



*Making a Difference through Law*

# **SUPPORTING THE COMMITTEE OF EXPERTS ON CONSTITUTIONAL REVIEW OF THE REPUBLIC OF KENYA**

November 2009 – August 2010

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## **Evaluation Report**

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Facilitated by

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USAID was the funder of IDLO's support to the COE and the related civic education campaign, the subject of this evaluation.

## **EXECUTIVE SUMMARY**

### **Introduction**

In September 2010, IDLO's Evaluation Unit carried out an assessment of IDLO's support to the Committee of Experts on the Constitutional Review of the Republic of Kenya (COE) and the related civic education campaign. The evaluation, though not a requirement, was done with the support and endorsement of USAID, Kenya. The aim of the evaluation was to provide an overview of the results of the technical assistance, as well as identify key recommendations and lessons for similar initiatives in the future. The report is informed by qualitative and quantitative data collected through relevant documents review, over ten structured interviews with key informants, and two focus group discussions with beneficiaries of the civic education trainings.

### **Overview of the Technical Assistance**

In July 2009, IDLO received a letter of request for technical assistance from the Chairman of the COE<sup>1</sup>. The COE is one of the four organs of review established by the new Constitution of Kenya Review Act, adopted in December 2008. The scope and terms of IDLO's services to the COE, as outlined in the letter, included technical support in the design and drafting of a new Constitution. Some of the specific tasks were related to reviewing or contributing to sections of the harmonized draft Constitution including: devolution of power; decentralization of local government; systems and structures of governance (presidential, parliamentary and hybrid); electoral systems, fiscal equalization; and reform of the judiciary.

IDLO's technical assistance to the Kenya constitutional review process was funded by USAID.

### **Analysis of evaluation findings**

The evaluation concluded that the technical assistance provided by IDLO was relevant to its beneficiaries, namely the COE and the Kenyan civic educators. The support and services were delivered to fulfill identified needs and requests from the COE and ensured the delivery of much needed trainings to educate Kenyans on the proposed Constitution before it was put to a national referendum.

In terms of the effectiveness of the technical assistance, the evaluation found that while there were some challenges, IDLO consultants were able to produce and deliver high quality technical reports and services which eventually contributed to the final version of the Constitution of Kenya.

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<sup>1</sup> Within this report the acronym "COE" will be used interchangeably with the term "the Committee", both are in reference to the Committee of Experts.

Some of these reports largely informed specific sections of the Constitution. Also, the evaluation acknowledged that IDLO's management of the undertaking was unbiased, conscientious, reliable and unassuming. IDLO also collaborated with national civil society organizations to carry out civic education training in five regions. In this regard, IDLO's role and contribution was recognized as innovative, useful and effective. The IDLO coordinated training benefitted 169 civic educators who went on to directly reach over an estimated thousand Kenyans on the proposed Constitution. A significant majority of the trainers reported that the training was organized and delivered satisfactorily and equipped them with the skills, knowledge and confidence to successfully facilitate instructions on the Constitution amongst their respective constituents and/or in their respective communities.

A noteworthy result was that, through this initiative, IDLO developed sustainable national and international relationships and created opportunities for future collaborations towards building a strong legal framework for the people of Kenya.

Amidst the achievements and successes, the evaluation noted that the technical assistance failed to achieve its full potential given that the Committee did not utilize IDLO's services as extensively as originally hoped. The initial assumptions of both IDLO and USAID were not fully realized as the expected role and use of IDLO's services were limited. The scope of work and activities that IDLO and USAID budgeted for were not realized largely because the COE was often overwhelmed with work and as a result unable to respond to IDLO as anticipated. To this end, it was noted that IDLO could have realized greater success if a "proposed resource and action plan" was developed for consideration by the COE after receipt of the COE's initial letter of request. This proposed plan would have provided the necessary information to encourage the Committee to better understand the potential of IDLO's resources.

## **Main conclusions and recommendations**

### **1) IDLO Fulfilling the terms of the Grant Agreement**

- ✓ IDLO satisfactorily met the terms and conditions of the USAID grant as it relates to the timely recruitment and management of COE-approved high level constitutional experts to provide/deliver technical assistance including the formulation and presentation of opinions/observations when requested by the COE. Reports support the conclusion that each time IDLO received a specific request from the COE, they mobilized their resources, had the preferred candidates' qualifications verified by the COE and had them deployed to provide the service in a timely manner – sometimes within a number of days.

## **2) Quality of IDLO's Technical Support to the COE and support to the Civic education**

- ✓ Both USAID and the COE respondents were generally satisfied with the reports, commentaries, and services provided by the experts recruited by IDLO. All of the reports contributed in some way to the final version of the Constitution. Also, COE members on occasion asked for follow up presentations and reports from these experts to finalize specific sections of the (then) proposed Constitution. The COE members interviewed expressed much respect and appreciation for the products and services delivered by the IDLO-recruited specialists. All beneficiaries of the IDLO co-organized civic education trainings expressed sincere gratitude for the knowledge gained and the increased awareness of the provisions of the proposed Constitution which was made possible through the trainings. Overall, the opinion was that the trainings were organized in such a way to maximize knowledge transfer – from the resources provided to the experience and skills of the facilitator.

## **3) IDLO's approach to engaging the COE and the civic educators**

- ✓ The general consensus from USAID is that IDLO did the best it could to engage the COE given their limited influence and scope of responsibility. IDLO's communication with the COE was managed by the Secretariat which was also responsible for managing many other requests and other priorities, so even though IDLO made numerous attempts to engage the COE it only resulted in a few opportunities for collaboration. Regarding the civic educators, IDLO fostered successful partnerships with three civic education organizations and they valued IDLO's strategic thinking and supportive contributions.

## **Recommendations**

### **1) Approach and Strategy**

- ✓ IDLO should ensure that before any intervention sufficient research is conducted to identify and understand the clients' needs, concerns and agenda; as well as the environment in which it will be working considering the cultural and political influences. The information obtained will allow IDLO to foresee and manage some preventable implementation challenges.
- ✓ IDLO should develop and present a workplan outlining its capacities in relation to the identified needs of the client. This proposed plan should be shared with the client for consideration early in the process, so that they will have a clearer idea of what IDLO can contribute in terms of expertise and resources.

## **2) Coordination and Management**

- ✓ IDLO should have had adequate discussion with the client on the needs and the specific areas IDLO can provide support; and agree on potential deliverables and timelines for foreseeable products.
- ✓ IDLO should establish an MOU prior to project implementation with its clients to ensure that the terms of the collaboration are clear.

## **3) Relationships/Partnerships**

- ✓ IDLO should ensure that partners and clients are accessible and that the lines of communication are always open. The representatives of both sides must be equally engaged and committed to partnership, so that there are no delays, misunderstandings and disappointments.

## 1.0 INTRODUCTION

After over four decades of attempts at constitutional reform in Kenya and as a direct result of the December 2007 post presidential civil unrest, in December 2008, the people of Kenya made a commitment to revisit and revise the 1963 Constitution of Kenya to better represent the needs, rights and fundamental freedoms of its people. Though the 1963 Constitution had been amended more than 30 times by 2008, many agreed that it required a major overhaul. With the passage of the Constitution of Kenya Review Act in 2008, four organs of review were established<sup>2</sup> to manage the constitutional review process and finalize the draft Constitution of Kenya. The COE is one of these organs; it comprised a technical team of legal, human rights, political affairs and elections specialists. The COE was given the mandate of finalizing the Harmonized Draft Constitution of Kenya (HDCK) and presenting it to the Parliament Select Committee (PSC) for approval within 12 months of its establishment.

Given the enormity of the exercise and the short timeframe to deliver the end product, the Committee by way of a letter dated 28 July 2009, proposed that the International Development Law Organization (IDLO) develop a working relationship with it to provide expertise in a range of areas, when the need arises. Subsequent to that letter, IDLO moved quickly to clarify and establish the terms of the collaboration with the COE.

The primary purpose of IDLO's support was to provide efficient, relevant and useful technical assistance to the COE in support of its work to produce a proposed Constitution for national referendum. The second and related purpose was to provide targeted civic educators with training to enable them to effectively undertake civic awareness activities on the proposed Constitution.

Over a period of six months, with the financial support of United States Agency for International Development (USAID), IDLO secured qualified and experienced consultants to support the COE in reviewing and refining the proposed Constitution. The contributions were in the form of: commentary reports on the HDCK and later the proposed Constitution<sup>3</sup>; supplemental information and presentation specific to certain sections of the draft Constitution; and specialized drafting services. All of the

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<sup>2</sup> The 2008 Constitution of Kenya Review Act established four organs of review: the Committee of Experts (CoE); the Parliamentary Select Committee on the Review of the Constitution (PSC); the National Assembly; and the referendum.

<sup>3</sup> For purpose of clarification, within the report, the Harmonized Draft Constitution refers to the first version of the Constitution prepared by the COE and presented to the Parliamentary Select Committee on 23 February, 2010. After that date, the evaluation refers to the document as the proposed Constitution.

contributions were in response to requests made by the COE. Also through the USAID grant, IDLO was also able to assist with the civic education campaign throughout Kenya in preparation for the national referendum in August 2010.

## **1.1 Evaluation Purpose, Methodology and Limitations**

The evaluation was conducted by an officer of IDLO's independent Evaluation Unit and was a "learning" rather than an accountability exercise. The evaluation was intended to address both IDLO and USAID's needs and questions. Firstly, IDLO supported the evaluation because it was an opportunity to explore fully the implementation successes and challenges and help the Program and Field Operations Units build on and improve on their approach and practices. IDLO also wanted to identify lessons that could inform the planning and management of similar initiatives in the future. USAID appreciated the initiative to evaluate IDLO's performance, which could better document the results of the technical assistance. The evaluation was conducted between 9 August and 24 September 2010, with an in-country mission the week of 28 August-3 September 2010.

### **1.1.1 Evaluation Purpose**

The purpose of this evaluation was to assess IDLO's performance and the quality and usefulness of the technical assistance provided to the COE in response to its invitations and to the civic educators. Specific to this evaluation, the stakeholders are the USAID (the funder), IDLO (the service provider), the COE and the respective civic educators (the direct beneficiaries).

To this end, the evaluation assessed the extent to which IDLO satisfied or met the terms of the USAID grant, thereby exploring: 1) the extent to which IDLO achieved the objectives and deliverables of the technical assistance; 2) whether IDLO's approach to engaging the COE and the civic educators was effective, efficient and enabled the delivery of the desired results; and finally to 3) make recommendations to inform future IDLO constitutional support initiatives.

Specifically, the evaluation asked questions to investigate and qualify the activities relating to terms of the USAID grant agreement. The questions are specific to the relevance, effectiveness and results of IDLO's support to the COE and the civic educators during the Kenya constitutional review process.

### **1.1.2 Evaluation Methodology and Limitations**

To capture, verify and substantiate findings and conclusions, the evaluator used three approaches to collect data namely: 1) conducted a comprehensive review of relevant reports and documents; 2) held interviews with key stakeholders including contributors to the IDLO

technical assistance, IDLO program team and members of the COE; and 3) facilitated focus group discussions with recipients of the civic education trainings.

### **1.1.3 Evaluation Limitations/Challenges**

The evaluation was unable to capture information from a representative sample of the COE members. The timing of the in-country mission did not coincide with the availability of many COE members, most of whom were either out of town on business or vacationing with family. In the end, the evaluator was able to speak with three of the 11 Committee members, one of whom was the Director.

In terms of participants' feedback on the civic education trainings, the evaluator was only able to speak with beneficiaries operating in Nairobi, which was representative of only one of the five regions covered. This limitation was largely because the in-country mission was confined to one week and only within Nairobi.

### **1.1.4 Managing with the Evaluation Limitations/Challenges**

The evaluation made the most of the limitations mentioned above. Firstly, even though the evaluator was unable to consult with the targeted six COE members, there was definite advantage in having a very lengthy and open discussion with the Director, Mr. Ekuru Aukot, who was responsible for managing both IDLO's technical assistance and all the other invitations for support received by the COE. Mr. Aukot was able to adequately speak on the behalf of the COE in terms of the role of IDLO and its consultants, the quality of the products and services coming out of the IDLO camp and the issues that may have contributed to IDLO's successes and challenges. One of the other COE members consulted, Dr. Christina Murray, was a useful informant given that she was one of the members who interacted closely with and benefitted directly from IDLO-engaged experts' contributions.

