
**Kenya Country Programme
2016-2020**

**Thematic Programme for
Governance**

**Development Engagement
Document:
Support to Human Rights,
Access to Justice and Equality**

**(International Development Law
Organization - IDLO)**

Kenya Programme 2016 – 2020 Governance Thematic Programme – Support to Human Rights, Access to Justice and Equality

Dev. Engagement Gov.	Outcome	Outputs
Support to Human Rights , Access to Justice and Equality	<ul style="list-style-type: none"> - Enhanced access to justice facilitated by effective, sustainable judicial reforms and increased use of alternative dispute resolution and other alternative justice systems. - Strengthened institutional and legal mechanisms for the advancement of gender equality and rights of vulnerable people. 	<ul style="list-style-type: none"> - Improved formal and informal justice mechanisms for access to justice. - Strengthened capacity for key judiciary offices to enhance access to justice for the most marginalised. - Strengthened capacity to administer gender justice within the Judiciary. - Strengthened capacity of the Judiciary for efficient electoral dispute resolution. - Strengthened human rights framework at county and national levels to advance gender equality and non-discrimination. - Strengthened institutional capacity to mainstream gender equality and non-discrimination
Budget	DE partner	
The Danish contribution is DKK 25 million. USAID will also provide funding to IDLO of DKK 13.6 million	International Development Law Organization (IDLO) – an international non-governmental organisation.	
Management arrangements		
Denmark will provide core funding for IDLO’s Kenya Country Strategy. IDLO will manage the programme. IDLO sits in two Donor Groups on Judicial reforms and Gender as well as two stakeholder groups – Judicial reform and Gender Sector Coordination Groups - and this will ensure coordination and harmonization with development partners, government and civil society.		
Description		
The support to Human Rights, Access to Justice and Equality will build on DANIDA’s strong credentials in this area of democratic governance. IDLO will provide technical assistance to key state organs that need to be strengthened to mainstream and guarantee rights, justice and equality. These include the Judiciary (Gender and Electoral Justice; Capacity Building of Judicial Officers; justice-related policy and legal reform; jurisprudence documentation), the Gender Directorate of the Ministry of Devolution and Planning (MODP) and the National Gender and Equality Commission - NGEC (Gender Policy and legal reforms; capacity building of gender officers; monitoring of state compliance with national and international gender commitments) and the Kenya National Commission on Human Rights - KNCHR (policy and legal reforms on rights protection generally and specifically for vulnerable people and groups; institutional strengthening). KNCHR has the pivotal role of promoting respect of human rights, advising the government on its responsibilities from the UPR and facilitating civil society to check government on the same. NGEC and Gender Directorate of MODP constitute the state gender machinery at the national level. The Judiciary is key to the promotion and protection of the constitutional principles of human rights, gender equality and justice in line with Chapter Ten of the Constitution.		

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Abbreviations

ADR	Alternative Dispute Resolution
AJS	Alternative Justice Systems
CIC	Commission for the Implementation of the Constitution
COK	Constitution of Kenya
CUC	Court User Committees
DAC	Development Assistance Committee
Danida	Danish International Development Assistance
EDR	Electorate Dispute Resolution
GMS	Gender Management System
HRBA	Human Rights Based Approach
IDLO	International Development Law Organization
JSC	Judiciary Service Commission
JTF	Judiciary Transformation Framework
JTI	Judiciary Training Institute
JWCEP	Judiciary Working Committee on Elections Preparations
KNCHR	Kenya National Commission on Human Rights
MODP	Ministry of Devolution and Planning
MTS	Medium Term Plan
NCAJ	National Council for the Administration of Justice
NGEC	National Gender and Equality Commission
OCJ	Office of the Chief Justice
OECD	Organisation for Economic Co-operation and Development
SIDA	Swedish International Development Cooperation Agency
UPR	Universal Periodic Review
USAID	United States Agency for International Development

Development Engagement Document: Human Right, Access to Justice and Equality

1. Introduction

- 1.1 The present development engagement document details the objectives and management arrangements for the development cooperation concerning Human Rights, Access to Justice and Equality as agreed between the parties specified below. The development engagement document is annexed to the *Bilateral Agreement with the International Development Law Organization (IDLO)* and constitutes an integrated part hereof together with the documentation specified below. The Danish support is part of the support provided within the Governance Programme under the Danish country programme for Kenya 2016-2020. The engagement document is also available to the External Grant Committee of Danida.
- 1.2 The development engagement entails Danish support in the form of core funding to IDLO of DKK 25 Million for the implementation of the IDLO Kenya Country Strategy 2016-2019 (Under Development) and the interventions specified in the present document. The support covers the period January 2016 to June 2020.

2. Parties

- 2.1 The Danish Embassy, Nairobi and *the International Development Law Organization (IDLO)*.
- 2.2 Signatories will be the Danish Ambassador representing the Government of Denmark, and the Director General representing IDLO.

3. Documentation

- 3.1 IDLO Country strategy for Kenya

4. Brief description of IDLO

IDLO is the only intergovernmental organization exclusively devoted to advancing the rule of law. Its mission is to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, equality, sustainable development and economic opportunity. It collaborates with governments, inter-governmental organizations and civil society groups to provide technical legal assistance, support capacity development, generate knowledge and advocate for policy change. It has established a reputation for working pluralistically with different legal systems in a non-prescriptive, enabling and empowering way to bring about institutional and societal change. For the last 15 years, IDLO has been providing support in the strengthening of rule of law and justice systems in at least 24 countries including, Kenya, Afghanistan, Congo, Central Asia, Egypt, Ethiopia, Indonesia, Kenya, Kosovo, Kyrgyzstan, Lebanon, Lesotho, Libya, Mauritania, Mongolia, Montenegro, Myanmar, Oman, Somalia, South Sudan, Swaziland, Tajikistan, Timor-Leste, Tunisia and Yemen. IDLO has its headquarters in Rome, Italy, a liaison office for the United Nations in New York and Geneva, a Branch office in The Hague, and Country Offices in Afghanistan, Kenya, Kyrgyzstan, South Sudan, Somalia (based in Nairobi) and Tajikistan.

IDLO offers legal expertise, resources, tools and professional support to governments, multilateral partners, and civil society organizations. IDLO enhances respect for human rights; encourages economic activity by providing a legal framework for business, trade and investment; and strengthens good governance through transparency and accountability of institutions. IDLO produces a variety of professional legal tools covering interdisciplinary thematic and regional issues; including book series, country studies, research reports, policy papers, training handbooks, glossaries and bench-books such as the IDLO's report **"Accessing justice: Models, strategies and best practices on women's empowerment" (IDLO, 2013)** which includes case studies drawn from, among others, Afghanistan, India, Namibia, Rwanda, Mozambique, Tanzania, Morocco, Papua New Guinea and the Solomon Islands.

