



TERMS OF REFERENCE

DEVELOPING A MODEL/PROTOTYPICAL GENDER RESPONSIVE NATIONAL LAND POLICY

Background

IGAD region comprises the countries of Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda. The region covers an area of about 5.2 million square kilometers. Approximately 80% of the region is arid and semi-arid. The lowlands in these areas receive less than 500 mm of rainfall per year. The rest of the region has diverse climate and landscapes, which includes cool highlands, swamp areas, tropical rain forests and other features typical of an equatorial region. Farmlands account for 7% of the total land area; forests 19% and 28% are permanent pastures. The remaining 46% of the land is considered unproductive. The rainfall pattern is unreliable and variable, both spatially and temporally. The region is prone to recurrent droughts and dry spells, making it one of the most vulnerable regions to climatic variations on the African continent (IGAD 2016a).

Improved performance on land policies, in terms of formulation and implementation, is required for IGAD to deliver on its three (3) priority areas for cooperation among Member States, thus – a) Agriculture, Natural Resources and Environment; b) Economic Co-operation and Integration and Social Development; and c) Peace and Security. To meet the mandate and the continental obligation on the AU Declaration on Land Issues and Challenges, IGAD together with the Africa Land Policy Center (ALPC) implemented the first phase of a project “Improving Land Governance in IGAD” since 2014. During this phase, 11 background studies were carried out that informed the development of 3 critical strategies – The IGAD Land governance Strategy, The IGAD framework for harmonized land policies and the Strategy for mainstreaming land governance in IGAD Projects and Programs. These were all translated into the IGAD Land governance business plan 2019 -2023, as an implementation framework for land governance.

The “Improving Land Governance in IGAD Region” project aims at facilitating implementation of the AU Declaration on Land Issues and Challenges in accordance with the Framework and Guidelines on Land Policy in Africa, in order to facilitate access to land and security of land rights for all land users in the IGAD region, especially vulnerable groups such as pastoralists, women and youth. The countries in the IGAD region have different laws governing land as a consequence of their colonial history, diversity of cultural and religious norms, and endowment with natural resources. They are also at various levels in undertaking land reforms. The region is characterized by political instability, with the largest number of refugees and internally displaced persons (IDPs) on the continent. Desertification, climate variability and climate change are major concerns in this region, a region that has substantial desert mass. Drought and floods pose serious challenges for land management. These circumstances have also meant that people move across borders either as climate or conflict refugees.

Furthermore, transnational processes in the IGAD region do not only include transnational social movements, migration, communities and citizenship, but also religions or various cultural practices. These have become the drivers and retainers of change in land governance in the IGAD region and have had implications on the rights of women to land from a regional perspective.

Purpose of implementing land Governance in the IGAD Region is to improve access to land and security of land rights for all land users in the IGAD region achieved through the implementation of the AU

Declaration on Land Issues and Challenges in Africa, leading to enhanced socio-economic development, peace and security.

Justification

In recent years, issues of access to land and natural resources have been of growing concern in the IGAD Member States. Much evolution in experience and thinking has taken place over this period. Land governance across borders or transnational land governance looks at rule making, standard setting and institution building across borders. Empirically, one can see a variety of patterns of regulatory governance emerging around improved use of technology in land administration, convergence in land policy development and implementation. Transnational regulations are only one aspect of a whole field of transnational phenomena in which there is more fully integrated relationships that encompass a wide variety of relationships including social networks, economic policies, and other relationships that not only facilitate but enhance the creative exchange of people.

Through the IGAD Land Governance Policy Convergence Framework, IGAD is promoting the formulation and implementation of harmonized land policies in the context of regional integration, a process that is beneficial to the region in a number of ways:

- Increasing credibility in national land policies as they would be perceived to be backed by the regional bloc which, in itself, would encourage domestic and foreign investment;
- Reducing national political resistance to land policy reforms;
- Facilitating the mobilization of human, technical, and financial resources to formulate and implement land policies;

Furthermore, there is insufficient understanding of the legal plurality governing women's land rights, inadequate safeguards of women's land and property rights, inappropriate mechanisms for implementing legislations, institutional constraints and limited awareness of women's rights also impede implementation of women's statutory rights. Some administrative measures taken to improve women's land rights have not been entirely effective as women are often excluded or under-represented in land related institutions¹. Gender discrimination in access, control, and ownership of land exacerbated by lack of gender responsive institutions for land administration remains a serious impediment to socio-economic development².

Land policy lies at the heart of economic and social life and environmental issues in all countries. The distribution of property rights between people has a tremendous impact on both equity and productivity. Inequitable land distribution, land tenure problems and weak land administration can lead to severe injustice and conflict. Changes to legislation, the distribution of property rights, and administrative structures are likely to have long-term consequences, positive or negative, for political, economic and social development. Similarly land policy is also crucial for environmental sustainability as it can create incentives for sustainable land-use and environmental management.

