

AN OVERVIEW OF IDLO'S WORK IN KENYA

About IDLO

The International Development Law Organization (IDLO) is an intergovernmental organization with a mandate to advance law and development. IDLO provides technical assistance and capacity development to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity.

Our approach

IDLO prides itself on being independent and impartial, and on working in a transparent, accountable and non-partisan manner. IDLO's Establishment Agreement provides that the organization shall not be influenced by political considerations in its activities, management, and staffing.

While the organization's work is anchored in international standards and values, IDLO's technical assistance seeks to align with local priorities, seek local support and ownership from a wide range of societal stakeholders, and work closely with local partners to meet local needs based on locally defined parameters.

IDLO takes into account the distinct nature of each country in which it works and invests in understanding the context. IDLO ensures it works in partnership with local institutions to identify the best entry points for programmatic intervention, while keeping in mind the needs of the end users of justice.

IDLO in Kenya

The Government of Kenya became a Member of IDLO in 2009. That same year, IDLO began its work in Kenya to provide technical assistance to the then Committee of Experts tasked with the development of the Constitution.

Since then, the organization has collaborated with the key agencies in the country responsible for the implementation of the Constitution, particularly relating to the Bill of Rights, land and environment, devolution, access to justice, public finance management and representation of the people. A key component of IDLO's work also relates to advancing gender equality across the country and operationalizing the gender provisions contained in the Constitution.

IDLO's support in Kenya has included strategic policy development, critical legislative review, expert technical advice, institutional strengthening and capacity building. In all projects undertaken by IDLO, the approach has been innovative and collaborative, rooted in partnerships, and driven by a meaningful understanding of the contextualized needs. From its inception, IDLO's work has been undertaken at the formal request from and with full knowledge of the Government of Kenya, and has been aimed at building a strong legal framework and enhancing access to justice for the Kenyan people.

Implementing the 2010 Constitution

In 2010, the people of Kenya overwhelmingly voted in favor of a new Constitution, which provides for one of the most ambitious devolution processes anywhere in the world and entrenches fundamental rights and freedoms.

IDLO began providing technical assistance in 2009 to the Committee of Experts on Constitutional Review, a body established to lead the drafting of Kenya's new Constitution. Subsequently, IDLO was invited to partner with the Kenyan government in the implementation of the new Constitution by providing support on capacity building, legislative drafting and expertise in constitutional implementation.

IDLO's support to the government is aimed at ensuring the implementation of the Constitution is effective, efficient and sustainable, in line with international standards and best practices, with a view to enhancing access to justice for Kenyans and ensuring that legislation required under the Constitution is produced to high quality standards.

This work is implemented in partnership with various legal and judicial entities within the Kenyan government. IDLO has provided support to state institutions from the three branches of government, both at the national and county levels, including:

- The Committee of Experts that developed the 2010 Constitution of Kenya
- The Commission for the Implementation of the Constitution from its inception to the conclusion of its mandate
- The former Ministry of Justice, National Cohesion and Constitutional Affairs
- The Office of the Attorney General and Department of Justice
- The Office of the Deputy President
- The Judiciary, namely the High Court (Family Division and Commercial and Admiralty Division); the Land and Environment Court; the Judiciary Training Institute; the National Council for Administration of Justice; and the Judiciary Committee on Elections
- The Parliament of Kenya
- The Ministry of Mining
- The National Treasury
- The Ministry of Devolution and Planning
- The Ministry of Public Service, Youth and Gender Affairs
- The Ministry of Environment and Natural Resources
- The Kenya Law Reform Commission
- The National Gender and Equality Commission
- The Kenya National Commission on Human Rights
- The county governments (through the Council of Governors, the County Attorneys Forum and the County Assemblies Forum)
- The Kenya School of Government

IDLO's technical support has enabled the enactment of over 50 pieces of legislation since 2010, thus giving effect to the letter and spirit of the Constitution. These include: the four main land laws in Kenya; four pieces of legislation relating to representation of the people; five laws relating to human rights; the Climate Change Action Plan; mining legislation and regulations; and over 15 laws relating to environment and natural resources management.

To further entrench a culture of constitutionalism in Kenya, IDLO has supported programs aimed at creating awareness on constitutional implementation and the roles of various stakeholders, including the development of periodic statutory reports by the Judiciary and key constitutional commissions.