Since its establishment in 1983, IDLO has worked with over 20,000 legal professionals in 175 countries. Its growing worldwide network – consisting of 47 independent alumni associations and a roster of some 2,500 experts – gives IDLO a unique possibility to draw on expertise from around the world. Its core staff includes highly experienced development professionals specialized in legal and judicial reform, human rights, gender equality, health, international trade, intellectual property, environmental law and sustainable development.

IDLO has over 29 years' experience in successfully managing grants and cooperative agreements, providing dedicated program management, oversight and reporting, including for all financial matters. In the period 2012, IDLO globally managed 53 projects with a combined grant contract value of about € 34 Million, 48 projects worth approximately € 74 Million in 2013 and 51 projects for approximately € 81 Million in 2014.

Previous Danish Support to IDLO Kenya Country Strategy:

IDLO's Country Strategy for Kenya 2013-2015¹ aims to contribute to a culture of justice and equality with the following as the substantive outcomes that it seeks to realize in its access to justice and gender equality support work in Kenya: Well-functioning, responsive legal institutions; men and women who are empowered and aware of their rights and; legal systems that enable fair, equitable and sustainable development. Its key policy objectives include: support to the implementation of the Constitution of Kenya, 2010; strengthening of justice and governance institutions; promotion of the advancement of gender equality in the public and private sphere and enhancement of protection of rights for the socially marginalized and vulnerable people as well as communities. The Strategy is implemented through a multi-donor funded IDLO program titled "Supporting the Kenyan Constitutional Implementation Process" with a current combined grant contract value of about € 5.8 Million comprising about € 3.25 Million from Danida, about € 2.285 Million from the United States International Development Agency (USAID) and about €269,295 from the Swedish International Development Agency (SIDA). Danida's contribution to IDLO's Kenya Program to-date constitutes approximately 56% of the Program's total funding. IDLO is in the final states of discussion of a 3 –year cost-extension to the USAID support up to December 2018 for an additional contract value of US\$ 2 Million (€ 1.8 Million). The implementation of the Kenya Program is carried on the basis of annual work plans, budgets and procurement plans developed in close consultation with the supported state partners.

¹ Under revision for the period 2016-2020. Anticipated finalization: October 2015.

5. Background and Theory of Change

5.1 Context

The promulgation and subsequent initial implementation of the Constitution of Kenya 2010 from 2011 to 2015 has seen a significant improvement in the promotion and protection of human rights, gender equality and access to justice for majority of the country's population. However, the sustained implementation of the Constitution is critical to ensuring the necessary raft of reforms required to achieve sustainable peace, development and prosperity for Kenya are implemented.

Kenya's Constitution places significant premium on the respect and observance of human rights, equality and justice including through guaranteeing the enjoyment of not just the traditional civil and political rights but also for economic, social, cultural rights and group rights. The Constitution further entrenches key independent Commissions under Article 59 particularly the Kenya National Commission on Human Rights (KNCHR) and the National Gender and Equality Commission (NGEC) and a robust, more independent Judiciary under Chapter Ten to oversee protection of these rights and liberties. Despite these constitutional provisions, however, equitable enjoyment of rights, opportunities and access to justice remains a significant challenge for majority of Kenyans.

On access to justice, even though the Constitution obligates the State to ensure that every Kenyan can access justice² and the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened³, access to justice has specifically been hampered by, among others, a hitherto opaque judiciary that was inaccessible⁴, inaccessibility of the court (physical, procedural and technical access); lack of sufficient judicial infrastructure, weak coordination mechanisms, inadequate funding for the Judiciary, gender insensitive informal justice systems as well as lack of effective linkages between the formal and informal justice systems. Further, weak, nascent internal accountability systems, turf wars between the Judiciary and the two other arms of government (the Executive and Parliament) and jurisprudential inconsistencies have served to slow down the judicial reform process hence underscoring the need to further strengthen the Judiciary and reform the policy as well as legal framework towards enabling better access to justice for majority of the population.

The Constitution also includes equality, non-discrimination and protection of the marginalised on the list of "National Values and Principles of Governance"⁵ and further safeguards the 'two-thirds gender rule'⁶ and the right to equal opportunities in political, economic, cultural and social spheres. This robust constitutional framework coupled with the vibrant women's rights movement, and relatively robust gender machinery at the national level, has seen Kenya's gender equality record significantly improve from being ranked in 2012 at position 72 out of a total 135 nations in the Global Gender Gap Index to position 37 out of 142 in 2014. Modest initiatives have also been undertaken by the National Government that point to the increasing political will to enhance the status of women and gender equality generally.

² Article 48

³ Article 22(1)

⁴ This has significantly changed since 2010 after the passage of the new constitution and the new judiciary culture of transformation under the JTF 2012-2016

⁵ Article 11

⁶ Article 27 of the Constitution.

However, much more still needs to be done including addressing gender-insensitive cultural values and norms and development and implementation of gender-responsive policy and legal frameworks including enacting enabling legislation to give effect to Article 27 and 100 of the Constitution towards improving social, economic and political participation of women, youth and persons with disabilities. In addition, towards ensuring effective enjoyment of other fundamental rights including right to non-discrimination and human dignity as highlighted in various recommendations made to Kenya in the 21st Session of the Working Group on the Universal Periodic Review (UPR), there is a critical need to strengthen the gender machinery at the national and county level through effectively resourcing NGEC, the Gender Directorate of MODP and KNCHR to undertake their Constitutional mandates.⁷ This includes, among others, strengthening coordination among them, their linkages with the civil society and other actors, strengthening the policy and legal framework to better facilitate their work and enhance their capacity for wider reach especially to the more marginalized regions and groups.

Building on previous Danish/IDLO support for Gender Mainstreaming:

The Danish Embassy in Nairobi/Danida has since October 2013 supported IDLO through funding amounting to approximately € 334, 277 towards technical assistance to the MODP in the promotion of gender reforms within the public service in Kenya through gender focused policy development, legislation, planning and resource allocation. By working closely within the MODP and in consultation with NGEC and other key actors in Kenya's gender movement, IDLO's interventions have effectively initiated the critical strategic actions required to mainstream gender in governmental institutional and systemic structures modelled along the Commonwealth Secretariat-developed Gender Management System (GMS) including through: strategic advice on the restructuring of the Directorate of Gender within the MODP; review and development of key gender policies and legislation (such as the draft policy and legislation on representation of Special Interest Groups (women, youth and persons with disabilities) in Parliament⁸, policy and legislative proposals on the realisation of the two-thirds Constitutional gender principle⁹ and the National Equality Policy)¹⁰ capacity building of gender officers deployed to all the 18 ministries; strengthened capacity of MDP to monitor gender budgeting including social budget tracking and monitoring the access of women to the 30% preferential public procurement, development of standard gender training tools (GMS training manual and trainers' guide) for use in the public service and increased profiling of gender issues in the media.