The focus group discussions, though limited to Nairobi participants, were divided into two beneficiary groups. The first was a group of civic educators who were direct beneficiaries of IDLO's training. This group was very dynamic and represented 12 different Kenyan civic education and social groups based in Nairobi. The second group comprised individuals who received the follow on trainings carried out by the first group of trainers. To supplement the information gathered from the two focus groups, the evaluator relied on civic education training reports prepared by URAIA, IDLO's main implementing partner for the training. These reports covered trainings done in partnership with IDLO in all five of the regions.

## **2.0 BACKGROUND OF THE TECHNICAL ASSISTANCE**

The Government of Kenya (GOK) has long been struggling to develop laws and institutions that meet the aspirations and social-economic development needs of its people. Since the 1963 Constitution of Kenya was drawn up at independence, Kenya has grappled with the notion of writing a new Constitution.

At the end of 2007, Kenya faced the most serious crisis in its post-independence history following the general elections on 27 December 2007. Civil unrest broke out in protest of the results of the elections. The international community responded swiftly and a Panel of Eminent African Personalities was established to assist Kenyans in mediating a peaceful solution to the crisis. Several actions were immediately taken to restore calm. However, it was widely accepted that long-term peace and political stability were dependent upon the review of the constitutional process. To that end, the Constitution of Kenya Review Act was adopted in December 2008 and a Committee of Experts constituted in February 2009.

The Constitution of Kenya Review Act, 2008 established the COE as one of the four organs of review in the constitutional review process. The COE is the main technical body and comprised nine experts and two ex-officio members who were nominated by the National Assembly and appointed by the President pursuant to the Review Act. The members are specialists in constitutional law, systems and structures of democratic governments, human rights, electoral systems and laws including land, gender, governance, finance and administration. The COE assumed office in late February 2009 and had a 12-month mandate to deliver a proposed Constitution for Kenya. Given the obvious magnitude of the COE's directive, the team invited technical support from a number of interest groups, governments and international organizations including IDLO.

Given the short timeframe to deliver the end product, the specialized training and experience required to revise the draft Constitution, coupled with the vast outreach and sensitization campaign needed before the referendum, the COE, in a letter dated 28 July 2009, proposed that IDLO provide technical support in a range of areas.

### **2.1 Why the Committee of Experts selected IDLO**

The general understanding of most, including USAID, was that IDLO was chosen to provide the Committee with additional technical support and was the best fit given their needs, for the following reasons:

- ✓ IDLO's non-partisan and intergovernmental nature assured its complete commitment to support the mandate of the Committee;
- ✓ IDLO's core function being legal reform allowed for a more seamless interaction with the Committee given their mandate; and

- ✓ IDLO seemed positioned to respond to the Committee's requests for high level legal experts on specific topics from its worldwide network of legal specialists through a quick and efficient mechanism with minimal administrative processing time.

## **3.0 EVALUATION FINDINGS**

### **3.1 Introduction**

From November 2009 to February 2010, IDLO provided eight analytical reports, commentaries and a number of face-to-face consultations for the COE on the various iterations and specific sections of the HDCK and the proposed Constitution. Then, from April to July, in preparation for the civic education initiatives, IDLO partnered with two Kenya civil society organizations (CSOs), namely URAIA and Mercy Corps, to carry out five provincial workshops for targeted civic educators on the purpose and contents of the proposed Constitution in support of their civic education work on the proposed Constitution with their respective constituents and/or in their respective communities. In total, IDLO, in collaboration with URAIA, trained 169 civic educators who went on to directly reach over an estimated thousand<sup>4</sup> Kenyans on the purpose and contents of the proposed Constitution.

### **3.2 Findings and Discussion Specific to the Technical Support to the Committee of Experts**

This part of the evaluation considers evaluation questions relating to the following issues: 1) Relevance of IDLO's Technical Assistance; 2) IDLO's Approach and Engagement of the COE; 3) IDLO's Fulfilment of the Terms of the USAID's Grant; and 4) the Effectiveness and Results of IDLO's Technical Assistance.

#### **3.2.1 Relevance of IDLO's Technical Assistance**

IDLO's proposal to provide technical support to the Committee came after careful review and consideration of the mandate and needs of the COE. The objectives and deliverables of IDLO's Technical Assistance proposal clearly identified the following:

- ✓ the problem/issues to be addressed – in this case, it was the identification of the challenges of the COE to carry out its broad mandate, within a short period;
- ✓ IDLO's qualification to assist COE, drawing on IDLO's work in promoting legal reform, and years of experience working in Kenya; and

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<sup>4</sup> Data received from URAIA are collected from the Southern and Central regions only and are inconclusive. There are definite statistics for the southern region which totals 722 participants, but there were biggest events held in the central regions and most of the figures are approximate. The data was collected by URAIA during their follow on trainings monitoring missions.

- ✓ the letter from the Chair of the Committee to IDLO which identified specific areas that IDLO's expertise and capacity will be required. This letter was seen as an invitation to provide the additional technical support it proposed and gave relevance to its presence and role in Kenya during the constitutional review process.

All of the components of the IDLO proposal to USAID give rational, validation and justification for IDLO's technical support to the Committee. Also, the objectives of the technical support were largely defined by the Committee as it was based primarily on the communications received from the Chairman and the Director. Further to this, the tasks at hand and the time given for the COE to deliver made the undertaking challenging. IDLO, already identified as a potential collaborator, had the experience and resources to assist the COE carry out its mandate within the timeframe given.

### **3.2.2 IDLO's Approach and Engagement of the Committee**

The manner in which IDLO engaged the COE is a somewhat complex subject with varying understandings and expectations according to which stakeholder's view is given. The general consensus from USAID is that IDLO did the best it could to engage the COE given its limited influence and scope of responsibility.

Upon receipt of the 28 July 2009 letter from the Committee, IDLO moved quickly to engage the COE and clarify the terms of the technical assistance referenced in the letter. For this purpose, IDLO representatives travelled to Kenya and had several email and phone exchanges with the Committee. These exchanges were to clarify and map out the terms of the technical support. Some of IDLO's initial expectations were not realized in terms of how closely and frequently IDLO was to work with the COE. However, in a letter to IDLO as early as 27 August 2009, the COE clarified a few things that would guide the terms/parameters of the IDLO-COE relationship during the process, they include:

- a) The COE will not be able to assist IDLO with office space within the premises they were using; and further the COE would prefer the separation of the two offices in an effort to "safeguard its independence and the integrity of the process"; and
- b) The Committee will agree on the areas they would need support from IDLO and then formulate specific questions to be directed to IDLO's pool of experts. Additionally, the Committee will determine when and for how long the IDLO expert consultants will be needed, at which time they will communicate this in a timely manner to IDLO.<sup>5</sup>

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<sup>5</sup> See Annex 5 COE letter to IDLO dated 27<sup>th</sup> August, 2009, signed by Dr. Aukot, Director, COE.

From the points noted above, which are directly taken from the letter, it seems to suggest that IDLO had little control over when and how they would provide support to the COE. The challenge therein is that the response rate to request had to be properly managed, which left some responsibility to the COE to dispense instructions in a timely manner. In terms of engagement, it also influenced the potential proactivity of IDLO's representatives.

Follow up communications in September and October, 2009, provided opportunities to clarify technical support on specific issues including land law and public finance. At this point, the COE penned a letter indicating that the timing was not ripe for engagement of IDLO on specific issues and sections of the Constitution, but the COE would call upon IDLO to "fine tune" the HDCK once it was published and views collected.<sup>6</sup> Given the conditions of that letter, IDLO proceeded to ready itself for the tasks at hand once the HDCK was published in November.

In preparation for its tasks, IDLO recruited a distinguished legal practitioner and human rights advisor with significant experience with constitutional and governance issues, to manage the technical assistance and serve as IDLO's Senior Advisor and liaison to the COE. The main responsibilities of Mr. Graham Leung, Senior Advisor, were to manage all aspects of the support that IDLO provides to the Committee in accordance with the IDLO and donor standards and procedure.<sup>7</sup> Mr. Leung, in his capacity, also made numerous attempts to engage the COE. Though he can claim a cordial and mutually respectful relationship with the Director, he confirms that the Director was his only point of contact over the nine months in country and therefore his attempts to engage the COE were limited to and managed by Mr. Aukot.

IDLO's position is that they were mindful of the COE's claim to independence and ownership of the constitutional review process. As a result, in an effort to respect that stance, as well as to maintain a cordial and productive collaboration, IDLO never attempted to overstep or appear too aggressive in its approach to working with the COE. Further, IDLO had limited access to the COE; all communications with the Committee went through the Secretariat/Director, who was also handling all other requests for support from numerous interest groups both local and international. Also, the understanding was that IDLO was expected to provide independent, apolitical and "only when requested" support to the COE.

On the other hand, all parties believe that IDLO's services could and should have been utilized more. The initial letter from the COE indicated that there were ample avenues for IDLO to be well-engaged and support the work of the COE. IDLO's move to establish a representative in-country

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<sup>6</sup> See Annex 6 COE letter to IDLO dated 6<sup>th</sup> October, 2009, signed by Dr. Aukot, Director COE.

<sup>7</sup> See Annex 7 Terms of Reference, Mr. Graham Leung.

is indicative of the assumed role and responsibilities in carrying out the technical assistance to the COE. However, IDLO'S presence and constant communication with the COE Secretariat did not result in the amount of work anticipated.

In explanation, there were a number of reasons offered as to why this was the result. On one side, there is the impression that IDLO's approach was not strategic and that affected how well it engaged the COE. There is the opinion that IDLO would have had more opportunities to work with the COE if a workplan had been prepared and presented to the COE on ways that IDLO could support given the needs identified in the initial letter from the Chair of the COE. This workplan should have attached a roster of potential consultants specializing in the technical areas identified. The list should have been comprehensive and also representative, including experts from within the region. This proposed plan could have been submitted to the COE for consideration early in the process, so that consultants could have been identified, vetted and selected easier and faster.

Another explanation offered was that the COE was somewhat overwhelmed with offers of support. The COE Secretariat had to manage a large number of requests coming into the COE from other interested parties both regional and international. The volume of requests coupled with their daily responsibilities in carrying out the mandate could have contributed to the COE's failure to be as responsive to IDLO's offers of assistance. This limited the scope of work that IDLO ultimately undertook in support of the COE. In some instances, the initial call for IDLO's consultants' support required follow up communication and work but it was still less than what was anticipated and budgeted for.

The suggestion that IDLO could have been more assertive was hinted. However, there were some limiting conditions that would have made it difficult including the fact that access to the COE was limited to the Secretariat, and that both IDLO and USAID wanted to respect the integrity and independence of the COE and the constitutional review process.

### **3.2.3 IDLO's Fulfilment of the Terms of the USAID's Grant**

The Grant Agreement (AID-623-G-00-10-00001) between IDLO and the United States Agency for International Development, Kenya, was managed by Catie Lott, Director, Office of Democracy and Governance, and Sheila Karani, Parliamentary Strengthening Program Manager. On the IDLO side, Miles Young, Manager Field Operations based at IDLO Head Office provided management and strategic guidance; and Mr. Graham Leung was the IDLO Consultant, based in Kenya, responsible for coordinating the Technical Support. In fulfillment of the signed agreement, IDLO provided regular reports and updates on achievements, challenges

and strategic direction regarding the technical support initiative to both USAID officials in Kenya, via emails with regular summary reports, and the mandatory progress reports.

As per the terms of the Grant Agreement, and specific to supporting the COE, USAID Kenya expected the following deliverables from IDLO namely: 1) timely recruitment and management of COE-approved high level constitutional experts; 2) provision of consultancies/technical assistance to the COE; 3) formulation of opinions/questions/observations by IDLO recruited experts; and 4) the recruited experts to deliver/perform service as requested by the COE. Upon careful interpretation and verification of the specific requests, the evaluation can assert that: a) the above activities culminate into a single and overarching deliverable with certain quality markers; and b) IDLO met the terms and conditions of the grant. Regarding the terms of the grant as it relates to IDLO's response to the COE's request with the timely recruitment and management of COE-approved high level constitutional experts, and the delivery of high quality technical assistance, deliverables and services by the recruited consultants, IDLO performed effectively given the time constraints. In practice, once a clear request was made for a specific skill, or service, IDLO acted quickly to provide such expertise. Over the period of review and drafting of the proposed Constitution, the COE requested formally and informally that IDLO provide expertise in a variety of areas including drafting, technical support to review and comment on the contents of the proposed Constitution. In total, a multidisciplinary international team of IDLO-engaged experts produced a total of eight reports to the COE. Some of the reports provided a complete analytical review and commentary of the HDCK and later, the proposed Constitution. In a few instances, the COE requests came with very little time to obtain and deploy the experts, but IDLO was largely successful.