It has also assisted in strengthening public participation including through support to the Office of Attorney General and Department of Justice in the ongoing development of the National Public Participation Policy. In order to ensure the active participation of civil society in the legislation process related to constitutional implementation, IDLO has engaged with academia, various professional bodies in policy and legislative processes, and other civil society organizations for their contributions.

Finally, IDLO has helped review proposed legislation and policies covering human rights, devolution, security, gender equality, land, natural resources management and the environment.

Access to justice

Access to justice is a critical pillar of poverty reduction and sustainable development, and the 2010 Constitution requires the government to facilitate access to justice for all citizens.

IDLO has been supporting the Judiciary in the implementation of Chapter 10 of the Constitution with the goal of enhancing access to justice for all Kenyans through strengthened institutional capacity to administer justice. IDLO's technical assistance has included support to the Judiciary Transformation Framework, and presently under the Judiciary's Strategic Plan 2014-2018 and the Sustaining Judiciary Transformation blueprint.

Since 2012, IDLO has been working to strengthen the capacity of the Judiciary to administer justice through a series of activities:

- Strengthening the capacity of Judicial Officers through the delivery of trainings and bar-bench forums;
- Providing technical assistance to the Judiciary's operationalization of alternative dispute resolution through support to the Alternative Justice Systems Taskforce and the Court Annexed Mediation Project with the Family and Commercial Divisions of the High Court;
- Supporting the capacity of the Judiciary to use information technology so that citizens can have increased access to information;
- Developing a legislative framework for access to justice through judicial policies on Sentencing and Bail and Bond;
- Supporting the development of the Judiciary Code of Conduct and Ethics;
- Providing technical assistance to the Family Division of the High Court on key legislative and policy reforms related to gender justice issues, including the revised Law of Succession (Amendment)

- Bill and Revised Probate & Administration Rules, which will have an important impact for women and marginalized groups throughout Kenya as they pertain to land, property and inheritance;
- Offering a mentorship program for female judicial officers in collaboration with the Kenya Women Judges Association;
 - Working with the Directorate of Public Affairs and Communication to streamline communications across the Judiciary to improve its public perception and better communicate reforms;
 - Supporting the Judiciary on gender mainstreaming initiatives, including the development and finalization of Judiciary's Gender Policy and the Sexual Harassment Policy;
 - Supporting the Judiciary's documentation of Kenya's emerging jurisprudence on devolution under the 2010 Constitution through a publication developed jointly with the Judiciary Training Institute and key contributors from academia and civil society;
 - Providing technical support to the National Council on the Administration of Justice, including programming support to the Court Users Committees at the local court station level around the country, and towards Technical Sub-Committees, including technical legislative support to the Children's Task Force in developing the 2017 Children's Bill.
 - Providing technical support to the National Council on the Administration of Justice and Council of Governors in convening the Second Annual Conference on the Administration of Justice within the Context of Devolution which culminated in the finalization of a Comprehensive Framework Agreement on the Administration of Justice within the Context of Devolution signed onto by more than two dozen partners, including the Department of Children's Services, the Inspector General of the National Police Service, the Director of Public Prosecution, Kenya Prisons Service, private sector actors, and civil society organizations.
 - Working with the Office of the Attorney General and the Department of Justice, the Judiciary, the National Legal Aid Service and other key stakeholders to finalize the National Action Plan on Legal Aid and Access to Justice.

Devolution

Under the 2010 Constitution, a new governance system with a national government and 47 county governments was initiated. However, the county governments had limited capacity for legislative drafting and policy development, and lacked effective mechanisms to ensure county legislation met constitutional standards and aligned to national policy.

IDLO has supported the devolution process by building the capacity of county governments to develop legislation for the devolved functions, facilitating coordination between the national and county levels of government, and strengthening systems for fiscal decentralization and accountability.

IDLO's activities have included:

- Training county attorneys on legislative drafting in collaboration with the Council of Governors, Ministry of Devolution and Planning, Office of Attorney General, the Kenya Law Reform Commission and Kenya School of Government;

- Supporting the development of county model laws as well as guidelines on the development of county laws and policies;
- Strengthening of the capacity of the National Treasury for fiscal decentralization and accountability through the Inter-Governmental Fiscal Relations Department;
- Promoting inter-governmental coordination by supporting various annual devolution conferences hosted by the Ministry of Devolution and Planning and the Council of Governors.