This development engagement will build on this foregoing work particularly by deepening its technical support to the MODP towards realisation of its gender-related mandate under the Executive Order No. 2 of 2013 on "Organisation of the Government of Kenya", of not only coordinating the national development planning and implementation of Kenya's development blueprint (Vision 2030) under the Medium Term Plan II (2013-2017) but also overseeing promotion of equitable social, economic development between men and women, youth and gender mainstreaming in national development, as well as gender policy management. This support shall generally be made through the Offices of the Cabinet Secretary as that of Principal Secretary for Planning. Specific support shall however be made to

⁷ United Nations Human Rights Council, Working Group on the Universal Periodic Review, 'Draft Report of the Working Group on the Universal Periodic Review: Kenya' A/HRC/WG.6/21/L.&.

⁸ In line with Article 100 of the Constitution of Kenya (COK), 2010

⁹ As provided for under Article 27 (8) of the COK, 2010 requiring that "...not more than two-thirds of the members of elective or appointive bodies shall be of the same gender."

¹⁰ Awaiting validation and adoption before gazettelement.

the Gender Directorate of the MODP (which acts as the Technical arm of the ministry on matters related to gender mainstreaming) and shall include: roll-out of the developed GMS Manual and Guide including through trainings for gender officers at both national and county levels on their role in effecting gender mainstreaming, provision of technical expertise in gender policy and legislative processes and strengthening its coordination with NGEK and the gender movement. IDLO shall also provide support to NGEK including in: monitoring the integration of equality and non-discrimination principles in national and county policies, laws and administrative regulations as well as compliance with all treaties and conventions ratified by Kenya on equality, non-discrimination and protection of rights of special interest groups.

Building on Previous Danish/IDLO support for Access to Justice and Human Rights:

Danida has supported IDLO since 2012 to enhance the institutional capacity of the Judiciary to deliver accessible, expeditious and transparent justice under Pillars 1 and 2 of the Judiciary Transformation Framework (JTF). This support has realised various significant results including: timely and effective resolution of over 120 electoral boundaries dispute cases, through IDLO's support to the High Court, paving the way for the 2013 General Elections; II) Hearing and determination of all 188 election petitions filed across the country in a record six months through IDLO's support to the Judiciary Working Committee on Elections Preparations (JWCEP); III) Strengthening of key offices in the Judiciary particularly the Offices of the Chief Justice and the Deputy Chief Justice through embedded technical experts contributing to sustained judicial reform momentum (IV) review of Law of Succession Act as well as Probate and Administration Rules towards improvement of gender justice dispensation; (V) Strengthening of the capacities of judicial officers through carrying out of trainings and bar-bench forums with the Judiciary Training Institute (JTI) leading to highly trained calibre of judicial officers who are well placed to effectively and fairly dispense justice ; (VI) Development of robust policy and legislative framework for access to justice through development of Judiciary policies on Bail and Bond, Sentencing and sexual harassment as well as development of draft High Court Administration Bill which if implemented will significantly enhance access to justice for the majority of Kenyans(VII) Mentorship of female judicial officers, in collaboration with the Kenya Women's Judges Association leading to a more assertive, independent and judicious body of female judicial officers who are championing gender justice through the courts; and (VIII) Change management realised through trainings for judicial officers and staff of the Family Division of the High Court leading to a highly motivated staff complement that is fully attuned to the Judiciary reform agenda.

5.1 Justification including lessons learnt

Even though significant work has been undertaken towards implementation of the constitutional provisions relating to gender equality, rights and access to justice, a combination of several factors portend the risk of drawing back on the gains made. These include: weakened institutions such as constitutional commissions and civil society due to limited funding and limiting legal/policy frameworks, incomplete judicial reforms and lack of coordination between the key actors at both national and county level. Hence, IDLO's proposed support to the Judiciary, NGEK, KNCHR and MODP will ensure the sustenance of the reform momentum and strengthening of these institutions towards addressing the highlighted factors. The Development engagement will also entrench joint planning, reporting and reviews with these actors specifically between the Gender Directorate, NGEK

and the KNCHR in the advancement of equality and realization of rights of women and other vulnerable groups.

The proposed engagement will also make use of the lessons learnt in the past Danida-supported IDLO programming in Kenya as elaborated below.

- Need for engendering the judiciary transformation process and enhancing access to gender justice: Over the years IDLO has learned¹¹ of and duly recognizes the special challenges that women and girls face in accessing justice in various countries including here in Kenya. Hence, IDLO shall adopt a more strategic approach according to which opportunities for promoting increased gender justice access will be identified early in the process through systematic gender analysis of all programs and interventions. These opportunities will be translated into specific development engagements to promote gender justice with clearly identified goals, outcomes and indicators building on the current IDLO work of gender justice-related support to the Judiciary
- There is a critical link between poverty, sustainable livelihoods and access to justice particularly for the disadvantaged groups: In many developing, post-conflict and economic transition countries including Kenya, poor and vulnerable groups are still marginalized by the legislative and socio-economic environment. Hence, increasing their access to justice can play an important role in empowering them and expanding their voice in cases where their rights are violated.
- Need for justice reforms to focus more on the "end user": People have little confidence in laws and institutions when they do not see their practical benefits to their own lives. Hence, justice reform initiatives need to focus on building people's trust in the rule of law. The best results come when the reforms are tailored to meet local needs and based on locally defined parameters, but anchored within the framework of international standards and values. This calls for more engagement with national actors, civil society and local communities. It also means measuring the success of reforms according to the extent to which they respond to people's needs and demands for justice. This shall be one of the key objectives of this Project.
- Need to promote empowering solutions: Legal reforms alone do not produce justice. Combating discrimination and fighting injustice requires tackling the underlying power dynamics that deprive people from equal protection of the law. Legal and non-legal empowerment strategies are critical in helping people access justice and claim their rights. The most successful reform strategies are those that combine top-down and bottom-up approaches, using national consultations, effective coordination among sectors and actors and legal empowerment. This rationale underlines the IDLO support and approach under this Project.
- Need for engagement with informal as well as formal justice systems: Most women and poor people do not trust formal legal institutions or are unable to access them. They tend to use traditional or informal systems to resolve their legal problems, including family disputes, property, natural resources management, inheritance and financial claims. Reform initiatives need to focus not only on the formal system, but also on informal systems, and on the relationship between the two to ensure that the state does not abdicate its responsibilities to poor and marginalized groups

¹¹ IDLO Strategic Plan 2014-2016

and women. In this regard, under this Project, IDLO shall seek to support initiatives that promote strengthening of the informal justice systems and their engagement with the formal judicial structures

- Need for enhancing coordination: Levels of inter and intra sector coordination in Kenya is low, with many institutions operating in silos. This leads to duplication of roles, funding, lack of cooperation and lost opportunities for synergies. While IDLO has facilitated partnership coordination efforts for judicial and gender mainstreaming actors, it expects to play a bigger role moving forward under this project towards improving the existing coordination mechanisms with all relevant stakeholders.
- The need to balance legal and policy reform interventions with corresponding efforts to address systemic cultural values and practices of individuals and institutions in society that hinder the realization of gender equality, non-discrimination and access to justice.
- The need for sustainable institutional strengthening initiatives that outlive the current support. Most especially, IDLO will provide consistent and high-quality technical support, twinning TA with policy and legislative changes and development of tools that can be left behind at the end of time bound TA to institutions.

