



PEACE, PROSPERITY AND
REGIONAL INTEGRATION



Terms of Reference for Consultancy to Develop a Gender responsive and conflict sensitive investigative and inquiry practitioners' guidelines on Alternative Dispute Resolution for Kenya.

Introduction

In 2021, IGAD with the support of the Embassy of Sweden in Addis Ababa developed the Manual on Alternative Dispute Resolution (ADR). Kenya, one of the IGAD Member through its National Land Commission (NLC), also passed its Policy on Alternative Dispute Resolution and developed Alternative Justice System (AJS) framework.. Since then, the IGAD Land Governance Programme has been working with NLC to roll out the alternative Dispute Resolution Mechanisms in a manner that linked formal and informal land institutions. Kenya further introduced court annexed mediations in the land courts. This, however, now requires the development of practical guidelines to support the systematic implementation and enforcement throughout the country. The guidelines are intended to be used as a practical advisory guide by the National Land Commission (Commission), AJS committee, Judiciary and all actors who are responsible for conduct and support of investigation and inquiries to resolve land disputes and determine rights and interests in land. The Guidelines will include the objectives, methods, and procedures to support structures that can effectively detect the underlying causes of the dispute, gather evidence, and produce investigation results to support litigation, prosecution, commission inquiries, policy direction and any other appropriate responses. It will identify the roles and responsibilities of diverse internal and external actors and the interface of the said roles for effective investigation and inquiries by the commission or any other investigative body. This will also serve as learning for the rest of the IGAD Member States. The investigative and inquiry guidelines to be developed by the Kenya National Land Commission must be Gender Responsive and conflict sensitive. This will ensure that they are inclusive and responsive to the needs of different sections of society throughout the country.

Background

The Intergovernmental Authority on Development (IGAD) is a Regional Economic Community (REC) of the African Union. Member countries include Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, and Uganda. IGAD's mission is "to assist and complement the efforts of the member countries through increased cooperation to achieve food security and environmental protection; promotion and maintenance of peace and security and humanitarian affairs; and economic cooperation and integration. IGAD's activities consist mainly of policy support, information and knowledge sharing, capacity development and research, and promoting the uptake of science and technology. IGAD member countries' priorities for achieving national development include, among others: eradication of poverty, food security, agriculture transformation, natural resource exploitation, preventing and mitigating climate change effects, and sustainable urban expansion. The Region is characterized by a fast-growing population and ambitious socio-economic development plans, for the most part, dependent on efficient and sustainable exploitation of land and natural resources. Land in the IGAD region is a synonym of identity, culture, power, development, food, and human security. Land and natural resources are abundant. In instances of good land governance (secure tenure, access and use), land and natural resources provide in many ways for IGAD citizens. In instances of weak land governance, land becomes a source of conflict, a perpetrator of social inequalities

and discrimination, and a vehicle for the depletion of natural resources. Healthy tenure governance systems are crucial to achieving IGAD development objectives. Yet land governance is often not prioritized, land reforms are addressed in silos and are seldom integrated within member countries' strategies for development. Land sector improvements require structural changes that are not sustainable unless integrated within development visions and are nationally driven and systemic. Land reforms become unsustainable when land programs do not respond to locally owned-demand, capacity is not in place to sustain activities in the long term, interventions are not national priorities, and activities are ad hoc and not framed within the existing legal and policy frameworks. The Consortium of the African Union Commission (AUC), the United Nations Economic Commission for Africa (UNECA) and the African Development Bank (AfDB) established a joint Land Policy Initiative (LPI) in 2006 to provide a common platform for dialogue on land governance and land-related challenges in Africa, and to support member countries in their efforts towards reviewing, developing, and implementing land policies, including mechanisms for progress tracking and reporting. The LPI developed the Framework and Guidelines (F&G) on Land Policy in Africa that were endorsed in 2009 by the AU Heads of State and Government through the AU Declaration on Land Issues and Challenges as a unique continental framework for strengthening land rights, enhancing productivity, and securing livelihoods on the African continent. The AU Declaration on Land Issues and Challenges calls upon RECs to convene periodic platforms for experience exchange, lesson learning and dissemination of best practices, and to capture/address issues of land within their respective common agricultural frameworks. The African political leadership's common vision and shared commitment to support regions and countries to strengthen their land governance systems in line with the F&G and VGGT is a global best practice. It is leading the Region to develop relevant, responsive, and context-appropriate land policies compliant with international best practices. Within this commitment, regional authorities like IGAD have a primary role to play in supporting member countries translate the AU vision into harmonized regional policy frameworks and convergence of national land policies and support implementation. IGAD is mandated by the AU to promote the development of harmonized land policies to improve member countries' land sector performance.

It's against this background that IGAD is supporting Kenya to operationalize its AJS framework by developing an investigative and Inquiry Practitioners guidelines in Alternative Dispute Resolution

Consultancy Objectives and Scope of work

The purpose of the work is to develop a Gender responsive and conflict sensitive investigative and inquiry practitioners' guidelines on Alternative Dispute Resolution for Kenya.