#### **3.2.4. Efficiency**

The technical assistance anticipated and proposed by IDLO was not fully realized in terms of the scope of work and the number of support interventions that were requested by the COE. The grant received by IDLO from USAID was in the sum of USD399, 896, from which IDLO secured the services of over 15 experts skilled in constitutional drafting, devolution, parliamentary systems, presidential and executive powers, finance, land, governance, and other relevant subject areas. IDLO also secured the continued presence of a senior and seasoned lawyer to manage all aspects of the technical assistance in Kenya. In the final months of the IDLO intervention, resources and time were devoted to organizing and delivering the five Training of Trainers workshops in support of the civic education.

The costs associated with the technical assistance were divided into three main categories namely:

- 1) *direct service delivery*, which are direct costs associated with the implementation of the technical assistance such the experts' fees and expenses, venues for activities, facilitators and materials used at the training workshops, the fees and expenses of the Senior Advisor and the administrative expenses relating to service delivery;
- 2) *supervision and quality control*, which includes IDLO management and support services at headquarters and the cost the evaluation; and
- 3) *IDLO's overhead costs*, which are the costs for IDLO support staff at headquarters.

As indicated in the table below, a grand total of USD 386, 514 was utilized to carry out the technical assistance, which is 96.6% of the grant received. From this sum, 52.1% of the expenditure was associated with actual costs for consultants' services and the delivery of the civic education trainings; and 44.6% (33.9% + 10.7%) was utilized to cover IDLO staff costs, including management oversight, accounting, logistics and administration.

**Table 1: Breakdown of the Technical Assistance Expenses (showing both direct and IDLO staff costs)**

<b>Functional Cost Items of the Technical Assistance</b>	<b>Actual Total Costs in USD</b>	<b>% of the total budget</b>
<b>Direct Service Delivery costs</b>		
<i>Consulting Fees and related expenses (direct cost)</i>	86, 222	22.3
<i>Civic education trainings</i>	16,740	4.3
<i>In country staff (direct cost)</i>	85,901	22.2
<i>Administrative costs in country including transportation</i>	12,349	3.2
<b>Subtotal</b>	<b>201, 212</b>	<b>52.1</b>
<b>Supervision and Quality Control</b>		
<b>IDLO staff costs (Management, Accounting)</b>	<b>131,073</b>	<b>33.9</b>
<i>IDLO staff related expense (direct cost)</i>	8,661	2.2
<b>Subtotal</b>	<b>139,735</b>	<b>36.2</b>
<b>Evaluation (direct cost)</b>	4,155	1.1
<b>Total cost of the Technical Assistance</b>	<b>345, 102</b>	<b>89.3</b>
<b>IDLO Overhead costs (12% of technical assistance total cost)</b>	41,412	10.7
<b>Grand Total</b>	<b>386,514</b>	<b>100</b>

USAID is generally satisfied with the way the funds were utilized. They felt that IDLO provided the necessary resources to carry out the services when requested and that the quality of the experts' work met the needs of the COE and was overall cost-efficient. Though the IDLO "project management" expenses were large, efforts were made to minimize some costs associated with in-country office set up and supplies. The initial budget included costs for renting office space for the in-county staff, however a decision was taken to forego this expense. The IDLO Senior Advisor mostly worked out of his residence. Though this posed some challenges, Mr. Leung was able to organize meetings with partners and collaborators at their offices or at a neutral venue.

### **3.2.5 The Effectiveness and Results of IDLO's Technical Assistance**

IDLO recruited experts produced, and in some cases, presented a total of eight reports to the COE. Some of the reports provided a complete analytical review and commentary of the HDCK and the proposed Constitution. The products included:

- ✓ Comprehensive report by the so-called "Chicago Group"<sup>8</sup> entitled: **Report on the Harmonized Draft Constitution of Kenya** of 17 November 2009 presented on 14 December, 2009;
- ✓ Follow up report of the Chicago Group entitled: **Comments on the Latest Draft Constitution of Kenya: Supplementary Report presented to the COE** on 10 February 2010.
- ✓ Other reports were specific to certain sections of early iterations of the proposed Constitution such as:
  - the two reports and one opinion piece from Professor Muna Ndulo: **Supplementary Comments on the Harmonized Draft Constitution of Kenya of 17 November 2009** submitted on 6 January, 2010 and the second report entitled: **Democratic Governance and Constitutional Restraint of Presidential and Executive Power**, which at the specific and direct request of the COE, he submitted on 15 February and subsequently presented to the COE and Parliamentary Select Committee on 16 February 2010 and
  - an opinion piece on the **Role of the Senate in Originating Money Bills** submitted on 23 February 2010.
- ✓ IDLO also recruited Professor Dele Olowu to prepare a report on the devolution provisions of the HDCK. The recruitment and

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<sup>8</sup> The Chicago Group was a multi-national, multi-disciplinary team of specialists, based in the United States, who met on at least three occasions to review and consolidate their commentaries on the HDCK and iterations of the proposed Constitution. The first work session was a coordinated workshop organized by Professor Tom Ginsburg in collaboration with IDLO.

submission were in response to a request made by the COE and conveyed to IDLO through Professor Ndulo.

The work of the Chicago Group was seen by most of those consulted by the evaluator as comprehensive and of high quality. IDLO collaborated very early with Professor Tom Ginsburg of the University of Chicago to set up this group of US-based constitutional experts because of the obvious value-add such a distinguished team would have been to the COE and the constitutional review process given their experience and expertise. Each member of the team is well recognized in his/her field of expertise and brought significant knowledge of the constitutional reform processes of many regions of the world including Asia, Latin America and Africa. The team comprised lawyers, legal analysts, constitutional experts and political scientists. The list of the members and short biographies of some of the key contributors are provided in Annex 9. Professor Ginsburg and the Chicago Group were available throughout the process to provide regular expert assistance to the COE.

The Chicago Group in particular prepared three reports – one on the HDKC and one on each of the two subsequent iterations of the proposed Constitution. Professor Ginsburg, who coordinated the work of the Chicago Group, reported that he received specific requests from Professor Murray, one of the COE members, to provide supplemental reports on **constitutional provisions relating to authority over the armed forces** and the **role of the president in legislation**. Professor Ginsburg followed up on these requests by preparing two memos, which ultimately informed the content of the aforementioned sections within the proposed Constitution.

The team of experts, including legal academics and practitioners, directed by Professor Ginsburg took on different composition based on specific requests from IDLO and the COE. The three times that the group convened, the composition and number of the members changed. At their first meeting, which was the workshop convened in November 2009, ten members were in attendance, primarily lawyers versed in constitutional law. For the second review, the working group comprised an eight-member team with experience and expertise from different regions including Kenya, South Africa, Ethiopia and Eritrea. The focus of the supplementary report was on the checks and balances needed given the proposed shift to a presidential system in Kenya. The third round review, later in February 2010, brought together six of the members to propose recommendations for the sections on devolution, presidential system and the Senate.

IDLO also provided an experienced 'plain English' drafter – John Leahy – to work with drafters from the COE Secretariat. Mr. Leahy provided technical assistance by drafting certain parts of the proposed Constitution

in accordance with instructions from the COE and reviewed the work of the other drafters, proposing improvements as required.

All of the experts were recruited only when the COE made a request through IDLO or directly to the consultants in the case of follow up exercises. In every instance, even with timing constraints, IDLO recruited qualified individuals who then produced work of high standards. As a general practice, and time permitting, IDLO would share the CVs of experts being considered with both USAID and the COE before going ahead with the selection. Even though the time given for the selection and deployment of these was not always sufficient, IDLO and key informants interviewed from USAID and the COE can vouch for the high quality of the products, the professionalism of those selected and the overall value and relevance of the product and services rendered.

### ***3.2.5.1 Quality of IDLO's Technical Support to the COE***

IDLO made a concerted effort to ensure that the technical support provided by the experts recruited was always professional and relevant to the specific needs of the COE. To ensure this service was delivered effectively and efficiently, IDLO put in place at least two levels of management and coordination. At the head office, the Manager of Field Operations collaborated regularly with USAID representatives and the Secretariat of the Committee of Experts to identify areas for IDLO's support and to ensure that, when the need was identified, the experts' services and products satisfied the COE's needs and expectations.

IDLO also engaged a Senior Advisor to be placed in Kenya for the duration of the initiative. The Senior Advisor's Terms of Reference had two main responsibilities: the first was to serve as the in-country IDLO representative with the specific task of liaising with the COE Secretariat to identify areas in which IDLO can work with the COE and to establish a mutually agreeable work plan for IDLO. The second was to coordinate the activities of the experts hired to provide a specific service for the COE. IDLO, with the two levels of support, tried with varying degrees of success to engage the COE, and when requested, provided the necessary support. The quality of the support therefore was evaluated on two levels: one is the quality of IDLO's management of the overall technical assistance initiative and the second is the ability of the consultants and the usefulness of their products and services. In the first instance, IDLO's management of the technical assistance received mainly positive reviews. All the experts that worked with either IDLO HQ staff or Mr. Leung reported that IDLO was very professional and supportive throughout the process. They noted that given the limited control IDLO had, they were able to provide clear instructions and terms of reference and were able to clarify issues when required. Mr. Leung is credited with improving the visibility and reception of IDLO in Kenya. Also, the recruitment and ongoing in-country support to Mr. Leahy, the drafter recruited by IDLO,

was managed admirably by Mr. Leung. One of the consultants, Mr. Ndulo, noted with high praise that Mr. Leung has “developed excellent working relationships with legal and political actors, agents of different social interest groups” and international development agencies as well as the members of the COE with whom he interacted.

To some extent, IDLO is also credited for the role it played in carrying out the civic education trainings. This activity was initially not part of the technical assistance contemplated and therefore not initially a part of Mr. Leung’s TOR. Nonetheless, within a very short period, he was able to establish partnerships with civil society organizations in Kenya, namely URAIA and Mercy Corps, and plan and carry out the civic education trainings in five regions. The establishment and maintenance of these partnerships were attributed largely to his character, capability and perseverance.

Nonetheless, a few of the experts mentioned that the allowance of more lead time to prepare for the assignments could have produced even better results. Mr. Leahy, who had to work with a team of drafters, would have appreciated some time to get to know his peers and allow for effective division of labour based on strengths.

Regarding perceptions of the quality of the technical assistance provided, both USAID and the COE informants were generally satisfied considering the tight timelines and limiting circumstances. The fact that the reports and memos were used to inform many sections of the proposed (now new) Constitution and improve the overall quality of the document speaks to the quality of the work submitted.

Nonetheless, these accomplishments came with some challenges. There is consensus from all parties involved that because of the cultural and political sensitivities attached to the constitutional review process in Kenya, IDLO, as an “outsider”, would have had a challenging undertaking and therefore would have required careful selection of its experts. There were also issues relating to preparedness, specifically IDLO’s ability to not just produce qualified and competent technical experts but also its ability to deliver at a moment’s notice.

The COE expected, to some extent, that IDLO’s experience would have enabled them to offer a proposal or plan for consideration. This proposal, including a list of experts specializing in the areas specified in the COE’s initial letter, would have served as guide for the technical assistance. The Director felt that such an initiative would have allowed the COE to have a better idea of what IDLO can offer and allow them to access and select qualified experts with greater speed and efficiency. Another issue was the perceived relevance and appropriateness of the experts’ experience. There is the impression that many of the IDLO-recruited experts, though leaders

in their relevant fields, did not bring adequate knowledge of the Kenyan history, political environment and culture.

### **3.3 IDLO's Support to the Civic Education Campaign**

After the proposed Constitution was approved by the National Assembly, the COE shifted its priority to civic education on its purpose and contents. In April 2010, IDLO proposed to USAID an opportunity for continued support of the Kenya constitutional review process by organizing and facilitating civic education trainings on the proposed Constitution. To that end, IDLO approached USAID to amend the terms of the Grant Agreement to include civic education as one of IDLO deliverables. On 4 May 2010, both parties agreed to extend the performance period of the Grant from 31 March 2010 to 31 August 2010 at no additional cost and on 15 June 2010 the parties agreed to include civic education<sup>9</sup> as a deliverable.

