

Terms of Reference for Consultancy for Legal and Policy Review of Kenya's Legislative and Constitutional Provisions Regarding Housing Rights, Resettlement and Forced Evictions.

REFERENCE NUMBER: TIK/ALAC/001/2024

DESCRIPTION: Corruption, Housing, Forced Evictions and Resettlement in Kenya: Legal and Policy Review

RE-ADVERTISED ON: 27th May 2024

DEADLINE FOR SUBMISSION: 30th May 2024

Organisational profile

TI-Kenya is a not-for-profit organization that seeks to contribute to 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 is bound by a common vision of a corruption-free world. The global movement provides a platform for sharing knowledge and experience, as well as developing strategies to respond to regionally distinct patterns of corruption. TI-Kenya is guided by its vision of a corruption free society while its mission is to champion the fight against corruption by promoting integrity, transparency, and accountability in both public and private spheres.

Background and summary of the project

Land and Corruption in Africa II Project

Transparency International Kenya (TI-Kenya) is implementing the Land and Corruption in Africa (LCAII) Project, a project that seeks to ensure that corrupt practices in land administration and land deals are addressed, thus contributing to improved livelihoods of men and women. The LCA II project is being implemented in 8 countries; Kenya, South Africa, Zimbabwe, Zambia, Madagascar, Cameroon, Uganda and Ghana. The key land governance issues that the project seeks to address include corruption in land dispute resolution systems, corruption in lands offices hampering service delivery and gendered land corruption, which makes women, disadvantaged

and indigenous groups vulnerable. Improving good land governance and supporting more accountable, robust, and transparent institutions in land governance, will contribute to the 'Africa We Want' envisioned in the African Union's Agenda 2063.

Background of the study

In Kenya, the 2010 Constitution under Article 40 (1) provides that, "every person has a right, either individually or in association with, to acquire and own property (a) of any description and (b) in any part of Kenya". This right coexists among other rights including, that under 43(1)(b) which provides that 'everyone has a right to equitable housing and reasonable standards of living.' The law therefore protects its citizens from any forceful or illegal eviction from their land. However, recently, forced evictions in Kenya have become a prevalent issue, with numerous instances of families being forcefully removed from their homes to make way for development projects such as the Affordable Housing Program. These evictions often lack due process, involving inadequate notices, violence, and human rights violations. Corruption plays a significant role in exacerbating these evictions, with reports of collusion between government officials and private developers leading to land grabbing and displacement of vulnerable communities. These actions not only violate constitutional rights to housing and property but also perpetuate a cycle of poverty and inequality within the country.

In light of the above, corruption within the eviction practices connected to national housing projects is widespread in Kenya considering the scope of the 'Affordable Housing Program' (AHP) targeting an ambitious 500,000 affordable homes for Kenyans across all 47 counties¹. Moreover, there have been reports of the National Housing Corporation (NHC) officials illegally allocating houses to themselves, highlighting how corruption can divert resources intended for affordable housing. The judiciary has also faced allegations of corruption, with claims that the wealthy can easily obtain court orders to evict the less fortunate from their homes. Concerns have also been raised about corruption within the National Construction Authority (NCA), leading to building collapses due to the failure to fulfil its responsibilities. Additionally, there have been cases of police involvement in unlawful forced evictions, underscoring corruption within law enforcement agencies.

¹ <https://cytonn.com/media/article/the-progress-of-affordable-housing-in-kenya>

These instances of corruption exacerbate forced evictions and underscore the urgent need for transparent reforms in Kenya's housing and land sector. It is crucial for the government to prioritize accountability and uphold the rule of law to protect vulnerable populations from illegal evictions and land grabbing. Efforts should also be keen to address the root causes of corruption within housing and land management agencies to prevent further injustices and socio-economic disparities in the country. This research would thus have wide-reaching impacts of corruption on housing rights and land to ensure the protection of all individuals in Kenya against forced evict.

