

TERMS OF REFERENCE (TOR) FOR CONSULTANCY TO DEVELOP A MODEL HUMAN RIGHTS DUE DILIGENCE TOOL

REFERENCE NUMBER: TIK/NRCG/002/2023

DESCRIPTION: Consultancy to develop a Model Human Rights Due Diligence Tool

POSTING DATE: 17th April 2023

DEADLINE FOR SUBMISSION OF BIDS EXTENDED FROM: 24th April 2023 to 5th May 2023.

Location: Nairobi

Organizational Profile

Transparency International Kenya (TI-Kenya) is a not-for-profit organization founded in 1999 in Kenya with the aim of developing a transparent and corruption-free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that are all bound by a common vision of a corruption-free world. TI-Kenya's vision is "A corruption-free Society". The mission is to champion the fight against corruption by promoting integrity, transparency and accountability.

Project Background

TI-Kenya Natural Resources and Climate Governance strategic area is aimed at addressing misgovernance of natural resources and environment; corruption; inadequate knowledge/information; as well as non-transparent natural resources and climate governance processes. The priority focus sectors are land, extractives, environment, energy, and the blue economy.

In line with this strategic focus area, TI-Kenya is implementing a project on 'Enabling the Business and Human Rights agenda in conflict-affected settings in Kenya'. The project seeks to engage stakeholders in the energy and extractives sectors towards avoiding/reducing conflicts attributed to investments in the energy and extractive sectors. The project will focus on Marsabit and Kwale Counties. One important tool that informs companies' human-rights-based approach to investment is the human rights due diligence tool. A Model Human Rights Due Diligence Tool developed in line with the constitution, and relevant policies, laws and regulations can guide companies to develop tools that protect human rights in their areas of operation.

Purpose of the Assignment

Conflicts in areas with significant investment in the energy and extractives sector have become more frequent, claiming lives and livelihoods. Some of these conflicts are associated with the approach taken by the companies that need to be cognizant of the rights of local communities, including non-participatory compulsory acquisition of land and benefit sharing. Under the new action plan 2023 - 2028, TI-Kenya has committed to enhancing the sustainable use and equitable sharing of natural resources to protect communities' socio-economic rights.

TI-Kenya seeks a consultant to develop a Model Human-Rights Due Diligence Tool guided by international principles on a human-rights-based approach and local policies, laws, and regulations governing Kenya's energy and extractive sectors. The Due Diligence Tool will guide companies on the kind of tool to develop and the rationale for developing a due diligence tool. The goal is to facilitate compliance with the Bill of Rights in the Constitution of Kenya, 2010, which binds all natural and legal persons, including businesses. The tool will further facilitate compliance with the United Nations Guiding Principles on Business and Human Rights (UNGPs), which reaffirms States' duty to protect those under their jurisdiction from business-related human rights abuses, business responsibility to respect human rights, and the requirement for both States and business to ensure that victims of such abuses have access to an effective remedy. While the project focuses only on Marsabit and Kwale Counties, the model tool should guide companies working across the counties and provide a basis for civil society organizations and other stakeholders to hold companies accountable.

Scope of the Assignment

The assignment shall cover the following scope:

- (i) Mapping of companies working in the energy and extractives sector in the country.
- (ii) In-depth analysis of conflicts between communities and companies working in the energy and extractives sector.
- (iii) Perform a policy and institutional frameworks review on the governance of the sector with a focus on human rights.
- (iv) Probe for the existence (or lack thereof) of due diligence processes carried out by companies in the energy and extractives Sector that are consistent with the National Action Plan on Business and Human Rights.
- (v) Develop a Model Human Rights Due Diligence Tool informed by lessons learnt from implementing company-specific tools and local experiences.
- (vi) Consider the outcomes and recommendations of the human rights impact assessments reports published by TI-Kenya and International Alert for Marsabit and Kwale counties, and the Enabling Business and Human Rights Annual Conference Report of 2022.

- (vii) Validate the Tool and include all the feedback from the relevant stakeholders.

Deliverables

The consultant shall be expected to deliver the following:

1. Inception report consisting of the preliminary desk review and updated work plan showing how the consultant intends to carry out the assignment.
2. A Model Human Rights Due Diligence Tool (Draft and final)
3. A detailed tool guided by the above scope.

DURATION: The assignment is expected to take **30 working days**.

Qualifications of the Consultant

1. Post-graduate degree in law, environment and natural resources or related field
2. Minimum of 10 years of experience and competence in legal protection, economic and social rights, project management, risk management, and familiarity with the energy and extractives sectors.
3. Demonstrable experience conducting similar tasks.

Application Process

Qualified candidates should submit a document of **not more than 10 pages**, including

1. Expression of interest (including methodology and work plan)
2. Curriculum Vitae, including contact details of at least two referees.
3. Financial bid detailing cost for the above deliverables
4. Evidence of previous relevant work undertaken
5. Two reference letters of previous work done

NB: This bid is open to both individuals and organizations.

Submission of Bids

The deadline for submission of expressions of interest is **24th April 2023**. Applications should be sent by email to procurement@tikenya.org. Please indicate: **“TIK/NRCG/002/2023-Consultancy to develop a Model Human-Rights Due Diligence Tool for companies/investors,”** in the subject line of your email application.

Complaints Process

This call for Expression of Interest does not constitute a solicitation and TI-Kenya reserves the right to change or cancel the requirement at any time during the EOI process. TI-Kenya also reserves the right to require compliance with additional conditions as and when issuing the final solicitation documents. Submitting a reply to a call for EOI does not automatically guarantee receipt of the solicitation documents when issued. Invitations to bid or requests for proposals will be issued in accordance with TI-Kenya rules and procedures. Any grievances and or complaints arising from the evaluation process and final tender award can be addressed, in writing, to the Executive Director and the Transparency International -Kenya Tender Complaints Committee.

The Executive Director
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