Only 2 countries in the Region, Uganda and Kenya, have National Land Policies. Of those two, only Uganda has a gender strategy for implementing the National Land Policy. Furthermore, it still remains an uphill task to ensure that the whole National Land Policy is mainstreamed by gender. Often Gender is written in as a section with the non –discrimination clauses making it gender aware but not mainstreamed to enable the attainment of gendered results from implementing the National Land Policy.

The development of National Land Policies has taken a minimum of 10 years to develop for each of the countries. With their experiences, this project will develop a regional model/prototypical which can then be tailored to local needs and this in a way would reduce the time countries need, pave way for quicker approach to work and get the region on its feet. It will be quite broad allowing for countries to tailor it to their

¹ Land Policy Initiative, 2014

² FAO, 2011

own needs based on their constitutional requirements, consultations with the citizens and countries own realities. This will be enhanced with the development of tools for advocacy, a technical guide with step to step protocols on gender responsive National Land Policy Development. The Member States staff as well as key non-state actors responsible for or interested in policy development will be trained on the appropriate steps and approaches to develop a gender responsive national land policy.

A land policy aims to achieve certain objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held. It defines the principles and rules governing property rights over land and the natural resources it bears as well as the legal methods of access and use, and validation and transfer of these rights. It details the conditions under which land use and development can take place, its administration, i.e. how the rules and procedures are defined and put into practice, the means by which these rights are ratified and administered, and how information about land holdings is managed. It also specifies the structures in charge of implementing legislation, land management and arbitration of conflicts.

Objective of the Assignment

To Develop a prototype of a National Land Policy with all the tenets in the AU Framework and Guidelines of Land Policies in Africa (F&G) as well as the Guidelines on Responsible Governance of Tenure over Land, Forests and Fisheries (VGGTs).

Political ownership, willingness and commitment are key factors for the definition and implementation of effective land policies and/or land reforms. Land reforms often reflect political compromises between various objectives and interest groups. It is the responsibility of national governments interacting with civil society to make their own land policy choices and craft feasible and effective solutions.

Specific Objectives:

1. Undertake a literature review of existing evidence in each of the IGAD Member States on the key elements of land governance (Land tenure land administration, land conflicts and dispute resolution, land use planning and management for both rural and urban land, valuation, taxation and compensation, public and state land management, institutional arrangements including decentralization, provision of public information, trusteeship over natural resources including extractives, oil & gas, land markets & financial services and; land for investment.) with a view of establishing common themes and threads that would frame the prototypical National Land Policy.
2. Prepare an issues paper that clearly identifies the legal, policy, institutional and regulatory issues, bottlenecks, gaps and challenges that require to be addressed through a national land policy and propose recommendations that are gender responsive.
3. Develop the model/prototypical gender responsive National Land Policy and present it for validation to the IGAD Member States.

Scope of Work

Land policy reform is an essential aspect of the policy and institutional reforms required to empower the poor and promote equitable and sustainable development; it should be seen as an essential means of securing the broader objectives of social justice and economic development. Drawing up a national land policy is the responsibility of the state, but will need to build on and respond to the concerns of many non-state actors. Land policy reform also has a key role to play in processes of democratization, the drive for improved governance, and decentralization.

To be effective, land policy must propose a practical and coherent set of rules, institutions, and tools, which are considered both legitimate and legal, and are appropriate for different context and interest groups. There are frequent contradictions between formal and informal tenure rules and institutions, which lead to

conflicts and inefficiencies. One aim of reformed land policies should thus be to find ways of combining these different systems so as to ensure legitimacy, equity and economic efficiency.

Depending on the context and objectives, a land policy reform programme may include one or several of the following elements:

new tenure legislation and revision of codes, to recognize and regulate new types of rights or forms of transfer (including women's, small farmers', pastoralists', minority groups or indigenous peoples' land rights);

- land registration and titling of existing rights;
- regularization (updating formal records to take account of changes and informal transactions) of existing land rights;
- land redistribution;
- the creation of new opportunities for land access;
- restitution of land rights alienated from the original owners or users;
- privatization of collective or state land;
- improvements to the efficiency and accountability of existing land administration systems;
- establishment of (new) institutions and structures with responsibility for land acquisition, administration and conflict resolution;
- setting up a land-based tax system;
- designing and enacting new land use and planning rules and procedures;

For each component, there is a broad set of options. Due to this diversity, there can be no blueprint approach to land policy reform yet there can be points of convergence among the IGAD Member States: the objectives, the political choices they reflect, and the legal and institutional options chosen are highly dependent on the specific economic, social and political context and its historical background, the institutional framework, the main issues to be dealt with, the type of agriculture and relations between government and people. Effective implementation of the options chosen depends on the institutional capacity of the public, private and community-based organisation involved. An assessment of these capacities must be taken into account in the design of the land tenure system.

