



Terms of Reference (TOR) for Consultancy to Assess the Impact of Mining Laws and Regulations on Mining Contracts and Revenue Transparency in Relation to Public Finance Management in Kenya and Tanzania

REFERENCE NUMBER: TIKPFM/001/2024

ASSIGNMENT: Terms of Reference (TOR) for Consultancy to Assess the Impact of Mining Laws and Regulations on Mining Contracts and Revenue Transparency in Relation to Public Finance Management in Kenya and Tanzania.

CONSULTANCY PERIOD: 4 Months

DEADLINE DATE FOR SUBMISSION: 8th November 2024

POSTING DATE: 28TH October 2024

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, which is bound by a common vision of a corruption-free world. TI-Kenya's vision is "A corruption-free Society," and its mission is to champion the fight against corruption by promoting integrity, transparency, and accountability in both public and private spheres.

Project Background and summary of the scope of the assignment

TI-Kenya is implementing the project Promoting Accountable, Sustainable, and Gender-just Domestic Resource Mobilisation (PASG-DRM) in Africa. TI-Kenya seeks to focus its interventions on two key areas: Illicit financial flows (IFFs), and on transparency and accountability in the extractives sector. The specific

interventions are informed by the recommendations from the Financial Action Task Force (FATF)¹ (recommendation 1 on assessing risks, 2 national coordination, 23 & 24 on beneficial ownership, 37 on mutual legal assistance) and the findings from AU High-Level Panel (AU HLP) report on IFFs² (with a keen focus the corruption component of IFFs) as well as some of the Team Europe Initiatives priority areas. These initiatives will also tap into existing global and continental protocols and conventions on governance and anti-corruption as the policy, legal and institutional frameworks for curbing illicit financial flows are invariably linked with anti-corruption measures. Among the key governance and anti-corruption policies, the legal framework that the project will seek to influence includes the following:

- a. Access to information:** overarching laws on access to information underpin transparency of key government processes and documents including contract, revenue and corporate ownership transparency, especially in the extractive sector. This will enhance transparency and accountability, public participation, and good governance in the management of natural resources within the EAC. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information. This will enhance the process of communities' negotiation with the extractive companies, to promote fair compensation of communities, as well as enhance governance of domestic returns in the form of revenues.
- b. Asset recovery:** There is a need for countries to have a framework for tracing and repatriating funds and assets lost via corruption and other forms of IFFs, in addition to having a proper framework for accountable use of repatriated funds/assets. This will be underpinned by the Common African Position on Asset Recovery (CAPAR)³ This also involves pushing for a coherent policy for returned assets that includes the transparent and accountable use of returned funds for the benefit of the people harmed in line with the practice recommendations below. This should also provide for the possibility of active participation of civil society in managing or overseeing the return and use of recovered funds in the victim countries.
- c. Whistleblower protection:** the focus on this law is driven by the need to have an enabling framework that supports CSOs, media and individuals who may blow the whistle on corruption and IFF-related matters. This involves pushing for policy reforms that will enhance a requirement to effectively implement protection and reward mechanisms for whistleblowers from the public and private sectors who report on corruption, in line with international best practices. Ensure penalties for reprisal actions and reinstatement in case of dismissal and grant immunity to whistleblowers

¹ <https://www.fatf-gafi.org/en/topics/fatf-recommendations.html>

² https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf

³ <https://au.int/en/documents/20221024/common-african-position-asset-recovery-capar>

whose status has been recognised. Consider creating or designating an independent body with a mandate to recognise the status of a whistleblower.

- d. **EAC good governance protocol⁴**: At the EAC level, the EAC had drafted a good governance protocol in 2013 that has never been adopted. The project hopes to revive the conversation among partner states to include IFF-related matters as a transnational and organised crime. The project will also propose language that promotes common standards and approach to anti-corruption as well as a framework for automatic exchange of information among law enforcement agencies and tax authorities and mutual legal assistance. The proposals will be borrowed from the AU HLP) report on IFFs.
- e. **Beneficial Ownership Standards at EAC**: the project proposes to advocate for harmonised Beneficial Ownership Standards for adoption by the EAC partner states. This will ensure that the region has a harmonised approach to corporate ownership transparency as one of the ways to counter IFFs in the region.