#### **3.3.1 IDLO's contribution to civic education trainings in Kenya**

The release of the proposed Constitution in May 2010 in advance of the national referendum on 4 August 2010, presented an opportunity for IDLO to further support the mandate of the Committee. IDLO collaborated with two CSOs in Kenya<sup>10</sup> to conduct civic education workshops on the proposed Constitution. Between 21 June and 6 July 2010, IDLO collaborated with URAIA and Mercy Corps to deliver five civic education workshops. The trainings were intended to supplement those being conducted by the COE as well as other civic education groups. URAIA was the main local partner and collaborated with IDLO on four of the five Training of Trainers (TOTs) workshops. The TOTs were conducted in Nairobi, Meru, Nakuru, Kericho and Malindi. The objective of the TOTs was to ensure that participants were provided with a good understanding of the main features of the proposed Constitution of Kenya to enable them to share the same information to members of their own constituencies before the referendum.

In just over two weeks, a total of 169 participants received training from IDLO. The TOTs were organized as a two-day workshop per region. Each workshop was organized around a comparison of the current and proposed Constitution, and reasons why a new Constitution had been proposed. Some of the "burning issues" relating to the proposed Constitution covered during the workshops included: land rights; Kadhi court; devolution, separation of powers, and citizenship. Each participant received both a copy of the current and the proposed Constitutions, and

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<sup>9</sup> See Annex 2: Modification 02 to the grant agreement between USAID and IDLO.

<sup>10</sup> The partner organizations, Mercy Corps and URAIA are also beneficiaries of USAID funding.

the facilitators and trainees were able to easily reference the relevant sections during the presentation and discussions.

IDLO contracted three trainers to facilitate the civic education trainings. They were selected after a careful review of their background and experience. Two of the trainers, Kimathi Kamencu and Christine Alai, were lawyers. The third trainer, Tom Kagwe has a background in political science and sociology. IDLO’s in-country Senior Advisor, Mr. Leung, was present at all five workshops to monitor and ensure quality control. In terms of demographics, more than one-third of the participants was female and in some areas, such as Nakuru, there was a significantly high number of youth, while in Meru a noticeable number of trainees were seniors. IDLO and URAIA reported that all the sessions were interactive and lively and there was a high level of engagement by participants.

The table below provides a breakdown of TOT participants by regions:

**Table 2: TOT participants from 21 June to 6 July 2010**

<b>Regions</b>	<b>Dates</b>	<b>Number of Participants</b>
Nairobi	21-22 June	28
Meru	24-25 June	39
Nakuru	28-29 June	29
Kericho	1-2 July	30
Malindi	5-6 July	42
<b>Total</b>		<b>169</b>

The 169 men and women trained came from a number of active social groups in Kenya, including Kenya Muslim Youth Alliance (KMYA), Rural Community Development Agency (RCDA), and Partners with Vision, African Youth Trust (AYT), Woman Kind Kenya (WOKIKE) and Center for Research (CLARION). The majority went on to facilitate follow on trainings with their respective constituents and/or in their respective communities. URAIA’s monitoring reports of the follow on trainings for the central and southern regions<sup>11</sup> tell that the trainers used different types of fora to undertake civic education on the proposed Constitution. These include open fora, road shows and targeted trainings. In the southern region, URAIA reports that over 722 individuals benefitted from the trainings of which 386 (53.4 %) were females and 336 (46.5%) were males. In the central region, an approximate 8673 Kenyans were exposed to information on the proposed Constitution.

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<sup>11</sup> IDLO was able to obtain only these two reports from URAIA at the point of writing this report.

### **3.3.2 Civic Education Trainings Evaluation Findings**

Evaluation reports on the follow on trainings indicate that the majority of the participants were satisfied with the training. Many believed that they were armed with the “facts” that will help them differentiate between the many myths that had been circulating in the community and what was actually contained in the proposed Constitution. The general consensus was that participants found the workshops to be helpful and they either met or exceeded their expectations. As a result of the information received during the trainings, many misconceptions entertained about the proposed Constitution were minimized or eliminated. Participants also reported that their new-found knowledge empowered them and increased the confidence needed to facilitate similar trainings and discussion on the proposed Constitution.

On the other hand, participants were able to identify some shortcomings in the organization and presentation of these follow on trainings. The timing of the civic education training was an issue. Some participants felt that while the training was valuable, it should have taken place earlier and not so close to the referendum date, as in the interim, some politicians had already made an impression on people with their opinions and prejudices. Others, about 65%, reported that the trainings were too short and would have had greater impact if were a “residential-based” training. There were comments regarding the hours lost in travelling to and from the training location each day, which essentially took away from time that could have been spent interacting and discussion the proposed Constitution in further depth. Both IDLO and its partners have noted these comments for consideration.

During her mission, the evaluator facilitated two focus group discussions (FGDs). The first group comprised TOT recipients based in Nairobi and the second group included beneficiaries of the follow up trainings conducted in Nairobi. The findings are based on participants’ perception of the TOTs and any results that can be attributed to the trainings. It is important to note that all the FGD participants were Nairobi-based recipients and therefore the representativeness of the claims is limited to the geographic area. Of the 169 individuals who attended the five TOTs, 28 or 16.5 % were from the Nairobi training. From this 28, 12 persons or 42.8% participated in the FGD. However, the evaluation considered the findings at this juncture supplementary to the information collected immediately after the trainings in July 2010. The information collected, though limited to the Nairobi participants’ experience, is useful and considered valid as the perceptions and opinions aligned with those captured in July 2010.

Below are comments based on FGD participants’ perception of the trainings.

### **3.3.2.1 Quality of the training**

- ✓ 100% of the participants felt that the facilitation skills were good. They felt that the facilitator's presentation was effective because he had a very good understanding of the contents of the proposed Constitution. He was also able to make quick references within the document where the specific "burning" issues that concerned most Kenyans were addressed. These issues include land rights, abortion and citizenship.

*"The facilitator was sharp in the presentation with a deep understanding of the contents of the constitution. There was good interlinking, (cross-referencing) of the various sections and articles of the constitution."*

- ✓ A similar number found value in having copies of both the (then) current Constitution and the (then) proposed Constitution made available to them during the trainings.

*"It was nice that a copy of the old constitution was provided – which prior to the referendum it would have been illegal in some ways to possess one. This helped in understanding and was useful for purposes of comparison."*

*"Making available the old constitution and the new constitution for comparison purposes made it easier to understand. If all Kenyans had an opportunity to compare the two documents the endorsement of the new constitution would have been by more than the 6 million people."*

- ✓ The majority of participants 9/12 (75%) also reported that the TOT met the stated objectives. Most of them reported that they were able to correct some of the misunderstandings on a number of the issues associated with the proposed Constitution. 100% of them felt that they were better able to make an informed vote.

*"People through the constitution have become more aware that they have the power to determine how they want to be governed."*

### **3.3.2.2 TOTs Influence on Participant Knowledge and Behavior**

- ✓ All of the participants felt that they had a better understanding of the proposed Constitution after the TOTs which allowed them to deliver the follow on trainings with confidence.

*"I had more confidence after the training and I had a good understanding of the constitution and the ability to discuss some of the main issues by referencing the different clauses in the constitution".*

*"I felt more knowledgeable on issues on the constitution which gave me confidence to make presentations with authority*

*"The training allowed me for the first time to question some of the misinformation that was out there about citizenship and animals. Certain things that I used to take for granted, I now separate the myths from the reality... I am now empowered. I know my rights."*

*"For the first time in my life I saw the constitution as something owned by the people and understood that the people actually had the power in this country, before I thought that this constitution thing was governments and not mine. "When one is taken through a document a feeling of ownership is bestowed them."*

- ✓ One noteworthy and unanticipated result is that one of the participants of the TOTs has since mobilized a youth parliament to address some of the contentious issues associated with the constitutions such as land ownership. The group is called the Akuru Youth Forum and it meets weekly.

## **4.0 CONCLUSIONS AND RECOMMENDATIONS**

### **1) Approach and Strategy**

In the future, IDLO should continue to exercise care and diligence when offering services to clients with a heavy political mandate and agenda. There are generally certain sensitivities to keep in mind and, if not considered, can cause unnecessary impediments to a successful collaboration and by extension, the achievement of the desired results of the initiative.

- ✓ Before any intervention, IDLO should ensure adequate research is conducted to identify and understand the client's needs, concerns and agenda as fully as possible, as well as the environment in which it will be working including the cultural and political context. The information obtained should inform the strategy and allow IDLO to foresee and manage some of the challenges it encounters. It will also allow IDLO to present a technical support plan that would be appealing to the client.
- ✓ IDLO should identify and investigate other agencies with similar capacities that are providing the same services to the client as those being proposed by IDLO. Early in the design phase, it would be useful and more efficient to liaise with these agencies, or interest groups operating within the country to identify niches and synergies, in order to optimize resource allocation and program effectiveness.

Successful engagement is also necessary when carrying out technical assistance initiatives. The clients and beneficiaries need to have confidence in the service provider, in their ability to carry out the tasks proposed and a clear understanding of the agent's experience and expertise. Even though IDLO met with some restrictions regarding access to the COE and limitations in terms of their role, they may have been some advantage in presenting a proposal to the the COE on how IDLO can assist them. This proposals could have addressed any concerns the Committee may have had regarding IDLO's experience with such a process, IDLO's competence and preparedness to carry out the activities as well as the necessary resources IDLO had available to support the Committee. The was a big issue, so any thing that could have been done to help the COE save time and deliver the end product on time would have been appreciated.

- ✓ At the outset of the Project, IDLO should insist with its partners that they jointly develop a workplan outlining IDLO's capacities in relation to the identified needs of the client. In cases where a variety of skills and technical assistance is required, IDLO should attach a comprehensive roster of potential consultants specializing in the areas identified. The list should also be representative, including experts from within the specific region. This proposed plan should be shared with the clients for consideration early in the process so they will have a clearer idea of

what IDLO can contribute in terms of experts. Based on the work plan, IDLO can establish an agreement with the clients, identifying the specific areas and points IDLO will be called in to support. This will allow IDLO to have a faster response rate, which is a requirement in these contexts.

## **2) Coordination and Management**

The opportunity for best results is greater when the service provider has more room to contribute to and shape the nature of the support or service provided. It will also foster efficiency and effectiveness as both IDLO and the selected consultants would have had more time to react to the requests. In general, coordinating and managing this kind of technical assistance requires quick reaction therefore being prepared and able to react quickly is crucial.

- ✓ IDLO should have had adequate discussion and agreement with the client on the needs and the specific areas IDLO can provide support and on potential deliverables and timelines. Based on these discussions and agreements, IDLO should establish a written understanding or agreement with the client which should be explicit and include a strategy and realistic work plan along with a list of relevant experts identified and pre-screened by the clients and donors based on the agreed areas for technical support.

## **3) Relationships/Partnerships**

IDLO had relative success in developing strategic relationships with ministry officials and some civil society agents in Kenya. However, additional effort and careful planning is required to ensure that these relationships are sustainable and mutually beneficial, especially if IDLO wishes to continue collaborations in Kenya. All of the Kenyan representatives of the Committee are distinguished personalities in the social, economic and political arenas in Kenya. Therefore, it is absolutely necessary for IDLO to utilize the contacts and relationships established during this exercise. There are obvious opportunities for continued work in Kenya, including in the implementation of the new Constitution of Kenya. Therefore, the time is ripe and opportunities are there for IDLO's expertise, but building on the relationships and establishing partnerships are crucial to IDLO's success in Kenya.

- ✓ IDLO should try to ensure that partners and clients are accessible and that the lines of communication are always open. The representatives of both sides must be equally engaged and committed to partnership, so that there are no delays, misunderstandings and disappointments.
- ✓ IDLO should not start implementation (hiring of personnel, deployment to the field) before client has demonstrated interest and commitment to engage in the proposed initiative with IDLO.

# ANNEXES: Annex 1: IDLO-USAID GRANT AGREEMENT with Attachments A & B



November 13, 2009

William T. Loris  
Director-General  
Viale Vaticano, 106  
00165 Rome, Italy  
Tel: +39 06 4040 3200  
Email: [wloris@idlo.int](mailto:wloris@idlo.int)

Subject: Award of Grant No. AID-623-G-00-10-00001 Supporting the Committee of Experts on Constitutional Review of the Republic of Kenya

Dear Mr. Loris:

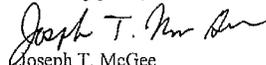
Pursuant to the authority contained in the Foreign Assistance Act of 1961, as amended, the U.S. Agency for International Development (USAID) hereby awards to International Development Law Organization – (IDLO) (herein after referred to as the "Grantee"), the sum of \$399,986 to provide support for Supporting the Committee of Experts on Constitutional Review of the Republic of Kenya governance and policy anti-corruption activities as described in the Schedule of this award and in Attachment B, entitled "Program Description."