The design of policy and institutions has also significant consequences for equity and fairness, since the choice of technology and institutions for land administration is not just a technical issue. Wrong assumptions on methods for customary registration may lead to the exclusion of youngsters, women and herders. A system of land registration based in the capital city, requiring payment of a substantial fee and based on formal survey techniques, will be much less accessible to more distant, and poorer rural populations than low cost land registration procedures handled at district or village level, and which are based on simple maps. The choices made must be pertinent (i.e. providing answers to the problems faced, and built on a sound knowledge of local conditions), affordable (i.e. coherent with the financial means of farmers, local government and state) and sustainable (i.e. provide a long term framework at acceptable recurrent costs); hence the need to specify political objectives before designing the policy and institutions.

The draft Prototype of the Gender Responsive National Land Policy will be subjected to Member States validation and eventually to the Sectoral Ministers responsible for Lands and Gender for endorsement for use.

Expected timeline:

The Consultancy is for a total of 45 days spread over four months. The final product i.e. the movie as well as all the raw material and project files, should be delivered to IGAD **no later than 30th March 2020**.

Location:

The Assignment is home based with one travel for the validation meeting.

Deliverables & payment distribution:

Payments of total budget will be processed upon delivery of the following product along with invoice:

1. Detailed timeline, work plan and draft outline of the Model National Land Policy (20%).
2. Literature review report of existing evidence in each of the IGAD Member States on the key elements of land governance and the issues paper (40%).
3. Draft Model/prototype of the Gender Responsive National Land Policy Report approved by IGAD (20%).
4. Final Prototype of the Gender Responsive National Land Policy (20%).

Report

A detailed report on the process of developing the prototype of a Gender Responsive National Land Policy including the validation meeting and the Sectoral Ministerial meeting.

Copyright and Intellectual Property Rights

In consideration of the fees paid, the consultants expressly assigns to IGAD any copyright arising from the works the Consultants produce while executing this contract.

The Consultants may not use, reproduce or otherwise disseminate or authorize others to use, reproduce or disseminate such works without prior consent from IGAD.

Qualifications:

The Consultant/firm team is expected to have the following qualifications:

- The Lead Consultant should have expertise on land policy formulation for both rural and urban land.
- **The Lead consultant** should have a PhD in land management, land economics, gender studies, public policy, population studies or law with 5 years of professional experience, or A master's degree in a field relevant to the assignment, such as land tenure, land ,management, land economics, Gender studies, Gender Economics Public Policy, Social Development, combined with at least 5 years professional experience; or A Bachelor's degree in land management, land economics, law, gender studies, population studies with 10 years of professional experience.
- **The second Consultant** should be an expert in Gender Mainstreaming. A minimum Bachelor's Degree (or equivalent) in relevant area (gender studies or social sciences). A Master's Degree or PhD will be considered an asset; Minimum 5 years of relevant professional experience in mainstreaming gender in development projects and policies; Record of participation in at least 2 assignments of similar size and degree of complexity (consultancy services in the area of gender mainstreaming in projects, programmes or policies);
- Knowledge of analytical methods and tools for mainstreaming gender in land reforms or related areas is considered an asset;
- Sound understanding of gender and development issues in the IGAD Region;
- Excellent communication, presentation, report writing and analytical skills;
- Mastery of oral and written English
- Very strong writing and analytical skills

Reservations & Confidentiality: IGAD reserves the right to withhold all or a portion of payment if performance is unsatisfactory, if work/output is incomplete, not delivered, or for failure to meet deadlines. In the event of the consultant/firm ending the contract prior to delivering all agreed upon products, a portion of the payments shall be returned to IGAD. Consultant/firm undertakes to maintain confidentiality on all information that is not the public domain and shall not be involved in another assignment that represents a conflict of interest to the prevailing assignment. The consultant/firm shall undertake to refrain from promoting any political or religious beliefs in the course of conducting this assignment.

It is important that the two consultants come from different IGAD Member States.

Each application should include the following:

- Cover letter with the applicant's current contact information including how the candidate's previous experience matches the consultancy objectives as well as their interest for the position (no longer than two pages);
- Technical proposal on how they intend to carry out the assignment;
- Financial proposal/detailed budget of the project;
- CV of consultants and professional references or letter of recommendation;
- Samples of recent similar assignments

The email must clearly state the assignment applied for and marked:

“Developing a Model/Prototypical Gender Responsive National Land Policy”

Applications must be submitted on 15TH November 2019 at 5:00p.m by email to

The Procurement Unit

Intergovernmental Authority for Development

Ave Georges Clemenceau, Djibouti

P.O Box 2653,

Republic of Djibouti

Email: procurement@igad.int copy to abdulhafeez.saeed@igad.int