Scope of Assignment

TI-Kenya is keen to assess corruption, housing and forced evictions in Kenya. The key goal of the assessment is to; examine Kenya's legislative and constitutional provisions regarding housing rights, resettlement and forced evictions, with a specific focus on addressing land administration corruption in the eviction process and also examine the challenges and opportunities within the different stages of the eviction process in Kenya. This research will inform better policies and decision making thereby enhancing the protection of land rights in Kenya. Further, the assessment seeks to answer the questions of whether a robust legal framework and policy will improve the status of resettlement and forced evictions or solve the challenges in land governance and administration in Kenya when it comes to corruption in land processes. The scope of the research includes but not limited to;

- Examine the impact and effectiveness of the legal framework on evictions in Kenya, specifically focusing on land rights, resettlement and forced evictions, and loopholes in law that might lead to corruption.
- To identify the gaps and challenges in the implementation, enforcement, and monitoring of existing laws and policies on forced evictions in Kenya.
- To examine how corruption manifests in different stages of the eviction process, including land grabbing, collusion between government officials and private developers, and displacement of vulnerable communities.
- To explore opportunities for addressing corruption in the housing and land sector in Kenya, particularly about forced evictions and land grabbing.

- To propose recommendations for enhancing transparency, accountability, and oversight in the eviction, resettlement, housing and land management in Kenya to prevent and combat corruption and protect the rights of citizens.

Tasks/Deliverables and Outputs

1. A Research Report on: Legal and Policy Review of Forced Evictions and Resettlement in Kenya. The research report will:

- Provide a contextual analysis of Legal and Policy frameworks on affordable and forced evictions and resettlement in Kenya. This encompasses an assessment of the risks and challenges that are present in housing and forced eviction as a product of land corruption.
- Provide an analysis of the estimated effect of corruption in the land sector especially where Affordable housing and forced evictions are concerned.
- Highlight the impact of the policies and legal framework on access to land rights by women, youth and indigenous groups especially on housing and forced eviction.
- A comparative analysis of affordable housing, corruption and forced evictions land processes in addressing land corruption (case study- South Africa, China, Turkey)
- A set of practical and policy-oriented recommendations for enhancing the legal framework and coordination among relevant stakeholders to prevent and redress corruption in land matters, particularly during forced evictions.
- A dissemination and advocacy strategy for sharing the research findings and recommendations with the relevant stakeholders, and for influencing policy and practice change on evictions processes.

2. PowerPoint Presentation on the findings

3. Facilitate a session and present the findings during the validation and the report launch

4. Facilitate a Webinar to publicize the findings of the assessment.

5. Develop Policy brief & Fact Sheet from the assessment report.

Qualifications of the Consultant

Interested individual(s) should possess the following minimum qualifications:

- At least a bachelor’s degree in Land Administration, Law, Mathematics, Land economics, public policy or any other relevant degree in social sciences.
- A relevant Master’s degree or more as an added advantage by the lead consultant.
- At least 5 years of proven experience in conducting research and analysis on land administration, land economics, land management and natural resources matters.
- Good knowledge of the national policies and legal frameworks around land and land issues with proven exposure/experience of the same at regional and international levels.
- Proven experience in analyzing qualitative and quantitative data.
- Demonstrated experience with the preparation of policy strategies and papers including review and development.
- Ability to establish priorities, and to plan, coordinate and monitor own work.
- Good interpersonal skills, ability to work in a consultative and collaborative manner.
- Recommendations /evidence of similar tasks/work successfully completed

Application Process

Qualified candidates are requested to submit one document of not more than 15 pages as an attachment (combining the application letter, CV, technical proposal including the methodology for the assignment, and financial proposal).

Submission Of Bids

The deadline for submission of expressions of interest is **30th May 2024**. Applications should be sent by email to consultancyapplication@tikenya.org. Please indicate “TIK/ALAC/001/2024-Land & Corruption II Research” 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 the final tender award can be addressed, in writing, to:

The Executive Director,
Transparency International Kenya,
Bishop Magua Center, Off Ngong Road – George Padmore Lane
Ground floor, Wing B, Office No UG7
P.O. Box 198- 00200, Nairobi

Or Email

complaints@tikenya.org