This Grant is effective and obligation is made as of the date of this letter and shall apply to expenditures made by the Grantee in furtherance of program objectives during the period beginning with the effective date and ending on or about March 31, 2010. USAID will not be liable for reimbursing the Grantee for any costs in excess of the obligated amount.

This Grant is made to the Grantee, on condition that the funds will be administered in accordance with the terms and conditions as set forth in Attachment A (the Schedule), Attachment B (the Program Description), and Attachment C (the Standard Provisions), all of which have been agreed to by your organization.

Please sign the original and all enclosed copies of this letter to acknowledge your receipt of the Grant, and return the original and all but one copy to the Agreement Officer.

Sincerely yours,

  
Joseph T. McGee  
Supervisory Regional Agreement Officer

- Attachments:  
A. Schedule  
B. Program Description  
C. Standard Provisions

ACKNOWLEDGED:

BY: William L. Lewis  
TITLE: Director General  
DATE: 18 Nov 2009

**ACCOUNTING AND APPROPRIATION DATA**

**A. GENERAL**

- |                                      |  |
|--------------------------------------|--|
| 1. Amount Obligated this Action:     | \$399,986.00   |
| 2. Total Estimated USAID Amount:     | \$399,986.00   |
| 3. Cost-Sharing Amount (Non-Federal) | \$0.00   |
| 4. Activity Title:                   | Supporting the Committee of Experts on<br>Constitutional Review of the Republic of Kenya |
| 5. USAID Technical Office:           | GJD  |

**B. SPECIFIC**

MAARD No.: 615-MAARD615-0006-3-90065  
Operating Unit: Kenya  
Distribution: 615-M  
Program Area: A09  
BFY Fund: ES-SUP 2008 2009  
Doc No.: 615-DAGA-010-09-001  
Amount: \$399,986.00

**C. PAYMENT OFFICE**

CONTROLLER RFMC  
P.O. Box 629 - 0621  
Village Market,  
Nairobi, Kenya

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**ATTACHMENT A: SCHEDULE**

**A.1 PURPOSE OF GRANT**

The purpose of this Grant is to provide support for the program described in Attachment 2 to this Grant entitled "Program Description."

**A.2 PERIOD OF GRANT**

1. The effective date of this Grant is on or about November 13, 2009. The completion date of this Grant is on or about March 31, 2010.

**A.3 AMOUNT OF GRANT AND PAYMENT**

1. USAID hereby obligates the amount of \$399,986.00 for purposes of this Grant.
2. Payment shall be made to the Grantee in accordance with the provisions entitled "Payment – Reimbursement (May 1986)."

**A.4 GRANT BUDGET**

The following is the Agreement Budget, including local cost financing items, if authorized. Revisions to this budget shall be made in accordance with the Mandatory Standard Provision entitled "Revision of Award Budget (October 1998)."

<b>Item Description</b>	<b>Total Cost</b>
Program activities	\$399,986.00

**A.5 REPORTING AND EVALUATION**

**1. Financial Reporting**

The Recipient will provide the following reports to the USAID/Kenya AOTR and the Agreement Officer, as specified below, in accordance with 22 CFR 226.51 and 226.52 and the Substantial Involvement provisions:

**1. Financial Reporting**

In accordance with 22 CFR 226.52, the SF 269 and SF 272 will be required on a quarterly basis. The recipient shall submit these forms in the following manner:

- i. The SF 269A shall be submitted to the Agreement Officer Technical Representative Officer with one copy to the Agreement Officer. The SF 269A shall be submitted on an accrual basis.

ii. The SF 272 must be submitted to the Agreement Officer Technical Representative Officer with one copy to the Agreement Officer.

iii. Financial reports will include budget versus the actual expenditures, along with a brief analysis of any variance. Reporting periods will coincide with the USAID/Kenya fiscal year quarters, with reports due no later than thirty (30) days after the end of each quarter.

## **2. Program Reporting**

The Recipient shall submit one copy of the program report to each of the following:

Agreement Officer Technical Representative  
USAID/Kenya, GJD Office  
P. O. Box 629 - 00621 Village Market  
NAIROBI, Kenya

Regional Agreement Officer  
USAID/EA/RAAO  
P. O. Box 629 - 0621 Village Market  
NAIROBI, Kenya

The program reports are required to be submitted at the end of the project and shall present the information contained in 22 CFR 226.51 (d). The final report should contain the following:-

- an overall description of the activities under the program during the period of this grant, and the significance of these activities;
- the program's accomplishments;
- the issues and problems that emerged during program implementation and the lessons learned in dealing with them;
- a budget spreadsheet that contains final expenditures of the program broken down by budget line item.

### **A.6 AUTHORIZED GEOGRAPHIC CODE**

The authorized geographic code for procurement of goods and services under this award is 935.

### **A.7 EXECUTIVE ORDER ON TERRORISM FINANCING (FEB 2002)**

The Contractor/Recipient is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the responsibility of the contractor/recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all subcontracts/subawards issued under this contract/agreement.

## ATTACHMENT B: PROGRAM DESCRIPTION

The Chairman of the Committee of Experts on Constitutional Review of the Republic of Kenya has requested IDLO's support in completing the constitutional review process in Kenya (see Annex A). IDLO has accepted this request and as a first step, its Director General travelled to Kenya from 5 – 7 August, 2009, to consult directly with the members of the Committee. This paper is the result of those consultations and the supporting correspondence.

### **Problem Being Addressed**

The Government of Kenya has long been struggling to develop laws and institutions that meet the aspirations and social-economic development needs of its people. Kenya faces a number of political and policy challenges in this regard, including implementation capacity in a fairly polarized and politically charged environment on substantive matters and process issues. Consequently, Kenya has grappled with the notion of writing a new Constitution for over a decade. Other laws need strengthening or updating to address such challenges as corruption, recovery of assets, successful criminal prosecution, land tenure, judicial review, transparency and accountability, fair and equitable use and distribution of national wealth and opportunities, increasing crime and extra judicial killings.

Kenya faced the most serious crisis in its post-independence history following the general elections of 27 December 2007. The international community responded swiftly and a Panel of Eminent African Personalities was established to assist Kenyans in mediating a peaceful solution to the crisis. Several actions were immediately taken to restore calm. However, long-term peace and political stability are dependent upon the review of the constitutional process. To that end, a new Constitution of Kenya Review Act was adopted in December 2008 and a Committee of Experts constituted in February 2009, as well as the promulgation of the Constitution of Kenya (Amendment) Act, 2008.

Under the Constitution of Kenya Review Act of 2008, the Committee of Experts is to complete its work by December 2009. The Committee has identified a need for technical support in a range of areas where IDLO expertise will be required.

### **Why the Committee selected IDLO**

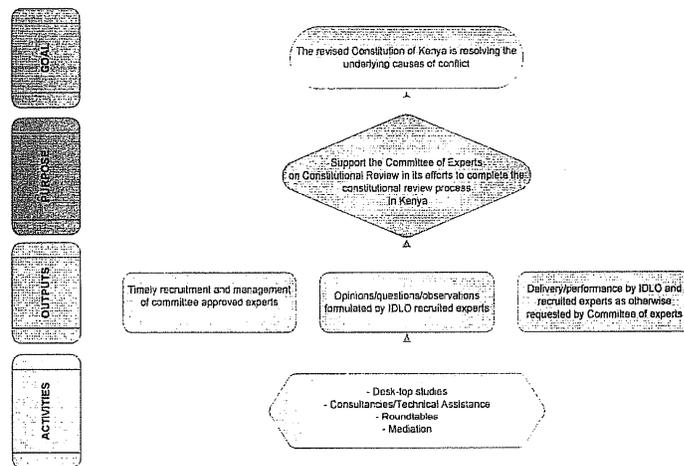
IDLO was chosen to provide the Committee with additional technical support for the following reasons:

- IDLO was recommended to the Committee by and with the support of the Panel of Eminent African Personalities, which originally suggested IDLO's input into the constitutional process;
- The Committee and IDLO share a core function - the Rule of Law – which makes for a more seamless interaction;

- IDLO is able to respond to the Committee's requests for specific information through a quick and efficient mechanism with minimal administrative processing time to provide high level legal experts on specific topics from its worldwide network of legal specialists;
- IDLO's non-partisan and intergovernmental nature assure its complete commitment to support only the mandate of the Committee;
- IDLO will work in close coordination with the UNDP, which is supporting the work of the Committee in accordance with its requests. IDLO has consulted with the UNDP in this regard.

IDLO will keep a written record of all work undertaken in the course of this initiative to be submitted to the Committee of Experts for historical purpose. IDLO sees its role as being one of guidance and support throughout the process, all IDLO inputs will be provided in a timely manner and IDLO will support all deadlines of the Committee of Experts.

The logic of IDLO's program of technical support is presented here below.



**Program Goal**

Ultimately, IDLO aims to contribute to the enactment of a revised Constitution of Kenya that resolves the underlying causes of conflict.

**Program Purpose**

IDLO will support the Committee of Experts on Constitutional Review in its efforts to complete the constitutional review process in Kenya.

### **Program Outputs**

The project intends the following outputs:

1. Timely recruitment and management of Committee-approved high level legal experts.
2. Number and type of consultancies/technical assistance provided to the Committee.
3. Number of opinions/questions/observations formulated by IDLO recruited experts.
4. Number of opinions/questions/observations formulated by IDLO recruited experts that specifically address gender issues.
5. Delivery/performance by IDLO and recruited experts as otherwise requested by the Committee of Experts.

### **Program Activities**

IDLO will use a combination of methodologies to provide the requested support to the Committee, including:

- ◆ *desk-top studies* by practitioners in comparable jurisdictions;
- ◆ *consultancies/technical assistance* with the Committee to work through specific aspects of the draft Constitution, including legislative drafting to supplement the in-house drafting capacity of the Committee of Experts;
- ◆ *roundtables/small meetings* on specific issues with a panel of international experts to share and discuss a range of experiences and options;
- ◆ *if necessary, engagement of a mediator* to ensure political, religious and cultural consensus and agreement.

Although the Committee of Experts is building on the work done in the previous process of constitutional review, it is dealing with a number of extremely complicated and technically specialized constitutional issues, including, in accordance with the Request Letter attached:

- legislative drafting;
- legislative and executive relations;
- devolution of power;
- decentralization and the constitutionalization of local government;
- systems and structures of governance (presidential, parliamentary and hybrid);
- electoral systems, inclusiveness, and affirmative action;
- public finance including fiscal federalism and fiscal equalization;
- reform of the Judiciary;
- land;
- implementing a Constitution – transitional arrangements especially in relation to devolution of powers;
- jurisdiction of a constitutional court;
- bill/charter of rights and particularly social, economic and group rights and the operation of a Bill or Charter of Rights with a general limitations clause.

In subsequent discussions, the Committee has outlined the following priorities for IDLO's immediate assistance:

- fiscal federalism
- land
- constitutional court - jurisdiction and transitional provisions for judiciary
- operational provisions of the Bill of Rights (standing, horizontality, application of social and economic rights)
- systems of government (parliamentary system, presidential system)
- devolved government (decentralisation, federalism)

The Committee of Experts has compiled a provisional list of people with relevant expertise and experience in matters of constitutional design in comparable jurisdictions. However, a fast-track mechanism would be established for the approval by the Committee of Experts of IDLO-identified experts.

IDLO will assist the Committee of Experts to prepare for engagement with the public by helping it better explain the choices made regarding the issues addressed when preparing the draft document.

#### **Gender Equality Strategy**

In designing this Program, IDLO is guided by a commitment to gender equality and has made gender perspectives central to all Program activities. As examples, IDLO will:

- ♦ pursue gender balance in all its activities, including the recommendation and inclusion of women experts as advisors to the Committee;
- ♦ promote gender-responsive drafting/revision of laws and legal provisions so that men and women benefit equally;
- ♦ weave gender-sensitivity into institutional strengthening action plans for effective, non-discriminatory delivery of services, including access to justice; and
- ♦ ensure that the concept of gender equality is addressed in all Program components.

In furtherance of this strategy, IDLO will specifically try to address with the Committee the following, among other issues:

- a. Strengthening the protection of women and measures to address gender discrimination;
- b. Providing technical assistance to the Committee in its efforts to improve and promote gender-sensitive policies with emphasis on public policies and the greater involvement of women in decision-making processes;
- c. Providing advice for removing barriers to the appointment of women in decision-making positions, e.g., as judges; and
- d. Educating women on basic rights and constitutional literacy.