5.3 Narrative for Theory of Change¹²

This Development Engagement seeks to contribute to the Embassy of Denmark's Governance Thematic Overall Strategic Objective of contributing to the ***implementation of the Constitution, consolidation of an accountable, inclusive and participatory democracy based on increased stability.***

The intervention under this DED is based on the theory that efficient implementation of the constitutional provisions and the enjoyment of fundamental rights and freedoms and access to justice is hampered by lack of institutional capacity of duty bearers (Judiciary, NGEK and the Gender Directorate of MODP and the KNCHR) to effectively deliver on their mandates. This inability by the duty bearers to effectively deliver on their mandates is contributed to by several factors including: failure to entrench institutional, legislative and policy reforms to advance access to justice, non-discrimination and gender equality principles in line with the new constitution, lack of adequate highly experienced internal expertise for implementation of envisaged reforms, weak coordination mechanisms in the justice, gender and human rights sectors and weak internal systems for reform work including lack of effective mechanisms for communication to their respective constituencies.

This engagement, therefore, seeks to address two challenges facing the effective implementation of the constitutional provisions namely: lack of access to justice for all including the vulnerable (article 22 of the Constitution) and the systemic gender based discrimination and pervasive discrimination against other vulnerable groups in accessing justice and enjoying fundamental rights and freedoms as enshrined under the Constitution. It also seeks to strengthen the capacity of the judiciary for efficient electoral

¹² Attached is the diagrammatic representation of the Theory of Change as Annex A and B

dispute resolution, through JWCEP, towards enhancing the credibility of the judiciary as an arbiter of electoral disputes and ultimately lead to the entrenchment of democratic electoral outcomes in Kenya.

Outcome 1: Strengthened judicial reforms and capacity for AJS for improved access to justice for the most marginalised

To achieve the outcome of this Development Engagement, the following assumptions and conditions must be met: (1) there is a supportive environment for reform in the judiciary, and the judiciary is committed and willing engage in the reform process, and invest required resources and build supporting partnerships (2) there is an acceptable level of judicial independence, and therefore room for reforms to be adopted and implemented (3) there is some level of support within the legal fraternity for non-judicial forms of justice-ADR, mediation, and (4) IDLO's expertise and previous and ongoing contributions to judicial reform continue to enable it to sustain a good relationship with the judiciary. This relationship will be sustained in the long-term, providing a conducive environment for a reform partnership.

To move towards achieving the Development Engagement, the following interventions/activities must be implemented by IDLO and its partners: (1) institutional strengthening for the judiciary (2) policy, legal and institutional design advice to the judiciary (3) gender mainstreaming in the JTF (4) public information campaigns on judicial services (5) promotion and enforcement of ADR/mediation (6) change management in the judiciary; and (6) use of technology to expand access to judicial services.

The implementation of these activities by IDLO and its partners will contribute to generating the following outputs, which are necessary preconditions to move towards the realization of the Development Engagement outcome: *“Enhanced access to justice facilitated by effective, sustainable judicial reforms and increased use of ADR/mediation mechanisms”*. (1)The desired outputs are: Improved formal and informal justice mechanisms for access to justice ; (2) Strengthened capacity for key judiciary offices to enhance access to justice for the most marginalised; (3)Strengthened capacity to administer gender justice within the Judiciary

This support in the short term will contribute to a more reformed judiciary capable of delivering justice as per its mandate and will in the long run contribute to increased access to justice for all especially for the most marginalised and ultimately to the efficient implementation of the constitution.). By strengthening the capacity of the judiciary for efficient electoral dispute resolution, the support will also enhance the credibility of the judiciary as an arbiter of electoral disputes and ultimately lead to the entrenchment of democratic electoral outcomes in Kenya. IDLO's support will also contribute to the implementation of the recommendations and accepted by Kenya in the 21st UPR Session on the need to strengthen the Judiciary and support implementation of the JTF. Such recommendations include those made by: Austria, Algeria, Namibia, Brazil, United Arab Emirates and Senegal.

Outcome 2: Entrenched institutional and legal reforms for the advancement of gender equality and rights of vulnerable groups.

This outcome is aligned to the Government of Denmark Strategic Framework for Gender Equality, Rights and Diversity, the equality provisions and Bill of Rights in the Constitution of Kenya 2010, the National Gender and Equality Policy, and gender mainstreaming priorities in the Kenya Vision 2030,

MODP's Medium Term Plan (MTP) II 2013 – 2017, and the Second Medium Term Plan (MTP II) 2013 – 2017.

To achieve this outcome, the following assumptions and conditions must be met: (1) there is a supportive environment and political will for reform in the four partner institutions (Judiciary, MoDP, NGEC and KNCHR) (2) sector coordination mechanisms will remain robust and/or will be strengthened and no duplication of support occurs (3) IDLO's expertise, previous and on-going contributions to equality and human rights have enabled it to cultivate a good relationship with relevant public agencies such as the Judiciary, Gender Directorate-MODP, and NGEC (4) Government of Kenya is committed to the promotion of access to justice, equality and human rights (5) There is a basic constitutional, legal and policy environment for the realization of promotion of access to justice, equality and human rights.

To move towards achieving the Development Engagement, the following interventions/activities must be implemented by IDLO and its partners: (1) Capacity strengthening for gender mainstreaming in public sector (national and county levels) (2) technical assistance in policy, legal and institutional design (3) advocacy for constitutional implementation, legal and institutional on equality and human rights.

