



## TERMS OF REFERENCE

### **DEVELOP A GENDER RESPONSIVE PRACTICE MANUAL FOR ALTERNATIVE DISPUTE RESOLUTION AND RESOLUTION OF ADMINISTRATIVE DISPUTES ARISING OUT OF LAND ADJUDICATION.**

#### **Background**

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. The studies commissioned by IGAD in 2016 reviewing the of land governance systems in the IGAD Member States identified four transnational elements:

- state sovereignty over land;
- legal pluralism (customary and statutory);
- gender biases in access to land;
- land tenure insecurity and land conflicts.

In the IGAD Region, national organisation as a structuring principle of societal and political action can no longer serve as the orienting reference point. This creates the need for increased cooperation among nations. The IGAD region finds itself in a time where economic, social and political developments in one country are increasingly affected by developments in others; and where opportunities and threats to people are no longer exclusively the responsibility of individual governments; The transnational sphere of land governance in the IGAD region is built neither upon nor beyond national institutional frameworks (full integration). Rather, the transnational sphere of land governance in the IGAD region transcends national borders while at the same time being entangled in historically contingent institutions and shaped by actors rooted in locally and nationally diverse contexts (Convergence). In dealing with cross border contexts in land governance, it is important to understand how transnational rules are implemented on the ground, how they are monitored by civil and public actors, and whether there is any learning from local experiences going on, or not.

Countries in the IGAD region differ in terms of their perceived complexity and need for expertise. Each country has unique features and therefore responding to cross border land governance needs poses practical challenges in setting regulation standards. The region greatly differs in its mix of land governance forms. National frameworks tend to draw a sharp distinction between international law, national law, private standards and the absence of regulation. More often than not, however, regulation in transnational land governance is complicated by overlaps of partly complementary and partly conflicting modes of land governance at Member States level. To make progress, there is need to increase inter-state collaboration in land governance as is underscored in the Region's Land Policy Convergence Framework. One of the key areas is enhancing alternative dispute resolution.

Land Dispute Resolution is a key challenge faced in the IGAD Member States with over 42% of disputes reported in the formal courts having the issues hinged on land. This has led to land held in impasse until such matters are resolved. Land disputes take an average of 5 years to be heard and resolved through the formal court process. This process is not only costly in terms of money and time, but is very elitist with only

those who can afford legal representation getting justice. This leaves out the majority of the citizens of the IGAD Region.

With the Support of the Swedish Embassy in Addis Ababa, the IGAD Land Governance Unit wants to develop a practice manual on ADR for the land sector that can be used across the IGAD Member States.

### **Justification**

ADR is commonly defined as any process or procedure for resolving a dispute other than adjudication by a judge in a statutory court. The consensual nature of either opting for dispute resolution or deciding the outcome of a dispute by the parties is a cornerstone element of ADR. Because it encompasses a large number of different methods for dispute resolution, we draw upon a set of general indicators, as well as some historical background to equip the reader with a tangible conceptual understanding of alternative dispute resolution. Achieving equity, efficiency and expertise outside formal, established courts through alternative means is not a recent idea. Early forms of conciliation and amicable settlement at the roots of modern-day ADR already reveal its primary motivation—realizing equity between two fighting parties. Seeking compromise by moderating contradictive or competing interests reflects the human preference for reconciliation over confrontation. In avoiding open dispute—and the often violent consequences of coercive force in executing a judicial decision—disputing parties tend to recognize the advantage of pursuing commonalities rather than differences. This is often helped by the technical, expert based nature of alternative dispute resolution. More efficient, ADR also enjoys economic advantages over formal court proceedings, being typically more expeditious and less costly than court proceedings.

The many benefits of alternative forms of dispute resolution have been written about extensively since the first ADR programs emerged in the United States following the political and civil conflicts of the 1960s. The most basic of these were saving costs and time, giving control of the dispute back to the disputants, and avoiding the destructive litigation process. Some view ADR essentially as an alternative method for delivering the “justice” for which the state is responsible. Although ADR boasts greater informality, flexibility, speed, and party control, in this view ADR represents simply an extension of the justice menu available to parties in the court system.

### **Objective**

The main goal of the assignment is to provide practical steps and approaches to alternative Dispute resolution for both juridical and administrative disputes arising from land. It should further provide an overview of good practices that exist in the IGAD Region on ADR for land governance. The manual seeks to facilitate a more informed approach to the design, implementation, and monitoring of ADR procedures for the land sector that can be used by Governments at various levels, traditional authorities, the Private Sector and non-governmental organizations (NGOs).

An efficient and appropriate dispute resolution system must be introduced, and must also be sustainable over a long period of time. With the practice manual, IGAD envisages building capacities of local stakeholders to establish mediation mechanisms that can be sustained over a long period of time at country level.

### **Scope of work**

The delivery of ADR services can take place in a number of different settings, using different ADR models, and under various sets of legal and procedural rules. The term ADR can cover a broad spectrum of processes, from formal proceedings involving a judge and closely resembling judicial proceedings taking place in a court, to purely private proceedings facilitated by a neutral third party and taking place, for instance, at a company’s headquarters. These various processes are governed by different rules, which in some cases may be set or influenced by the parties involved. In designing an ADR intervention, practitioners should consider both the ADR process to be adopted and the modality to be used in driving the intervention.

All proposed ADR interventions should be assessed individually and on their own merits. To achieve this purpose, the Consultants must -

- Carry out an assessment of lessons learned in ADR for the land sector in the IGAD Member States, and consequent good practice;
- Provide key principles for effective ADR interventions;
- Provide a wide range of structural options for ADR interventions;
- Document case studies that provide practical examples; and
- Offer a series of diagnostic tools that could be used by the IGAD Member States.

**Expected timeline:**

The Consultancy is for a total of 21 days spread over three 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 28<sup>th</sup> February 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 annotated outline of the Practice manual (20%).
2. Assessment report of lessons learnt in ADR in the IGAD Member States (40%).
3. Draft Practice Manual for ADR approved by IGAD (20%).
4. Final Practice Manual for ADR (20%).

**Report**

A detailed report on the process of developing the practice manual for ADR including the validation 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 in IEC tools development.
- **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) with 10 years relevant professional experience. 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.

**Application: (DEADLINE 15th November 2019)**

**\*\*\*\*\* 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:**

***“Develop a Gender Responsive Practice Manual for Alternative Dispute Resolution and Resolution of Administrative Disputes Arising out of Land Adjudication”***

**For the attention of:**

**H.E. Amb. Eng. Mahboub M. Maalim  
Executive Secretary  
IGAD Secretariat.**

**Applications must be submitted on 15<sup>th</sup> 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](mailto:procurement@igad.int) copy to [abdulhafeez.saeed@igad.int](mailto:abdulhafeez.saeed@igad.int)