Gender reform

One of the most celebrated aspects of the 2010 Constitution is the expanded Bill of Rights which includes extensive provisions on economic, social and cultural rights and envisages enhanced institutional systems for the respect, protection and promotion of human rights, including the right to gender equality and freedom from gender-based discrimination.

The Constitution further harnesses gender equality and the empowerment of women by entrenching the principle that no more than two thirds of the members of an elective or appointive body shall be of the same gender. Furthermore, Kenya's Vision 2030 envisions gender mainstreaming in all government policies, plans and programs and by decision-making bodies to ensure that the needs and interests of women and girls are addressed.

Since 2013, IDLO has worked to enhance the capacity of the government to mainstream gender at both the national and county levels through technical assistance to the Ministry of Public Service, Youth and Gender Affairs (via the State Department of Gender Affairs), the National Gender and Equality Commission, the Judiciary and the Office of the Attorney General and the Department of Justice.

IDLO's activities have included:

- Together with the State Department of Gender, finalizing the Status of Women Report towards ensuring gender mainstreaming and improved availability of gender aggregated data, which was launched by Hon. First Lady Margaret Kenyatta and Hon. Cabinet Secretary Sicily K. Kariuki in March 2017.
- Providing support to the State Department of Gender in the development of the draft National Equality Policy 2017, and accompanying Ministerial Implementation Matrix which is presently before Cabinet for consideration, following approval by the Office of the Attorney General.
- Providing a Legal and Policy Gender Advisor to the State Department of Gender Affairs, who has provided input to: the draft periodic report on the Maputo Protocol outlining measures Kenya has taken to ensure its implementation of the Protocol; the Anti-Female Genital Mutilation Policy; child marriage initiatives; Kenya's Technical Committee on the implementation of the UN Security Council Recommendation on women and peace and security; Kenya's National Gender Equality Policy; and towards the implementation of the Government of Kenya's comprehensive framework to address sexual and gender-based violence.
- Supporting the National Gender and Equality Commission in the development of a Handbook for Legislators at the National Assembly, Senate and County Assembly levels on Principles of Equality and Non-Discrimination, as well as support towards the review and revision of the County

Government Leadership Guide on Integration of Gender Equality and Inclusion in County Development for newly elected county governments.

- Supporting the National Gender and Equality Commission in the development and finalization of a model policy and legal framework to address sexual and gender based violence for county governments.
- Providing support towards strengthening institutional capacity of the National Gender and Equality Commission to address gender equality and inclusion for the 2017 general elections through development and finalization of elections monitoring tools, trainings of cultural and traditional structures in Marsabit and Murang'a to advance gender equality, non-discrimination and promote prevention of gender-based violence, and through a rapid assessment of select political parties' constitutions, coalition agreements, nomination rules and regulations on gender equality and inclusion.
- Supporting the State Department of Gender, formerly the Directorate of Gender under the Ministry of Devolution and Planning under former Cabinet Secretary Anne Waiguru, to enhance institutional capacity to promote gender mainstreaming through development of the Government of Kenya's Gender Management System Manual and Guide and subsequent training of all County Gender and Youth Officers.
- Providing support to the Office of the Attorney General and Department of Justice, which has included the development of the rules to accompany the Marriage Act pertaining to Islamic marriages and the Divorce Proceeding Rules, and the review of the Public Trustees Act.

Electoral dispute resolution

The elections of 2013 were the first in Kenya's multiparty history in which disputes were resolved legally, peacefully and speedily, as opposed to resulting in violence or being allowed to drag through the courts.

Since 2012, IDLO has been supporting policy, legal and institutional reforms relating to elections and electoral dispute resolution in Kenya, ahead of the 2013 and 2017 general elections. IDLO's support is based on the rationale that by strengthening the capacity of the relevant mechanisms for efficient electoral dispute resolution, the credibility of these institutions as arbiters of disputes will be enhanced, which can ultimately lead to sustainable peace, the entrenchment of democratic electoral outcomes in Kenya, and continued equitable socio-economic development in the country.