The implementation of these activities will contribute to generating the following expected outputs, which are necessary preconditions to move towards the realization of outcome 2: *Strengthened institutional and legal mechanisms for the advancement of gender equality and rights of vulnerable people*. The expected outputs are: (1) Improved formal and informal justice mechanisms for access to justice ; (2) Strengthened capacity for key judiciary offices to enhance access to justice for the most marginalised; (3) Strengthened capacity to administer gender justice within the Judiciary

IDLO shall ensure that its partners effectively engage and allow meaningful participation of key stakeholders including the public and civil society including through linkages with other Danish partners such as FIDA-Kenya and also that the agencies effectively communicate to their stakeholders on their on-going work including through regular reports and media engagement in line with the Danish HRBA principles of transparency, accountability and participation. IDLO's support will also contribute to the implementation of the recommendations and accepted by Kenya in the 21st UPR Session on the need to strengthen the human rights and gender machinery particularly NGEC and KNCHR (Brazil, Niger) and carry out legislative and policy reforms towards enhancing gender equality and protection of human rights particularly for vulnerable and disadvantaged groups (Estonia, India, Austria, Colombia, France and Albania).

6 Development Engagement Objectives

6.1 The overall vision for the partnership is to support the Government and people of Kenya in implementing the Country's Socio-economic Development Blueprint, *Vision 2030*, to create '*a globally competitive and prosperous country with a high quality of life by 2030*'.¹³ The Government of Kenya has identified implementation of the Constitution and addressing of inequalities as some of the key priorities in the implementation of Vision 2030, hence closely related to the purpose of this engagement.

¹³ Danish Country Programme for Kenya 2015-2020: Governance Thematic Programme Document

6.2 This development engagement seeks to contribute to the Danida Thematic Governance Programme overall objective of supporting the *implementation of the Constitution, consolidation of an accountable, inclusive and participatory democracy with increased stability*. The specific objective of the development engagement is to *‘Contribute to the implementation of Constitution particularly for the most marginalised and vulnerable Kenyans’*.

6.3 Outcomes:

Outcome 1: Enhanced access to justice facilitated by effective, sustainable judicial reforms and increased use of alternative dispute resolution and other alternative justice Systems ¹⁴

Outcome 2: Strengthened institutional and legal mechanisms for the advancement of gender equality and rights of vulnerable people¹⁵

6.4 Outputs:

Outcome 1 Outputs:

- Improved formal and informal justice mechanisms for access to justice
- Strengthened capacity for key judiciary offices to enhance access to justice for the most marginalised
- Strengthened capacity to administer gender justice within the Judiciary

Outcome 2 Outputs:

- Strengthened human rights framework at county and national levels to advance gender equality and non-discrimination.
- Strengthened institutional capacity to mainstream gender equality and non-discrimination

7 Results Framework

7.1 IDLO is responsible for monitoring and reporting on the progress and achievements of the development engagement using its own results framework and M&E system as detailed in Section 12 below. The parties have however agreed that the Danish Embassy will use the following results framework with a limited number of outcome and output indicators for the purpose of reporting back to the Danish constituency. Data to inform the reporting will be supplied by IDLO as part of the ordinary monitoring of the engagement. Within the first half-year of implementation, a final results framework will be prepared by IDLO in consultation with State Partners involved in the implementation of this Program. It will include annual targets for the outputs.

¹⁴ Aligned to Goal 1 of the IDLO Kenya Country Strategy: *‘IDLO in Kenya will help to build confidence in the justice sector by supporting legal and institutional reforms and promoting good governance’* and Goal 2: *‘IDLO in Kenya will enhance access to justice by enabling governments to uphold human rights and empower people to claim them.’*

¹⁵ Aligned to Objective 1 (‘Promote Gender Equality’ of Goal 2 of the IDLO Kenya Country Strategy: *‘IDLO in Kenya will enhance access to justice by enabling governments to uphold human rights and empower people to claim them’* And Strategic Objective 5 of the Strategy: *To enhance legal protections for socially marginalized and vulnerable people.*

7.2 The strategy proposed under the engagement is well tailored to promote Danida’s Human Rights-Based Approach (HRBA) principles in several ways. This includes: promotion of the principle of non-discrimination by providing agencies such as NGEC and the Gender Directorate that are key to protection and promotion of the rights of women and other excluded special interest groups; strengthening the ability of the supported agencies including the Judiciary and MODP to harness technology in communicating progress of its work and receiving feedback on its work from its users in line with the principle of transparency. Also, in the envisaged work on development and review of laws and policies, IDLO shall ensure effective participation of key stakeholders while ensuring that laws and policies are rights-responsive in line with the principles of participation, inclusion and accountability.

7.3 Subject to 7.1, the parties have agreed to measure progress and performance by the following key outcome and output indicators.

Outcome 1		Enhanced access to justice facilitated by effective, sustainable judicial reforms and increased use of alternative dispute resolution and other alternative justice systems.	
Outcome indicator 1		Number of cases lodged brought by the public to informal and formal justice mechanisms ¹⁶	
Baseline	Year	2013	116,754 new cases filed in courts across Kenya and 190,093 cases were determined by the courts, yet 657,670 remained pending
Target	Year	2020	50% of case backlog determined by the courts and other dispute resolution mechanisms
Outcome 2		Strengthened institutional and legal mechanisms for the advancement of gender equality and rights of vulnerable people.	
Outcome indicator 2		Number of related initiatives undertaken by MODP Gender Directorate, NGEC and KNCHR	
Baseline	Year	2015	Key policies and legislation on gender equality, protection of rights of vulnerable people and non-discrimination as stipulated by the 2010 constitution not in place (e.g. Legislation on the realisation of the ‘not more than two-thirds’ gender principle, national equality policy, Law of Succession Act). ¹⁷
Target	Year	2020	Key Policies and laws on gender equality, protection of rights of vulnerable people and non-discrimination in line with 2010 Constitution in place
Output 1		Improved formal and informal justice mechanisms for access to justice	
Output indicator 1.1		Number of initiatives by judiciary and other justice stakeholders.	
Baseline	Year	2015	Weak court systems and process; minimal entrenchment of informal justice or ADR mechanisms. ¹⁸
Target	Year	2020	Improved court administration systems and processes; increased efforts to popularise informal justice mechanisms with the public.

¹⁶ State of the Judiciary and the Administration of Justice Report 2012-2013.