#### **Timing**

The Committee of Experts' current mandate continues to be extended. It currently aims to produce a first draft of the new Constitution by November 2009. With this submission, an extensive round of consultations will begin. Further drafting needs will likely arise thereafter:

- o in the period that the draft is submitted to the public for comment during which time the Committee of Experts will also be able to refine some of the technical detail in the draft;
- o once comments have been received;
- o after the politicians and in particular the Parliamentary Select Committee on the review of the Constitution have agreed and the Committee of Experts is revising the draft according to that agreement.

A number of *desktop studies* will be undertaken after the initial draft is presented for public comment but before the draft Constitution is presented to Parliament.

The *presence of experts in Kenya* on certain matters as identified by the Committee of Experts in November, December, or later to work with the Committee or its sub-Committees, on drafting and research would greatly assist the process.

#### **Reporting**

Cognizant of the short timeframe for this program (October 2009-February 2010), IDLO will submit a brief monthly update, and a final performance report. The final report should include:

- an overall description of the activities under the program during the period of this grant, and the significance of these activities;
- the program's accomplishments;
- the issues and problems that emerged during program implementation and the lessons learned in dealing with them;
- a budget spreadsheet that contains final expenditures of the program broken down by budget line item.

#### **Management/Logistical Arrangements**

IDLO will establish a small presence in Nairobi with a Senior Advisor there at all times to guarantee continuing communication between the members of the Committee of Experts and IDLO. IDLO will oversee and manage its own experts' assignments directly, thus not adding any administrative burden to the Committee. IDLO will use its substantial in-house logistical capacity to ensure that all administrative arrangements are undertaken efficiently and effectively. It has been agreed that communication between IDLO and the Committee of Experts will be maintained through the Director of the Committee of Experts and the IDLO Representative in Nairobi.

#### **Coordination**

IDLO has consulted with government partners, the panel of eminent African personalities and directly with the Committee members in formulation of this initiative and will coordinate closely with the donor community and UNDP in order to ensure that IDLO's efforts, especially in the recruitment of outside expertise, are additive to other ongoing efforts.

**IDLO and Kenya**

On 26 March 2009, Kenya became a Member Party of IDLO. This Initiative builds upon 25 years of collaborative work undertaken by IDLO to support and strengthen Kenya's legal framework and institutions. Key areas of engagement have included institutional capacity development targeting senior justice sector officials. As example, IDLO has contributed to the establishment of the Kenyan Judicial Training Institute and worked to build the capacity of the Kenya Investment Authority (KIA). Through such work, IDLO has developed a successful partnership with the Government of Kenya and taken concrete steps towards improving access to justice, enhancing skills within the justice sector and promoting greater effectiveness, efficiency and transparency in the Kenyan justice system. In addition, key Government and private sector actors are IDLO-trained and active members of the Organization's Kenya-based Alumni Association.



**MODIFICATION OF ASSISTANCE  
CONTINUATION PAGE**

PAGE NO.  
2

ASSISTANCE NO.  
AID-623-0-10-00001

MODIFICATION NO.  
02

**11 DESCRIPTION OF MODIFICATION (CONTINUED)**

Cost Category	Amount
Direct costs	\$351,988.00
Indirect Cost	\$ 47,998.00
<b>Total Program Costs</b>	<b>\$399,986.00</b>

b. Under schedule, A.5, REPORTING AND EVALUATION, Financial reporting 1. 2, delete the section in its entirety and in lieu thereof replace with the following:

"In keeping with the requirements of 22 CFR 226.52, *Financial Reporting*, the Recipient is required to submit Standard Form (SF) 425. The SF 425 is to be submitted electronically to the AOTR, Alternate AOTR and Agreement Officer on January 31, April 30, July 31, and October 31 of each year. A final report shall be submitted in accordance with the guidelines contained in 22 CFR 226.51".

Electronic copies of the SF-425 can be found at [http://www.usaid.gov/pressroom/grants/grantdocs/external\\_report.pdf](http://www.usaid.gov/pressroom/grants/grantdocs/external_report.pdf) and <http://www.usaid.gov/pressroom/grants/grantdocs/form425.pdf>.

Line item instructions for completing the SF-425 can be found at: [http://www.usaid.gov/pressroom/grants/grantdocs/form425\\_instructions.pdf](http://www.usaid.gov/pressroom/grants/grantdocs/form425_instructions.pdf).

c. Under attachment B, Schedule, para 10, Program activities, incorporate bullet 5 "Civic education" and add the following:

4.4 The mandate of the COE includes civic education with respect to the proposed Constitution. Any civic education program will necessarily require information that must be both technically correct and easily understood by the general public. As much of the information will cover complex and technical matters, such as relation between the executive and the legislature, the devolution of power, the electoral system, and the Courts system, there may be a need for IDLO to assist in some way. For example, the COE may request IDLO to work with any organization tasked with delivering the civic education campaign by reviewing the material to be used to ensure that it is both technically correct and easily understood by the general public. Another possibility is for IDLO to provide experts to deliver training to those whose role it is to deliver the civic education campaign. In this regard, IDLO would work in collaboration with any organization given the responsibility for delivering the civic education campaign in order to add value to the initiative.

4.5 IDLO proposes to apply remaining funds under the grant agreement to supporting the COE, as detailed above. IDLO also stands ready to discuss and provide the COE with any additional support that USAID identifies as being of value.

All other terms and conditions remain unchanged and in full force and effect.

End of Text

**TERMS OF REFERENCE****Evaluation of IDLO's Support to the Committee of Expert on Constitutional Review of the Republic of Kenya****1. Background to IDLO's Support**

In December 2007, civil unrest broke out in Kenya following the disputed outcome of presidential elections. The international community responded swiftly and a Panel of Eminent African Personalities chaired by His Excellency, Kofi Annan, established a national dialogue and mediation process to contribute to a peaceful solution to the crisis. While several actions were immediately taken to restore calm, it was apparent that long-term peace and political stability were very much dependent upon the successful review and conclusion of constitutional reforms. In this regard, one of the most significant challenges for Kenya in its recent past, which has contributed to political and social instability, has been in undertaking but failing to achieve constitutional reform.<sup>12</sup> Accordingly, pursuant to the Statement of Principles on Long-term Issues and Solutions of 30 July, 2008, the Constitution of Kenya (Amendment) Act 2008 and the Constitution of Kenya Review Act 2008 were passed to establish the roadmap for a new constitutional review; and the establishment, in February 2009, of a Committee of Experts ('COE') to develop a new Constitution for national referendum in 2010.

In July 2009, the COE identified the need for technical support and invited the International Development Law Organization ('IDLO'), by way of a letter dated 28 July 2009, to provide technical support in the design and drafting of a new Constitution covering a number of complicated and technically specialized constitutional issues including: legislative drafting; devolution of power; decentralization of local government; systems and structures of governance (presidential, parliamentary and hybrid);

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<sup>12</sup> In 2003, the Constitution of Kenya Review Commission (CKRC) embarked on a process of constitutional review, leading to three draft constitutions: The Constitution of Kenya Review Commission Draft submitted to the Bomas Constitutional Conference (Ghai Draft), the Constitution Conference Draft (Bomas Draft) and the Proposed New Constitution 2005 (Wako Draft). The Wako Draft was subject to referendum in 2005 but it did not meet the required majority vote.

electoral systems fiscal equalization; reform of the judiciary among others.

IDLO is an international organization, established in 1983 with a mandate to support efforts by developing and transitions countries to strengthen the rule of law and good governance in order to stimulate sustainable economic and social development and to alleviate poverty. IDLO was chosen to provide the Committee with additional technical support for the following reasons:

- ✓ IDLO was recommended to the COE by and with the support of the Panel of Eminent African Personalities, which originally suggested IDLO's input into the constitutional process.
- ✓ The COE and IDLO share a core function – the Rule of Law – which makes for a more seamless interaction.
- ✓ IDLO is able to respond to the COE's requests for specific information through a quick and efficient mechanism with minimal administrative processing time to provide high level legal experts on specific topics from its worldwide network of legal specialists.
- ✓ IDLO's non-partisan and intergovernmental nature assure its complete commitment to support only the mandate of the Committee.

## **2. IDLO Support – Objective, Purpose, Deliverables and Activities:**

The **overarching objective** of the project was to contribute to the adoption of a new constitution for Kenya.

The **primary purpose** of IDLO's support was to provide efficient, relevant and useful technical assistance to the COE in support of its work to produce a proposed constitution for national referendum. The **second and related purpose** was to provide targeted civic educators with training to be enable them to effectively undertake civic awareness activities on the proposed constitution.

The **intended deliverables** for the project were:

- ✓ provision of technical assistance to the COE in support of its work;
- ✓ delivery of training to targeted civic educators on the purpose and contents of the proposed constitution.

### **Program Activities:**

IDLO used a combination of methodologies:

- ✓ provision of commentary and analysis to the COE in the form of reports on the various iterations of the constitution;

- ✓ provision of legislative drafting support to the COE;
- ✓ provision of training to civic educators on the purpose and contents of the new constitution.

### **3. Evaluation Purpose**

The purpose of the evaluation is to assess IDLO's performance and the quality and usefulness of the technical assistance provided to the COE in response to its invitations, and the civic educators. Specific to this evaluation, the stakeholders are the USAID (the funder); the COE and the respective civic educators (the direct beneficiaries).

To this end, the evaluation will:

- ✓ assess the extent to which IDLO satisfied or met the terms of the USAID grant;
- ✓ assess the extent to which IDLO achieved the objectives and deliverables of the project;
- ✓ determine whether IDLO's approach to engaging the COE and the civic educators was effective, efficient and enabled the delivery of the desired results; and
- ✓ make recommendations to inform future IDLO constitutional review support initiatives.

The users of the results of the evaluation will be IDLO and USAID.

### **4. Scope of the Evaluation**

The evaluation will investigate the specific activities relating to each of the deliverables listed above.

### **5. General Evaluation Questions/Issues**

#### **5.1 Relevance of IDLO's role/support**

- ✓ Was IDLO's support based on an adequate analysis of need?
- ✓ To what extent were the objectives of IDLO's support valid?
- ✓ Were IDLO's activities and outputs consistent with the intended results?
- ✓ Was the technical support from IDLO relevant to the COE's invitation to provide such technical support?
- ✓ Was the design of the civic education trainings based on adequate analysis of beneficiary need?

#### **5.2 Effectiveness of IDLO's Performance and Services Provided**

- ✓ Was IDLO able to deliver the services/support intended? If not, why?
- ✓ Did the COE engage IDLO in a manner that was envisaged by the parties?

- ✓ Have there been any different/unintended/unplanned deliverables? What was the rationale for them?
- ✓ Was IDLO's approach, method of engaging the COE and the civic educators effective?
- ✓ the Funder satisfied with IDLO's reporting (timeliness of reports, quality of report and communication with USAID representatives)?
- ✓ Is the funder satisfied with the quality of IDLO's support (the type of experts recruited, process of recruiting the experts, the management of the experts, the work produced by the experts, etc)?
- ✓ Were the civic education trainings well structured/organized to achieve the intended results?
- ✓ Were the participants of the trainings selected after careful assessment?
- ✓ Did the participants of the civic education trainings benefit from them?

### 5.3 Efficiency

- ✓ Is the Funder satisfied with IDLO's use of funds and other resources? Has IDLO used the funds cost-efficiently?
- ✓ Were the necessary and relevant resources allocated/or provided to carry out the stated activities (and on time)?
- ✓ Were the courses designed and implemented in a cost-effective manner?

### 5.4 Results

- ✓ Is the COE satisfied with IDLO and/or IDLO recruited experts' contributions to the process?
- ✓ Did the COE use or reference any of the reports produced by IDLO recruited experts during the constitutional review process? If so, how relevant and useful were the reports to the work of the COE?
- ✓ To what extent was the IDLO recruited drafter's inputs useful during the constitutional review process?
- ✓ Did the beneficiaries of the civic education trainings find them useful and relevant to their needs?
- ✓

## **2. Evaluation approach: Methodology, deliverables, phases, timeline**

**a) Methodology:** The data collection will be primarily focused on capturing information from relevant stakeholders to support, validate or clarify information presented in reports and other documents. To that extent, the approach will entail:

- ✓ Desk review of relevant documents: The evaluator will review all documents including proposal, grant, Terms of Reference, reports to COE; reports to the donor, emails, the drafts of the HDC and any other documents related to the IDLO Support to Kenya Constitutional Review Initiative.
- ✓ Key informant interviews: The evaluator will interview a selected number of stakeholders to this Initiative. These informants will include 1) IDLO program staff at HQ; 2) IDLO's Consultant liaising with the COE in Nairobi; 3) Selected members of the COE; 4) representatives of USAID; and 5) a sample of the experts recruited by IDLO to support the COE during the process.
- ✓ Focus Group Discussion: The evaluator will convene and facilitate a group discussion with 10-12 of the beneficiaries of the Civic education workshops conducted to ascertain the immediate to medium-term benefits of the trainings.