IDLO's work on elections and electoral dispute resolution has involved all critical stakeholders - including the three arms of government, constitutional commissions and independent offices, political parties and civil society.

IDLO provided support to the Judiciary through the Judiciary Working Committee on Elections Preparations in the 2013 electoral dispute preparation process, and to the Judiciary Committee on Elections in the 2017 electoral dispute preparation process, including through training, legal reforms, documentation of electoral jurisprudence and communications support.

IDLO also provided support to a multi-state stakeholder initiative in undertaking legislative and institutional reforms on elections and management of electoral dispute resolution, bringing together the Independent Electoral and Boundaries Commission, Kenya Law Reform Commission, Registrar of Political Parties, Judiciary and the Parliamentary Justice and Legal Affairs Committee, among others.

Specifically, IDLO's activities have included:

- Providing training for judges and magistrates working on electoral dispute resolution;
- Delivering training of trainers for the Supreme Court, Court of Appeals, High Court, magistrates and support staff;
- Embedding training curricula in the Judicial Training Institute to provide continuous and updated skills-building workshops;
- Supporting the review of policy and legislative reform related to elections to create enabling legal and policy framework for effective dispute resolution;
- Bringing together multiple stakeholders to undertake legislative and institutional reforms on elections and dispute resolution management;
- Drafting and launching a series of publications which highlight the need for a strong judicial electoral dispute resolution mechanism;
- Supporting the finalization and launch of a Judiciary Bench Book on electoral dispute resolution to serve as a reference guide for judges and magistrates;
- Providing communications support to strengthen engagement with the Kenyan public, media, legal experts, civil society and other key stakeholders in the electoral justice chain.

Land, environment and natural resources management

The 2010 Constitution includes progressive provisions related to land, environment and natural resource management, and has given impetus to the development of new laws, policies, guidelines and other enabling legal instruments across many relevant sectors at the national and county levels.

IDLO is supporting legal, policy and institutional reforms through the following activities:

- Supporting the development and review of various bills - since enacted into law - and proposed amendments concerning mining, minerals, water, energy, forest and wildlife conservation, community land, marine pollution prevention, and agriculture and livestock research;
- Strengthening the capacity of community-level institutions in the sector to effectively engage with policy processes and push for increased community participation.
- Strengthening of the role of the Environment and Land Court to play its role in effecting of environmental justice in Kenya

How IDLO is structured

As an intergovernmental organization, IDLO is made up of 31 Members which include 30 States covering all regions of the world and one multilateral organization. The Members are responsible for governing the organization, overseeing its management and approving its policies, plans and budget.

IDLO is headquartered in Rome, Italy, has 14 field offices, and is currently implementing 28 programs around the world. The organization was granted Observer status to the United Nations in 2001 and has

representation offices to the United Nations in New York and Geneva. IDLO's Country Office in Kenya is headed by a Country Director who provides overall leadership, accountability to external and internal stakeholders, and coordination with IDLO Headquarters.

IDLO is a member of the International Aid Transparency Initiative (IATI) and reports publicly on all its programs and projects in accordance with IATI standards. Its programs, including those in Kenya, have been evaluated by independent experts and the findings are reported on its website.

Much of IDLO's technical assistance work is implemented by technical experts who are selected and assessed on the basis of their substantive legal, thematic and procedural expertise.

IDLO's Board of Advisers serves a purely advisory function. It is composed of legal and development experts who are elected by the Member Parties. Currently there are ten individuals from nine different nationalities. The Board of Advisers meets once a year to give general policy advice on issues relating to law and development.

The Board of Advisers is not involved in the selection, design or implementation of programs in any country or globally. That is the responsibility of IDLO's Director-General who reports to the Member Parties, not to the Board of Advisers.

All members of the Board of Advisers, including the Chair, serve in their individual capacity as independent experts. They are not employees of IDLO, do not receive any remuneration from IDLO and do not speak for IDLO. The views of the Chair of the Board or of any other member of the Board do not reflect the views of IDLO.

IDLO's International Advisory Council is not part of IDLO's governance. It is an informal structure, composed of distinguished individuals who have agreed to lend their name to IDLO's public outreach. They have no influence or role to play in the selection, design or implementation of any of IDLO's programs.

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