Scope of the assignment:

TI-Kenya is plans to conduct an analysis of the impact of Mining Laws and regulations on mining contracts and revenue transparency in relation to public finance management in Kenya and Tanzania. The **overall goal** of the study is to generate a report that identifies gaps in the awarding of mining contracts and revenue transparency deficits within the extractives sector and offers practical recommendations towards policy reforms

The **specific objectives** include:

- a. Conduct an analysis of Mining laws and regulations to identify gaps related to mining contracts and revenue transparency in Kenya and Tanzania.
- b. Develop actionable recommendations including evidence-based advocacy strategies to ensure effective implementation of the Mining laws and regulations in Kenya.

Key Deliverables/ Outputs:

1. **Inception Report**: A detailed document outlining the consultant's understanding of the assignment, including the methodology, work plan, data collection tools and timeline for

completing the data collection and entry tasks. This will also include an interim report on the findings based on the relevant literature review.

2. **Draft report:** As a build, up to the interim report and guided by the provisions in the inception report while utilizing the approved data collection tools, the consultant will submit a draft report on the research outcomes in line with the study-specific objectives and overall goal.
3. **Validation engagements:** This will entail presentations of the draft research findings to the target stakeholders for their input and feedback.
4. **Final Report and Presentation template:** This will entail: -
 - a. A comprehensive report documenting the entire process, addressing the objectives and in cooperating all the reviews from the preliminary processes.
 - b. Summary of the findings into PowerPoint slides that are precise and easy to comprehend by policymakers.
 - c. Produce a policy brief, no more than 15 pages, identifying the gaps in awarding of the mining contracts and revenue transparency deficits within the extractives sector, and offer practical recommendations towards policy reforms for Kenya and Tanzania.

Specific tasks:

The consultant shall work in close cooperation with the TI-Kenya team to ensure deliverables are developed according to organisational standards and policies. The consultant is expected to:

- i. Highlight the gaps in awarding of the mining contracts in Kenya and Tanzania, and the revenue transparency deficits within the extractives sector, and offer practical recommendations towards policy reforms.
- ii. Undertake (using the methodology developed) a study to provide an analysis of the Kenya and Tanzania Mining/PFM laws to identify gaps related to mining contracts and revenue transparency deficits, including the risk of illicit financial flows within the sector.
- iii. To evaluate the potential of enhancing/increasing domestic resource mobilization through the extractives sector in Kenya and Tanzania.
- iv. A report with recommendations on legal provisions to include on revenue and contract transparency as relevant in enhancing domestic resource Mobilization through the extractives sector.

A feedback loop will be built in to allow TI-Kenya to review draft tools, methodology, draft and final reports produced under this consultancy. All submissions are required in English, electronic form and

within the set deadlines. The Consultant is responsible for editing and quality control of language. TI-Kenya retains the sole rights with respect to all distribution, dissemination, and publication of the deliverables.

Qualifications and Attributes Required.

Individuals interested in this assignment must meet the following minimum requirements:

- i. Bachelor's degree in economics, Law, Social Sciences, Statistics, Public Policy and Administration (Master's Degree preferred).
- ii. 5+ years' experience conducting substantive and demonstrable research work in the Extractives sector, the Public Finance Management Laws and Illicit Financial Flows (IFFs).
- iii. Expertise in quantitative and qualitative data collection and analysis.
- iv. Experience in working across cultures and religions.
- v. Excellent networking, communication and interpersonal skills.
- vi. Experience and understanding of gender-responsive mainstreaming in project implementation (an advantage)
- vii. Experience working with clients in civil society, particularly advocacy-oriented NGOs and ability to establish and maintain effective partnerships and working relationships.
- viii. A competent and dedicated person who can be reached for feedback.
- ix. Track record of successful completion of similar assignments.
- x. Willingness and flexibility to work within the set deadline.
- xi. Strong computer skills including experience with Google Sheets and Office applications of Excel, PowerPoint, and Word.

Timelines

1. The assignment is expected to take 4 months.

Application process

- Qualified candidates should submit their expressions of interest in one combined document (PDF) of not more than 15 pages covering both technical (including detailed methodology and work plan) and financial aspects.
- Provide a copy of CV (or CVs for those working as a team and their profiles) indicating work experience relevant to the consultancy with at least **three professional referees** (with at least one being a recent supervisor to a similar consultancy assignment).
- Provide evidence of /similar assignments undertaken before.

Submission of Bids

The deadline for submission of expressions of interest is 8th November 2024. Applications should be sent by email to consultancyapplication@tikenya.org. Please indicate “**TIKPFM/001/2024 – Review of mining laws**” in the subject line of your email application. Only shortlisted candidates will be contacted

Complaint's 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 Expression of Interest (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 as well as the TI-Kenya Tender Complaints Committee.

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