## **b) Evaluation roadmap**

The evaluation process will entail three phases:

- ✓ Preparation: During the phase, the evaluation methodology, key issues to be investigated, evaluation timeline will be finalized. The evaluator will also review the relevant documents and existing data; hold preliminary discussions with the program team and the donor (estimated 2.5 weeks). August 9-27.
- ✓ Primary data collection and analysis: Phase two will be spent in country to capture data from stakeholders. A series of semi-structured interviews will be conducted (estimated 1 week). August 30-Sept 4.
- ✓ Report writing: This phase will include the production of a draft report and briefing to IDLO managers and funders if applicable. The preliminary report will be prepared and shared with relevant IDLO staff for review and feedback. Then, after receiving and considering feedback, the final report will be submitted including an executive summary, and all relevant annexes (estimated 4 weeks). Week of October 1.

## **c) Roles and responsibilities**

IDLO Program Manager, Miles Young, will manage and provide general oversight to the evaluation exercise; ensuring that all information is provided and requests for feedback are responded to in a timely manner. Program manager will coordinate with in-

country consultant to finalize all arrangements for the in-country mission.

The Evaluation Officer, Rolene Guillard, will be responsible for undertaking the evaluation in accordance with the agreed TORs. The evaluation officer will review the documents, prepare the tools, conduct the interviews, prepare the report, and coordinate the presentation of the findings of the evaluation.

The IDLO Special Counsel, Graham Leung, will coordinate the in-country meetings and support with all logical arrangements for the evaluation in country, including finalizing the list of key informants to be interviewed.

#### **d) Deliverables:**

A presentation of the initial findings will be done no later than **2 weeks after the data collection (in country and via telephone)**

A draft report will be submitted to the relevant IDLO staff for review no later than **four weeks after the mission**

A final evaluation report will be submitted to IDLO no later than **four weeks following the draft report**. All evaluation tools and summary survey findings should be annexed to the evaluation report.

#### **e) Outline of Evaluation Report**

The evaluation report (maximum 20 pages, excluding annexes) should contain the following sections:

- ✓ Executive Summary (1-2 pp)
- ✓ Evaluation purpose, methodology and limitations
- ✓ History and overview of the program
- ✓ Analysis based on findings, conclusions, recommendations (to be organized at the discretion of the evaluation consultant)
- ✓ Lessons/recommendations to inform program implementation for the remainder of the program, and program design for the future
- ✓ Annexes: TORs; list of people interviewed

#### **Annexes**

- ✓ IDLO Proposal to USAID
- ✓ USAID Grant
- ✓ COE Terms of Reference
- ✓ List of key informants

## Annex 4: List of Individuals Interviewed

Individuals	Role	Date	Time	Venue
<b>Committee of Experts</b>				
1. Nzambi Kitonga	SC Chairperson			
2. Ekuru Aukot	Director	September 2	8-9:30	COE office
3. Amos Wako	Attorney General			
4. Atsango Chesoni	Vice Chairpeson	September 2	4:15 pm	Via phone
Telephone Interview of COE Members				
5. Christina Murray	COE Member (South Africa)	September 8		Phone interview from Rome
<b>USAID (Funder)</b>				
6. Catie Lott	Director of Democracy and Governance	September 1	1:30-3:00	Pan Afrique
7. Sheila Karani	Parliamentary Strengthening Program Manager	September 2	1:00-2:00	USAID Office
<b>Focus Group Discussion (10 participants from various Civic Education CSOs in Kenya) 1 September 2010 at URAIA Office 10:00 to 12:30 pm</b>				
Collins Otieno	Youth Agenda	September 1		Nairobi/URAIA office
Patrick Kamotho	Baraza la Kitaifa/Bunge la Mwananchi			
Ivy Ndiewo	TI Kenya			
Joy Masheti	Caucus for Women Leadership			
Marceline Nyambala	AMWIK			
Duke Mainye	Northern Aid			
Kiluma Vodongo	Elimu Impact			
Fatuma Kamene Juma	Kenya Muslim Youth Alliance			
Kiama Kaara	Kenya Debt Relief Network (KENDREN)			
Eugene Omolo	Kenya Young Greens			
<b>Consultants</b>				
8. Muna Ndolo	Constitutional Review Expert, (New York)	September 8		Phone interview from Rome
9. John Leahy	Draftsman	September 7		Skype call/ interview from Rome
10. Tom Ginsburg	Constitutional Review Expert, (Chicago Group)	September 9		Phone interview from Rome
<b>IDLO Staff and Consultants</b>				
11. Miles Young	Program Manager	Multiple		Rome
12. Robert Buergenthal	Director Program	September 9/10		Rome
13. Graham Leung	Advisor/Liaison	August 29 & 30		Nairobi
<b>Kenyan Partners</b>				
14. Wanjiru Kago	Programme Officer, URAIA	August 31 & Sept 1		Nairobi
15. Zein Abubakar	Director, URAIA	August 31		Nairobi

## Annex 5: Initial Letter from Chairman of COE to IDLO

THE REPUBLIC OF KENYA



THE COMMITTEE OF EXPERTS ON CONSTITUTIONAL REVIEW

28 July 2009

William T. Loris  
Director General  
International Development Law Organization  
Viale Vaticano 106  
Rome; Italy

Dear Mr. Loris,

As Chairman of the Committee of Experts on Constitutional Review I am pleased to propose to you that the International Development Law Organization (IDLO) provide support to the Committee as described below.

### **Background**

---

Kenya faced the most serious crisis in its post-independence history following the general elections of 27 December 2007. The international community responded to the Kenyan crisis swiftly. A Panel of Eminent African Personalities, comprising former UN Secretary-General, Dr. Kofi Annan (Chairman), former President of Tanzania, Mr. Benjamin Mkapa and former South African First Lady, Mrs. Graca Machel, was established to assist Kenyans in mediating a peaceful solution to the crisis through the Kenya National Dialogue and Reconciliation (KNDR) that established four agenda items that Kenya needed to address immediately. These included ending of violence, establishment of measures to address the humanitarian crisis, how to resolve political crisis and agenda number four was long term measures that included the completion of the constitutional review process.

## Annex 6: Letter from the COE to IDLO Indicating the Terms of Reference of the Engagement



### COMMITTEE OF EXPERTS

ON CONSTITUTIONAL REVIEW

DELTA HOUSE, WESTLANDS

P.O. Box 8703- 00200, NAIROBI; TEL: 020 - 252 7152; FAX 020 252 6959

coekenya@gmail.com

*Our Ref: CoE/DIR/IDLO/VOL.1/2009*

27<sup>th</sup> August, 2009

William T. Loris  
Director- General  
International Development Law Organization  
Viale Vaticano, 106  
00165 Roma  
**ITALY**

Dear Loris,

**RE: IDLO SUPPORT TO THE COMMITTEE OF EXPERTS**

We acknowledge with thanks your letter dated 25<sup>th</sup> August, 2009 to our Mr. Peter Ay... contents of which have been noted and consequently discussed by the committee a... whole. In addition, we are pleased to confirm of a good meeting with your colleague... Mr. Kenneth Waweru Kihara and Walter G. Coppenrath, Jr., with whom we had furt... discussion on our agreed collaboration.

The Committee of Experts after deliberating your request in the context of our agre... collaboration now wishes to communicate as follows:

**1. Office Space for IDLO**

Owing to the fact that the Committee is currently sharing the available space with t... other Commissions, namely the Truth Justice and Reconciliation Commission (TJ... and the National Cohesion and Reconciliation Commission (NCRC), it would... difficult to find space for you. Furthermore, and to safeguard its independence a...



integrity of the process the committee is concerned about perception if it were to share space with any other donor.

## 2. Expert Consultant support to the Committee

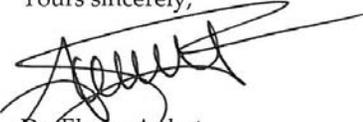
With regard to the expert consultant support to the committee, the committee indeed discussed this support and agreed as follows:

- (b) That the committee will in due course agree on the areas they would need support from the IDLO. This is further to our earlier discussion that the committee will have to formulate specific questions to be directed to your specific pool of experts.
- (c) That the committee will shortly determine when the expert consultants will be needed which communication will be made in a timely fashion
- (d) That further to the foregoing, the committee will then determine for how long the consultants will be needed.

As soon as the committee makes decisions on the above, the same shall be communicated to IDLO promptly.

We look forward to our collaboration.

Yours sincerely,



Dr. Ekuru Aukot,  
**DIRECTOR, CoE**

cc. Chairperson, Committee of Experts

**Annex 7: Terms of Reference: Graham Leung, IDLO In-county Advisor**

Attachment I

**Terms of Reference**  
**Constitutional Review Process Project - Kenya**  
**Mr. Graham Leung, Consultant**

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With the support of IDLO's Field Operations Unit and other dedicated units at Headquarters in Rome, the duties and responsibilities for the Consultant will include the following:

- Working closely with the Committee of Experts to identify the support it requires from IDLO;
- Working closely with the Committee and IDLO to design activities to support the work of the Committee;
- Working closely with IDLO to respond to any request for support from the Committee, including through identifying, corresponding and engaging constitutional law experts;
- Managing all aspects of the support that IDLO provides to the Committee in accordance with the IDLO and donor standards and procedures;
- If requested by the Committee, and subject to clearance from IDLO, directly providing technical advice to the Committee; and
- With the support of a Finance & Administration Assistant, managing the finances and administration of the program and the Field Program Office.

## **Annex 8: Evaluation Questions**

### **Kenya Evaluation Questions**

- COE Members
- USAID Representatives
- Recipients of Civic Education TOT
- IDLO Consultants
- IDLO CSO Partners

**Evaluator**

**Rolene Guillard**

### **Questions for Members of the COE**

- 1) What would you say were some of the main challenges of carrying out the mandate to the COE?
- 2) What would you say were the COE's expectations of IDLO?
- 3) Referencing the initial letter sent to IDLO from the Chairperson requesting IDLO's support, to what extent would you say IDLO fulfilled these expectations?
- 4) What were the benefits of having IDLO's services available to you?
- 5) Were there any challenges working with IDLO?
- 6) Was IDLO the only apolitical agency providing you with technical support and input (when requested)?  
How would you describe IDLO'S role?
  - a. Do you think that the consultants recruited were appropriate and qualified for the tasks assigned?
  - b. Do you think IDLO maintain appropriate distance from the process and recognized/respected the COE's independence?
  - c. Do you think that IDLO engaged the COE adequately? If not what else could IDLO have done or done differently?
  - d. Do you think that the nature of the relationship between IDLO and the COE was efficient? Was IDLO responsive to requests made?
  - e. Do you think that there were other initiatives that IDLO could have gotten involved in? If yes, can you give an example? Also, if yes, why was IDLO not engaged?
- 7) Do you believe that the request from the COE for technical support or contributions to the HDCK were identified and conveyed adequately?
- 8) What is your general impression of the quality of area experts recruited by IDLO to support the work of the COE?
  - a. If possible, what is your opinion of the work done by Muna Ndulo, John Leahy and the Chicago Group? The quality of the work or services provided?
- 9) Have you had the opportunity to interact with or assess the Mr. Graham Leung? If yes, How would you describe him and the work he has done? What do you think about his character, conduct and professionalism, his responsiveness to requests made?

10) In terms of future initiatives, would you engage IDLO's services to assist in the implementation process?

- a. What role do you think IDLO can play?
- b. Do you think that there are future opportunities for IDLO to work with the Kenyan government? If so, can you elaborate?