¹⁷ Source: NGEC Annual Report 2012-2013, NGEC Strategic Plan 2013-2015; KNCHR Annual Report 2013-2014, MODP Strategic Plan 2013/2014)

¹⁸ State of the Judiciary and the Administration of Justice Report 2012-2013

Output 2		Strengthened capacity for key judiciary offices to enhance access to justice for the most marginalised	
Output indicator 2.1		Number of initiatives by the Office of the Chief Justice (OCJ), the Chief Registrar of the Judiciary (CRJ), National Council for the Administration of Justice (NCAJ) and JTI promoting access to justice; increased processes and systems established on access to justice ¹⁹ .	
Baseline	Year	2015	Weak institutional capacities and lack of adequate technical staff in the 4 offices
Target	Year	2020	Improved capacity of OCJ, CRJ, NCAJ and JTI to dispense their mandate regarding access to justice, illustrated by improved processes and systems established.
Output 3		Strengthened capacity to administer gender justice within the Judiciary	
Output indicator 3.1		Number of initiatives undertaken by Judiciary aimed at gender justice reforms	
Baseline	Year	2015	Weak capacity of judiciary to adequately address gender issues especially on issues of succession (due to backlog, overburdened Family Division) and SGBV (backlog of cases); State of the Judiciary and the Administration of Justice Report 2012-2013.
Target	Year	2020	Increased initiatives by judiciary towards addressing gender justice reforms, which includes improved access to justice by women, and number of cases dispensed by Courts.
Output 4		Strengthened human rights framework at county and national levels to advance gender equality and non-discrimination.	
Output indicator 4.1		Number of policies and laws drafted and enacted at county/national level embodying principles of gender equality, protection of rights of vulnerable people and non-discrimination.	
Baseline	Year	2015	Most existing and proposed laws and policies fail to effectively comply with the constitutional principles of gender equality, human rights and non-discrimination ²⁰
Target	Year	2020	Increase in key laws and policies on gender equality, protection of vulnerable people and freedom from discrimination in place and reviewed for constitutional compliance
Output 5		Strengthened institutional capacity to mainstream gender equality and non-discrimination	
Output indicator 5.1		Number, types and effectiveness of capacity strengthening initiatives undertaken by NGEC, MoDP-Gender Directorate and KNCHR	
Baseline	Year	2015	Weak institutional capacity of NGEC, MoDP-Gender Directorate and KNCHR (lack of adequate senior technical expertise, weak coordination mechanisms, weak communication mechanisms). ²¹

¹⁹ State of the Judiciary and the Administration of Justice Report 2012-2013.

²⁰ Source: CIC Annual Report 2014, NGEC Annual Report 2012-2013, KNCHR Annual Report 2013-2014

²¹ Source: NGEC Annual Report 2012-2013, NGEC Strategic Plan 2013-2015; KNCHR Annual Report 2013-2014, MODP Strategic Plan 2013/2014

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Target	Year	2020	Improved capacity of NGECC, MoDP-Gender Directorate and KNCHR to fulfil their organizational mandate especially as it pertains to mainstreaming gender equality and non-discrimination
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8 Risk Management

Programmatic Risks						
Risk Factor	Likelihood	Background to Assessment of Likelihood	Impact	Background to Assessment of Impact	Risk Response	Combined Residual Risk
Inadequate performance of other institutions in the chain of justice affecting the delivery of justice	Likely	The ability of the judiciary is impacted by the ability of other actors in the justice chain.	Major	Access to justice is also dependent on other actors including the prosecution, law enforcement, CUCs etc. There is limited access to existing formal justice mechanisms especially the most vulnerable	<u>Mitigation/Reduction</u> : IDLO will strengthen the judiciary collaborative mechanisms to assist other institutions in improving their performance. IDLO will strengthen support to the NCAJ, which has the mandate to work with key actors in the justice chain to streamline delivery of justice. Entrenchment of AJS and ADR to enhance access to Justice	Major
Inadequate coordination of Development assistance to the Judiciary leading to duplication of support	Likely	Inadequate coordination of Development assistance poses the danger of duplication of efforts and the lack of support for some of the critical components of the JTF and Strategic plan	Minor	The coordination mechanisms are still at a nascent stage	<u>Mitigation/Reduction</u> : Continued strengthening of the judiciary and Development partners' coordination mechanisms that have been established.	Minor
Resistance to change within the Judiciary and other institutions in the justice chain affecting implementation of JTF.	Likely	Though the implementation of the JTF has been rolled out, there is still insufficient goodwill from all key actors for its implementation	Major	There is danger of superficial transformation anchored on individual actors other than the institution itself affecting their sustainability.	<u>Mitigation/Reduction</u> : IDLO will continue support for sustainable solutions including internal strengthening of the Judiciary as an institution, development of policies and laws to anchor the transformation as well as develop tools and processes to anchor the change	Major
Weak implementation capacity of key institutions such as the NCAJ, CUCs and the Judicial Service Commission (JSC)	Likely	The setup of these institutions has not been coupled with the adequate resourcing of the institutions to enable them deliver on their mandate	Minor	The NCAJ and CUC have the critical mandate to bring together justice actors and address challenges to access to justice at national and decentralized level.	<u>Mitigation/Reduction</u> : IDLO will continue strengthening the capacity of the key institutions (NCAJ, CUC and JSC) so they can play their part in enhancing access to justice.	Minor

Kenya Programme 2016 – 2020 Governance Thematic Programme – Support to Human Rights, Access to Justice and Equality

Programmatic Risks						
Risk Factor	Likelihood	Background to Assessment of Likelihood	Impact	Background to Assessment of Impact	Risk Response	Combined Residual Risk
slowing down judicial reforms progress				The JSC is critical in the strategic direction of the Judiciary as well as in ensuring conducive environment for judicial officers.		
Failure to integrate the human rights approach in judicial and gender reforms	Likely	Despite a number of initiatives to enhance the environment for gender justice and address issues of integrating human rights discourse within the judiciary, this has not translated to the effective mainstreaming of the issues within the judiciary and in the delivery of justice	Major	There is need for continued strengthening of capacity to integrate gender and human rights based approach The framework for gender justice is still inadequate	<u>Mitigation/Reduction:</u> Continued support to the development and implementation of gender and human rights based-policies, processes and procedures by the Judiciary, Gender Directorate-MoDP and KNCHR Continue support to strengthen the revision of the gender and human rights framework	Minor
Inadequate political will negatively affect realisation of gender equality	Unlikely	A number of initiatives have been put in place that illustrates political will by Government and private institutions to advance gender equality. These are however hampered by lack of adequate laws and policies to anchor the changes and lack of sufficient capacity by the intended beneficiaries	Major	Despite progressive Constitutional provisions and passage of several laws and policies, there still exists many laws that need to be passed and reviewed to give effect to the Constitutional provisions	<u>Mitigation/Reduction:</u> Continued support to policy and legislative changes and the effective implementation of the existing laws and policies to advance equality.	Minor
Deeply entrenched retrogressive cultural practices and social norms hindering advancement of Gender Equality	Likely	Passage of progressive laws and policies and existence of Constitutional guarantees for equality and equity is not matched by change of cultural norms and practices.	Major	The cultural norms and practices limit the realization and enjoyment of the rights by women, girls, and other vulnerable groups.	<u>Mitigation/Reduction:</u> Enhanced awareness raising on human rights and the new laws Continued advocacy for passage and implementation of progressive laws and policies	Major
Inadequate conducive Legislative, and regulatory framework to advance gender	Likely	Despite progressive Constitutional provisions and passage of several laws and policies, there still exists many	Major	Lack of adequate progressive laws and policies continue to negatively affect realization of gender equality and human	<u>Mitigation/Reduction:</u> Enhanced awareness raising on the new laws Continued technical support towards	Minor

