

Why GAO Did This Study

Following a 2007 disputed election and widespread violence, Kenya reformed its constitution, which its voters approved in August 2010. The United States has provided over \$18 million to support this process to date. GAO was asked to (1) describe any involvement that U.S. officials have had in Kenya's constitutional reform process relating to abortion; (2) describe any support that U.S.-funded award recipients and subrecipients have provided in Kenya's constitutional reform process relating to abortion; and (3) assess the extent to which agencies have developed and implemented guidance on compliance with the Siljander Amendment, which prohibits using certain assistance funds to lobby either for or against abortion. GAO analyzed documents and interviewed officials from the U.S. Agency for International Development (USAID), the Department of State (State), award recipients and subrecipients, and the Kenyan government, and conducted an extensive media search.

What GAO Recommends

GAO recommends that State and USAID develop specific guidance on compliance with the Siljander Amendment, indicating what kinds of activities may be prohibited, disseminate this guidance throughout their agencies, and make it available to award recipients and subrecipients. USAID concurred. State concurred that it should inform staff of the amendment but not that it should provide examples of potentially prohibited activities. GAO continues to believe that providing such examples would enable officials to better understand the amendment and when to seek additional guidance.

View [GAO-12-35](#) or key components. For more information, contact Jacquelyn Williams-Bridgers at (202) 512-3101 or williamsbridgersj@gao.gov.

FOREIGN ASSISTANCE

Clearer Guidance Needed on Compliance Overseas with Legislation Prohibiting Abortion-Related Lobbying

What GAO Found

Between 2008 and 2010, U.S. officials, including the U.S. ambassador to Kenya, publicly expressed support for Kenya's constitutional reform process. GAO found no indication that U.S. officials opined on the issue of abortion publicly or attempted to influence the abortion-related provisions of the draft constitution—a finding corroborated by a key Kenyan parliamentarian who served on the committee assisting in the constitutional reform process.

U.S.-funded award recipients and their subrecipients supported the constitutional reform process through activities that included civic education and technical assistance, both of which addressed the issue of abortion to some extent. USAID-funded civic education sought to inform Kenyans on the text of the draft constitution, and GAO found that some forums included discussion of abortion-related provisions. Some subrecipients undertook interpretation of the provisions at their forums, including describing scenarios in which abortion might be allowed. Several subrecipients explained to the public that, in their view, future legislation might be required to implement and further articulate the abortion-related provisions. While some subrecipients addressed the abortion-related provisions of the constitution, GAO found no indication that they cited the abortion provisions as a rationale to vote for or against the constitution. USAID also funded a technical assistance award to the International Development Law Organization (IDLO) to support the Committee of Experts (COE), the nongovernmental entity charged with drafting the constitution. In the course of providing comments and advice regarding the entire draft constitution, IDLO made suggestions relating to the issues of fetal rights and abortion during the early stages of drafting. IDLO later commented on broadening the exceptions when abortion would be legal. The COE has indicated that it generally considered IDLO's advice when revising the draft constitution. The final draft of the constitution is consistent with some of IDLO's advice relating to abortion, though GAO could not determine whether the COE made these changes in direct response to IDLO's advice.

Neither State nor USAID has clear guidance for compliance with the Siljander Amendment, which makes it difficult for some agency officials and award recipients to determine what types of activities are prohibited. State has not developed any guidance at all on the prohibition. USAID has offered training for its health and legal officers on compliance with family planning-related legislation, including the Siljander Amendment, for years and began offering some training to other officials in 2010. However, USAID's training and other family planning resources do not identify specific types of activities that are prohibited under the amendment. State and USAID attorneys indicated that they are available to provide advice to staff on a case-by-case basis, upon request. However, some State and USAID officials and award recipients GAO spoke to said that they were unclear as to what specific activities were prohibited.