### **Questions for members of USAID**

- 1) What was USAID's primary expectations regarding IDLO's involvement with the COE?
  - a. Who would you say was IDLO's main client?
  - b. What were USAID's specific requirements of IDLO?
- 2) Do you think that IDLO made sufficient effort to engage the COE?
  - a. What were some of the challenges foreseen and unforeseen for IDLO's role in supporting the COE?
- 3) Do you think that IDLO's efforts/attempts to engage the COE were successful? Do you think IDLO was responsive to the requests made either by COE or USAID? How so? If not? How so?
- 4) Do you think that IDLO could have been a bit more proactive?
- 5) Do you think that IDLO's support was developed after an adequate analysis of need?
- 6) What do you think were some of the major challenges for the COE given their mandate?
- 7) Of those challenges which areas did you anticipate IDLO contributing to?
- 8) What were some of the expected and unexpected challenges IDLO regarding this initiative? Do you think IDLO handled both the expected and the unexpected challenges well?
- 9) Why do you think the COE did not accept IDLO's proposals for support outside of those specifically requested by the COE?
- 10) What is your general impression of the quality of area experts recruited by IDLO to support the work of the COE?
  - a. if possible, with specific reference, tell me your opinion of the work done by Muna Ndulo, John Leahy and the Chicago Group
- 11) What do you think about how IDLO handled the civic education initiative? The proposal to do this? Engaging the partners and carrying out the trainings?

- 12) Have you had the opportunity to interact with or assess the Mr. Graham Leung? If yes, How would you describe him and the work he has done? What do you think about his character, conduct and professionalism?
- 13) Do you think that there are future opportunities for IDLO to work with the Kenyan government? If so, can you elaborate?
- 14) What you think about IDLO reporting and management activities specific to this grant? Were progress reports timely and of high quality? Did you receive frequent updates etc? Did you feel that you always had opportunities to interact with IDLO management (project level and management) on the initiative?
- 15) Do you think IDLO utilized the grant funds efficiently? Do you think you got a reasonable value for the investment?
- 16) Would you say IDLO was successful in terms of achieving the objectives of the grant agreement with USAID?
- 17) Would you consider IDLO for similar initiatives in the future? If not why?

### **Questions for members of the TOTs (Focus Group Discussion)**

1. Tell me about what new Constitution and the Referendum mean to you as Kenyans?
2. Tell me what you see as an immediate benefit in having these Civic Education trainings? Do you think they were helpful? What specific difference did it make to you as Kenyans?
3. Were you in general satisfied with the Civic Education trainings conducted by IDLO? If so, can you share with me some reasons for your satisfaction?
  - a. If you were not satisfied with the trainings please explain why, giving some examples of the things you were not satisfied with?
4. Specifically, do you think that the course materials were relevant and useful? Do you think that all the necessary topics/issues were covered adequately? Elaborate.
5. Specifically, were you satisfied with the training facilitator? What about his approach/style did you like or not like accordingly? Please give examples.
6. Would you say that you have a better understanding of the Constitution as a result of the TOT?
7. Do you think the training received was adequate (in terms of time/duration and substance/content covered) to prepare you for training other Kenyans on the constitution and the referendum process? If yes, how so? If no, why?
8. As a result of the TOT received, would you say that you are more comfortable and confident to conduct similar training to fellow Kenyans on the constitution and the referendum process?
9. How many of you actually conducted follow up trainings after receiving the TOT?
  - a. What was your experience?
  - b. In general, did the participants seek clarification...or did they want general information?
  - c. What were some of the key issues or topics participants wanted information on or clarification?
  - d. Do you think you were able to convey\explain\discuss some of the key sections well?
  - e. Did you employ different strategies to engage the participants or deliver the content of the Constitution?

- f. Do you think you succeeded in addressing some of the myths\misconceptions that many individuals had?
- g. What were some of the difficulties or challenges you had as trainers....If any?

## Questions for IDLO Consultants

### Graham:

- 1) Tell me about carrying out the tasks as outlined in your TOR?
  - a. Given your role supporting the COE and serving as a Liaison for IDLO to the COE, do you think you were successful in fulfilling those tasks? If so, explain/elaborate?
  - b. Were you able to work with IDLO and the COE to “design” activities to support the COE?
  - c. Did you manage all aspects of the support IDLO provided to the COE? Whether that meant assisting the recruitment of Consultants, supervising their work, providing feedback and reporting as needed etc?
  - d. What were some of the successes/achievements specific to carrying out your duties?
  - e. What were some of the challenges specific to carrying out your duties as specified in your TOR?
  - f. Were your skills/expertise requested or used specifically by the COE?
- 2) Were you able to meet with and collaborate with the members of the COE? If so, how was that experience?
- 3) What was the nature of that relationship with the COE Director?
  - a. How often did you hear from him? How often did you initiate meetings or conversations? What were the results?
  - b. Were the interactions fruitful? Were you able to accomplish a lot?
  - c. What do you think could have been done differently to get better results?
  - d. What factors do you think prevented a more results-oriented relationship (between you and the COE)?
- 4) In general, do you think IDLO was successful at engaging the COE? If yes, how so? If no. What do you think were the reasons for this?
  - a. Do you think IDLO was successful at providing high quality, useful, technical support to the COE?
  - b. Do you think IDLO could have done more to support COE? If yes. What?
  - c. Do you think things could have been done differently to engage the COE? If so, what could have been done differently?
- 5) Tell me about IDLO’s decision to support the Civic Education trainings?

- 6) Why did IDLO partner with Pact-Kenya, URAIA, and Mercy Corps for the Civic education trainings? Was there a rationale for this? What other NGOs were involved?
- 7) What was your specific role regarding the Civic Education trainings? Did you coordinate them? Did you serve as a facilitator? Please elaborate.
- 8) Was there a plan in terms of rolling out or coordinating the follow up trainings that were to be conducted by the recipients of the TOT?
  - a. What was the plan? Who was expected to manage and report on progress made?
  - b. Are all the follow up trainings completed? If yes? How many have be conducted, what areas/regions/communities were reached? Was there a specific target? If no, what is the expected end date for these trainings or target?
- 9) What would you say were IDLO'S specific objectives regarding the Civic education TOTs?
  - a. Do you think IDLO achieved them? If so, how, If not, why?
- 10) Do you think are there are future opportunities for IDLO to continue to support the referendum process in Kenya? If yes, in what ways or which areas specifically?

### **Other IDLO-Consultants**

- 1) What was your experience as an IDLO consultant during the period?
  - a. Opinions of the recruitment process
  - b. Quality of the support provided from HQ and in-country in terms of managing the process?
  - c. Quality of instructions received?
  - d. Nature of interaction between yourself and IDLO representatives?
- 2) What was your experience supporting the work of the COE?
- 3) What do you think about IDLO's relationship with the COE?
- 4) What is your opinion of Mr. Leung, the IDLO-in-country advisor/representative? His character, capabilities etc?

5) In terms of future initiatives, would you ever consult on behalf of IDLO?

**Questions for IDLO Partners—URAIIA (Civic Education Training)**

- 1) Total number of individuals trained in the 5 TOTs co-organized with IDLO?
- 2) From the 5 TOTs, how many civic education groups were reached or trained?
- 3) Of those civic educators that received trainings, how many of them/ percentage actually carried out follow up trainings?
- 4) Who was responsible for following up on whether they actually carried out the follow up trainings?
- 5) Was there an action plan developed as to how this follow on trainings were going to be managed ---i.e. the process (implementation, support and monitoring of the activities)?
- 6) How many monitoring missions did URAIA conduct?
- 7) What was done during these monitoring missions?
- 8) What is the approximated number of persons (rural and urban) reached through these follow on trainings?
- 9) What was your experience working with IDLO on this initiative?
- 10) How were the roles and responsibilities shared?

## Annex 9: List of Chicago Group Members

Name of Members	Field of Expertise	Posting
1. Jose Cheibub	Professor of Political Science	University of Illinois at Urbana-Champaign
2. Rosalind Dixon	Associate Professor of Law	University of Chicago Law School
3. Zachary Elkins	Professor of Government	University of Texas
4. Tom Ginsburg	Professor of Law	University of Chicago Law School
5. Donald L. Harowitz	James B Duke Professor of Law and Political Science,	Duke University
6. Aziz Huq	Associate Professor of Law	University of Chicago Law School;
7. Jacqueline Klopp	Assistant Professor of International and Public Affairs	School of International and Public Affairs, Columbia University
8. Thomas Wolf	Consultant and Analyst	with the Steadman Group in Kenya
9. Justin Blount	Research Associate and (PhD candidate at University of Illinois)	Comparative Constitutions Project
10. James Thuo Gathii	Associate Dean of Research and the Governor George E. Pataki Chair of International Commercial Law	Albany Law School,
11. Bereket Habte Selassie	William E. Leuchtenburg Distinguished Professor of African Studies and Professor of Law	University of North Carolina at Chapel Hill

### Short Biography of Some of the Key Members of the Chicago Group

**Tom Ginsburg** works on comparative and international law from an interdisciplinary perspective, with a focus on East and Southeast Asia. He holds BA, JD, and PhD degrees from the University of California at Berkeley. Along with Zachary Elkins, he currently co-directs the Comparative Constitutions Project, an effort funded by the National Science Foundation to gather and analyze the constitutions of all independent nation-states since 1789. He is the author of *Judicial Review in New Democracies* (2003), co-author of *The Endurance of National Constitutions* (2009), and editor of six other books on law and democracy. Before entering law teaching, he served as a legal adviser at the Iran-U.S. Claims Tribunal, The Hague, Netherlands, and consulted with numerous international development agencies and foreign governments on legal and constitutional reform.

**Zachary Elkins**, University of Texas Department of Government, focuses on issues of democracy, institutional reform, research methods, and national identity, with an emphasis on cases in Latin America. He is currently completing a book manuscript, "Designed by Diffusion: Constitutional Reform in Developing Democracies," which examines the design and diffusion of democratic institutions, and recently completed *The Endurance of National Constitutions*, with Tom Ginsburg.

**James Thuo Gathii** has been on the faculty of Albany Law School since 2001. His research and expertise are in the areas of public international law, international economic, international intellectual property and trade law as well as on issues of good governance and legal reform as they relate to the third world and sub-Saharan Africa in particular. He has recently published a book *War, Commerce and International Law* (Oxford University Press). Professor Gathii received his LL.B. from the University of Nairobi and his LL.M. and S.J.D. from Harvard Law School. He is admitted to practice in Kenya.

**Donald L. Horowitz** authored six books: *The Courts and Social Policy* (1977), which won the Louis Brownlow Award of the National Academy of Public Administration; *The Jurocracy* (1977), a book about government lawyers; *Coup Theories and Officers' Motives: Sri Lanka in Comparative Perspective* (1980); *Ethnic Groups in Conflict* (1985, 2000); *A Democratic South Africa? Constitutional Engineering in a Divided Society* (1991), which won the Ralph Bunche Prize of the American Political Science Association; and *The Deadly Ethnic Riot* (2001). Professor Horowitz is currently writing a book about constitutional design, particularly for divided societies, a subject on which he has advised in a number of countries. His book on the making of Indonesia's constitutional democracy is nearing completion. Elected to the American Academy of Arts and Sciences in 1993, he is currently president of the American Society for Political and Legal Philosophy and is a member of the Secretary of State's bipartisan Advisory Committee on Democracy Promotion.

**Jose Cheibub** is one of the leading scholars of executive-legislative relations. He is the author of *Presidentialism, Parliamentarism and Democracy* (2007) and co-author of the prize winning *Democracy and Development: Political Institutions and Material Well-Being in the World, 1950-1990* (2000).

**Rosalind Dixon** among other distinguished postings, served as a Teaching Fellow in Constitutional Law, Constitutional History, Comparative Constitutional Law and Comparative Constitutional Engineering. Ms. Dixon's teaching and research interests include constitutional law, comparative constitutional law and design, international human rights, law and gender.

**Bereket Habte Selassie** served as both the Attorney General and Associate Justice of the Federal Supreme Court under Emperor Haile Selassie's Government in Ethiopia. Dr. Selassie later chaired the Constitution Commission of Eritrea in 1994. Dr. Selassie has written a number of books on law and politics, including *The Making of the Eritrean Constitution* (2003).

### **List of Documents Reviewed**

- IDLO Progress Report to USAID
- IDLO Final Report to USAID
- Consultants Reports for the COE (Muna Ndulo, Chicago Group)
- Consultants Reports to IDLO
- Civic Education Reports
- Civic Education Reports from URAIA
- Letters from IDLO to COE
- Letters from COE to IDLO
- Commentaries and Postings of the COE's webpage
- The Harmonized Draft Constitution of Kenya, 2010
- Consultants Contracts