Programmatic Risks						
Risk Factor	Likelihood	Background to Assessment of Likelihood	Impact	Background to Assessment of Impact	Risk Response	Combined Residual Risk
equality coupled with low implementation of gender related laws and policies		laws that need to be passed and reviewed to give effect to the Constitutional provisions		rights	development, passage and implementation of progressive laws and policies	
Institutional Risks						
Risk Factor	Likelihood	Background to Assessment of Likelihood	Impact	Background to Assessment of Impact	Risk Response	Combined Residual Risk
Fiduciary risk in terms of corruption and misuse of DANIDA funds managed by IDLO	Rare	Internal control and steering environment and processes assessed sufficient and adequate	Significant	Would it occur it not only implies inefficiency but entails reputational risk – both to the IDLO and the Danish Embassy - to an extent that may put whole program and Danish support in peril	<u>Mitigation/Reduction:</u> - IDLO will use established international procedures for audits and fiduciary oversight.	Minor

9 Inputs

Denmark will contribute DKK 25 million for the period 2016 to 2020 while USAID will contribute DKK 13,616,601 for a three-year period (2015-2018) hence the total funding for the program for the period shall be DKK 38,616,601 as further detailed below:

Financial Support of IDLO Kenya Country Office Strategy					
IDLO Kenya Field Office Combined Budget 2016-2020					
<i>(Funded Jointly by USAID & DANIDA)* - Amounts in Million Danish Kroner (DKK)</i>					
	2016	2017	2018	2019**	Total
IDLO Strategy Focus Area 1: Legal and Institutional Reform					
<i>Output 1: Quality Legislation, Policies & Administrative Procedures Development compliance with the Constitution at both national and county levels</i>	1,31	1,31	1,31	0	3,94
IDLO Strategy Focus Area 2: Access to Justice					
<i>Output 2: Improved formal and informal justice for Access to Justice</i>	0,55	0,55	0,55	1,00	2,67
<i>Output 3: Strengthened capacity for key Judiciary offices to enhance Access to Justice for the most marginalised</i>	0,15	0,15	0,15	0,28	0,71
<i>Output 4: Strengthened capacity to administer Gender Justice within the Judiciary</i>	0,48	0,48	0,48	1,00	2,40
<i>Output 5: Strengthened capacity of the Judiciary for efficient Electoral Dispute Resolution</i>	1,19	1,19	1,19	0,62	4,21
<i>Output 6: Strengthened human rights framework at county and National level to advance gender equality and non-discrimination</i>	0,34	0,34	0,34	0,69	1,74
<i>Output 7: Strengthened institutional capacity to mainstream gender equality and non-discrimination</i>	0,65	0,65	0,65	1,30	3,25
IDLO Strategy Focus Area 3: Legal Innovation to Promote Sustainable Development					
<i>Output 8: Land/Environment and Natural resources management policy and legislative framework advance at National & County Level</i>	0,34	0,34	0,34	0	1,03
Program Administration & Management					
Local Project Staff, Local Office Costs, Evaluation & Audit, Contingency fund, HQ Supervision & Management and Overhead	4,43	4,43	4,43	5,23	18,52
Overall Total Funding (USAID & DANIDA in DKK)	38,6				
<i>Total Supported by DANIDA (in DKK)</i>	25				
<i>Total Supported by USAID (in DKK)</i>	13,6				

10 Management Arrangement

The overall principles for management of the present development engagement are described in the implementing Partner Agreement to which this Development Engagement Document is annexed

* USAID support is focused on particular outputs only, for the three-year period (2015-2018), notably output 1, 5 and output 8.

- 10.1** The daily management of the engagement will be undertaken by IDLO with mechanisms set to ensure on-going dialogue with the Danish Embassy in Nairobi on operational and strategic issues such as results, assumptions and risks. IDLO will, *inter alia*: review and endorse the operating principles of the engagement program; ensure that implementation is in line with the expected outcomes and principles for the engagement; monitor engagement partnership level risks, and ensure appropriate responses are taken; monitor expenditure and maintain high level oversight performance; maintain partnership level communication, including attention to communication protocols between itself and Danida. IDLO shall provide annual plans, as well as financial and narrative reports on the progress in the implementation of the engagement semi-annually and one final financial and narrative report within six months from the end of the engagement period. All such reports shall be provided in line with IDLO’s narrative and financial reporting templates.
- 10.2** IDLO and Danida shall set up a Joint Steering Committee that shall meet every year to play an oversight role in the monitoring and evaluation of this engagement and provide strategic decisions regarding the engagement. IDLO shall act as the Chair of the Joint Steering Committee. The Chair shall convene a meeting of the Committee to be held every twelve months. Minutes shall be kept of all decisions made by the joint steering committee. Copies shall be provided to Committee members within fourteen (14) days of the meeting date.
- 10.3** IDLO will continue being a member of two Donor Coordination Groups on Judicial reforms and Gender as well as two stakeholder coordination groups – Judicial reform and Gender Sector Coordination Groups - and this will ensure coordination and harmonization with development partners, government and civil society. Similarly IDLO will continue participating effectively in the Gender Sector Working Group that is convened by the Ministry of Devolution for Government and the Joint Steering Committee on Judiciary Transformation convened by the Judiciary. Both groups meet quarterly. Key government agencies within this sector, including NGEC and KNCHR, also convene donor roundtables to provide briefs and updates on progress and challenges experienced in the implementation of their strategies and the attendant alignment to government policy. IDLO will support and play an active role in these forums.

11 Financial Management and Audit

- 11.1** Both parties will strive for full alignment of the Danish support to IDLO financial rules and procedures.
- 11.2** Accounting and auditing of the Danida funds will be undertaken by IDLO in accordance with the General Guidelines for Accounting and Auditing of Grants channelled through National NGOs (<http://amg.um.dk/en/technical-guidelines/financial-management/accounting-and-auditing>). IDLO will conduct the audit on annual basis and submit the signed audit report to the Danish Embassy.
- 11.3** Additionally, the allocation of overheads and sharing of costs will be ensured by application of IDLO related policies and procedures. IDLO shall also ensure adherence to the IDLO procurement policy and procedures for items it procures in respect of this engagement. IDLO shall maintain accurate accounting records, documents, original receipts and other evidence to sufficiently substantiate charges to the engagement agreement for a period of seven years from the conclusion of activities under this engagement.

- 11.4 Accounting records shall be available for control by the Embassy of Denmark, by a representative appointed by the Embassy, or by the Danish Auditor General.