Specific Objectives:

- Recruit a consultant to support the National Land Commission and other Land institutions in developing the Guidelines
- Support establishment/ strengthening of inclusive ADR Multistakeholder platform at national and sub national levels for the operationalization of the guidelines
- Advise IGAD and Kenya Government on possible opportunities for upscaling the implementation of AJS

The IGAD Land Governance Team will provide overall oversight and coordination of this consultancy. The consultant will lead the process and will work with the Legal Affairs and Dispute Resolution Committee of the Commission and its support multi-directorate team to formulate and implement the following activities:

To process for developing the Gender responsive and conflict sensitive investigative and inquiry practitioners' guidelines, will follow the following procedure.

1. Constituting a technical working group for the drafting of the Guidelines.

A technical working group will be formed comprising of relevant institutions such as Judiciary, Ministry of Land Public Works, Housing and Urban Development (MOLPWHU), National Council for Administration of Justice (NCAJ), Quasi-judicial institutions such the National Land Commission and non-government organizations such as the FIDA- Kenya, Kenya Law Reform Commission also DPP, DCI and EACC.

The team will identify and document the underlying causes of disputes, related elements of procedures and relevant evidence. These will be distilled from the knowledge of the members of the technical working group who have the institutional memory of the policy, legal and administrative processes, and structures applicable to the causes of actions arising before and after the new constitution of 2010. They will also be distilled from jurisprudence and the lessons learnt by the Commission in dispute resolution. Related activities will include workshops with the relevant staff, Legal Affairs and Alternative Justice (LAAJS) Committee Commissioners, stakeholders, clients, and experts.

2. Stakeholder consultations.

The consultations will be done at National level and county level. Carry out public consultation to receive views from the stakeholders including the professional bodies, Government Agencies, Civil societies, Institutions of higher learning. The aim will be to bring all the intended users of this guidelines to give views on its practicability and tap their experience on handling land disputes and conflicts.

3. Developing the Guidelines.

The technical working group will hold a working session to compile the diverse views from the stakeholder's engagement and come up with the final investigative and inquiry practitioners' guidelines on Alternative Dispute Resolution.

4. Validation workshop.

There will be a final validation workshop done with all the stakeholders before the final document is shared. The validation workshop will bring together 30 actors drawing representations from the local governments, civil society, judiciary, the National Land Commission, and the Ministry of Lands.

5. Publishing and launch of the investigative and inquiry practitioners' guidelines on Alternative Dispute Resolution.

The documents will be published, and launch done to disseminate and popularize the guidelines.

Expected Outputs and Deliverables

The project consultant will be expected to produce the following outputs during the period of the consultancy:

- A work plan that consists of methodology, time frame, and illustrative list of materials to be reviewed and stakeholders to be interviewed.
- A comprehensive assessment report for both Pokot and Turkana that includes;
 - Existing tenure, use and land management dispute and conflict thematic areas
 - Recognized local community initiatives in resolving land disputes;
 - Sound conservation and protection of ecologically sensitive areas
 - Elimination of gender discrimination in law, customs and practices related to land and property in land.
- Gender responsive and conflict sensitive investigative and inquiry practitioners' guidelines on Alternative Dispute Resolution framework

Role of IGAD

IGAD will monitor the consultant to ensure timely delivery and quality products. IGAD will participate in the National Technical Working Group meetings to give technical guidance. IGAD will; receive reports and facilitate learning with and between the Member States.

Time Frame

The Processes for developing and finalizing the guidelines will take maximum 3 months. Once the consultant is recruited, the consultant in consultation with IGAD and NLC and other stakeholders to draw a detailed implementation plan.

No.	Deliverables	Duration (approx.)
2	Inception Meeting, Inception Report and Workplan	3 working days
3	Preparation and administration of questionnaire	3 working days
4	Review of laws and documents Preparation of zero draft	4 working days
5	Share zero draft with internal stakeholders and collect feedbacks and produce draft one	3 working days
6	Field visit to map out external land dispute resolution actors, roles and linkages in Turkana and West Pokot.	5 working days
7	Explore the actors' administrative and operational workflow beneficial convergences to develop a procedural mechanism that integrates into other relevant existing actors' mechanisms	5 working days
8	Stakeholders review of the community land investigation framework- Validation workshop	3 working days
9	Review, refine, edit and produce the final draft	3 working days
10	Submission of the final document	1 working days
Total Working Days		30 Days

Qualifications and Experience Requirements

The prospective Service Provider (Team Leader) is expected to meet the following minimum requirements:

- One must be an advocate of the high court of Kenya qualified to be a high court judge
- Holds master's in law or conflict resolution or any other relevant area in adjudication of land and environment disputes.
- Practitioner at the high court of Kenya
- Over 10 Years Demonstrated experience in policy formulation, Gender mainstreaming and social inclusion
- Project leadership and delivery experience
- Member of law society with current practicing certificate
- Qualified ADR practitioner
- Capacity to network in the public and justice sector
- Experience working with rural land initiatives is an added advantage.
- Excellent Report Writing Skills and proficient in English