12 Monitoring and Evaluation

- 12.1 IDLO is responsible for monitoring and reporting on the progress and achievements of the development engagement using its own results framework and M&E system. IDLO shall follow the international good practice for monitoring and evaluation (M&E) in line with its Evaluation Policy and quality standards and methods of the OECD Development Assistance Committee (DAC) Evaluation Network, of which Denmark is a member. IDLO shall give priority to ‘managing for results,’ focusing on defining realistic expected results, monitoring progress towards their achievement, integrating lessons learnt into management decisions, and reporting on performance. Also, given IDLO’s strong track record in developing comprehensive M & E frameworks in close collaboration with the partners’ involved, a similar approach shall be adopted within this program.

The M & E framework while guiding program implementation will also take into account the very fluid environment in which support is provided. Hence, project data will be collected by IDLO on an on-going basis, semi-annually analysed and presented to Danida, the Joint Steering Committee as well as IDLO management to review progress, identify reasons for divergence from the targets, and make any necessary changes to implementation modalities. Also, IDLO will in-build a joint review of the work plan and M&E framework after the first 12 months of implementation. The process of review will consider: practical and realistic indicators to track progress at each level of results; data collection and collation methodologies for each indicator; and assumptions about dynamics within the external environment, and potential risks to the program.

A mid-term evaluation will be conducted mid-way through the program implementation during which time IDLO will examine actual and potential achievements, and recommend any necessary adjustments to the program/engagement for the remaining period. A final program evaluation will also be conducted at the end of the Project duration in order to report on results, provide conclusions and recommendations, draw lessons for organizational learning, and inform the development of future programs. For both mid-term and end-of-program evaluations, the data collected via program-level monitoring will be an important source of evidence and further triangulated by data acquired by evaluation experts from other sources. The evaluation will be designed, planned and conducted, aligning it to the OECD DAC criteria, namely relevance, efficiency, effectiveness, impact and sustainability.

- 12.2 The Danish Embassy shall have the right to carry out any technical or financial mission that is considered necessary to monitor the implementation of the programme.
- 12.3 The Danish Embassy will contract a strategic monitoring support for the entire country programme and all DED partners including IDLO will provide data needed to measure progress.
- 12.4 Danida Copenhagen will carry out Real Time Evaluation during the time of implementing the agreement and Danida will also after the termination of the programme support reserve the right to carry out evaluation in accordance with this article. This obligation will remain in effect for a period of seven years commencing from the program end date.

13 Signatures

On behalf of

IDLO

Signature

Director General

Date

On behalf of

The Danish Embassy, Nairobi

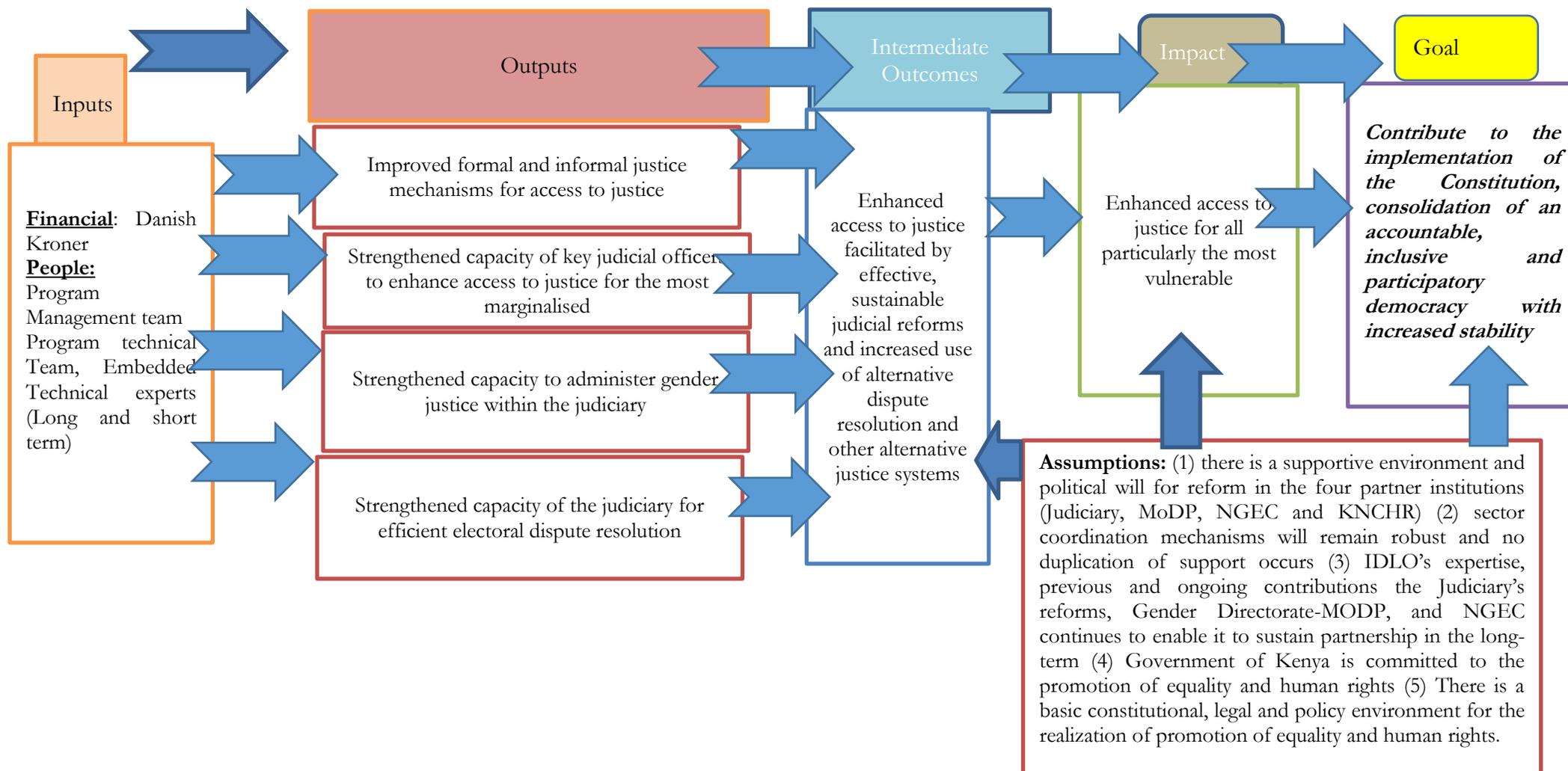
Signature

Ambassador

Date

ANNEX A: THEORY OF CHANGE (TOC)

1. ACCESS TO JUSTICE



2. HUMAN RIGHTS AND GENDER EQUALITY

