
KENYA AFFORDABLE HOUSING FINANCE PROJECT

Terms of Reference for Consultancy Services to Assess the Land Sector and Develop Land Reform and Capacity Building Plans

I. Introduction and Background

The Government of the Republic of Kenya (GOK) has requested support from the International Bank for Reconstruction and Development (IBRD) for a Kenya Affordable Housing Finance Project of an estimated USD250 million equivalent with a proposed development objective of expanding access to affordable housing finance to targeted beneficiaries. The project has two main components:

- Support to the Kenya Mortgage Refinance Company (KMRC); and
- Technical Assistance (TA) to Ministry of Lands and Physical Planning (MLPP).

The project supports one of GOK's four big priority areas for the next five years ("the Big Four") - affordable housing – and the GOK expects to deliver 500,000 new adequate units by 2022. Urban housing in Kenya is not affordable for the majority of the urban population and the GOK has developed an Affordable Housing Strategy to address the issue of unaffordability of housing. The unaffordability stems from the cost of financing, the short loan tenors, the cost of land and construction, and from inefficient property registration.

The Affordable Housing Finance Project supports the GOK's Affordable Housing Strategy on two fronts: expanding affordable housing finance via the provision of long-term funding and improving the enabling environment by addressing inefficiencies in property registration and land administration. It will build on the transformative reforms introduced by the 2009 National Land Policy (NLP) which led to the consolidation of 11 Land Acts into three 2012 Acts (Land Act, Land Registration Act and the National Land Commission Act) and the 2016 Community Land Act, all of which now form the backbone of land management in Kenya.

To enhance implementation of further land sector reforms, the MLPP intends to use funds from the TA component of the Kenya Affordable Housing Finance Project to hire a Consultant to support the MLPP address structural constraints in the existing land management in Kenya. These include legal, regulatory, administrative and institutional constraints to addressing persistent land tenure insecurity and inequality. An assessment will be done to comprehensively document the constraints and, from this assessment, a roadmap (reform plan) will be developed to guide the MLPP in its reforms to improve the equitable use of land for all Kenyans. In addition, Consultants are being procured under this project to support the review and updating of the remaining outdated land-related policies and laws, and to prepare a strategy for upgrading the geodetic reference system and to complete the on-going base mapping of the country. These particular terms of reference are for a Consultant to support the land sector assessment and the development of a land reform plan.

II. Objectives of the Assignment

The overall objective of this assignment is to provide TA to the MLPP to prepare a land reform plan, based on a land sector assessment, and the required capacity building plan and estimated financial resources to implement it.

The specific objectives of the assignment are:

- Undertaking an assessment of the land sector including key institutions, the challenges, capacity and opportunities to implement the NLP and achieve its objectives;
- Preparing a 10-year land reform plan, based on the assessment;
- Preparing a capacity building plan to implement the reform plan;
- Preparing budget proposals, broken into two(2) five(5)-year implementation cycles, to finance the reform plan and capacity building plan; and
- Preparing monitoring and evaluation arrangements to track implementation.

The Client's intent is to hire a Consultant of relevant qualifications and practical experience to provide services according to the scope outlined below to achieve the objectives outlined above.

III. Scope of Services and Specific Tasks

There are 5 main tasks:

- Assessment of the performance of the land sector and its institutions as far as delivering their mandates with a focus on implementation of land reforms articulated in the NLP;
- Preparation of a Land Reform Plan (LRP), based on the land sector assessment and the pursuit of NLP objectives, Kenya's Vision 2030 and the 2010 Constitution;
- A capacity assessment and capacity building plan to implement the LRP;
- Preparation of a road map, budget estimates and M&E arrangements for implementation of the LRP and the capacity building plan; and
- Preparation of a public information and sensitization campaign to ensure that public participation and awareness is maintained throughout the assignment and beyond.

1. Assessment of the performance of land sector and institutions in delivering their mandates

The Consultant should build on the land sector assessments that underpinned the NLP and that align with Chapter 5 of the 2010 Constitution, as well as more recent ones including the World Bank's Land Governance Assessment Framework (LGAF) and the African Development Bank's Review of Land Tenure Systems in Kenya in order to identify challenges and opportunities to implement fully and timely the land reform agenda to implement Kenya Vision 2030. The assessment should be a review of the performance of the following land institutions and functions, but not be limited to them:

- the National Land Commission (NLC), the Community Land Management Committees (CLMCs), the Land Control Boards, their operational complementarity with each other and other existing institutions, and the progress in meeting their mandates. Special attention is required to assess if the NLC and CLMCs are established and operating in ways that enable the protection, allocation and use of public and community lands to be done efficiently, equitably and sustainably. The assessment of NLC should be thorough given the high expectations that were set for it both in the NLP and the 2010 Constitution;

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- physical planning with a view to enhancing more effective and efficient implementation of National Land Use Policy, National Spatial Plan and the services required under the Physical Planning Act;
 - geodetic, topographic, hydrographic, cadastral and adjudication surveying and mapping with a view to enhancing the supply of quality and timely geo-referenced spatial data to meet the requirements of the public and private sectors with judicious development of mechanisms including the National Spatial Data Infrastructure (NSDI). This assessment should be coordinated with the consultancy services which are also being procured in this Project that are supporting the development of a strategy for large scale mapping and for establishing a modern Geodetic Reference Frame and a unified horizontal and vertical datum and coordinate system for Kenya;
 - the adjudication, settlement and registration of land with a view to expedite the protection of the land rights of communities, women and other vulnerable people (including forest dwellers and residents of informal settlements) while working toward achievement of national coverage in documentation of land rights and the enforcement of multiple rights over common property and natural resources;
 - valuation of real property for purposes of registration, compensation, and leasing with a view to producing standardized values, and improving efficiency and transparency following international valuation standards even for the valuation of unregistered land;
 - the taxation of land and real property and the efficiency and equity of methods and systems of taxation and tax collection including preparation of valuation rolls with a view to improving the fiscal capacity of government institutions and encouraging better land use;
 - land management and administration systems at national and county level to improve efficiency, working in coordination with the relevant corresponding consultancies being procured in this Project to improve land administration and management;
 - services and mandates at county level that are guided by MLPP (e.g. integrated county development plans, county spatial plans, plans required by the Physical Planning Act, etc.)
 - land disputes and land resolution mechanisms including an assessment of the Environment and Land Courts as well as Alternative Dispute Resolution (ADR) mechanisms including traditional dispute mechanisms; and
 - land data collection, monitoring and reporting mechanisms with a view to meeting the demands of monitoring and evaluation coming from commitments at national, regional, continental and global levels including the reporting on sustainable development goals and on the implementation of the proposed LRP.

The assessment should not only identify and analyse opportunities and challenges but also recommend short, medium- and long-term policy interventions and investments that should feed into preparation of the LRP which is outlined in the next section.

2. Preparation of a 10-Year Land Reform Plan (LRP)

Based on the above assessment and recommendations covering the land sector including assessment of MLPP departmental functions and of other key institutions notably NLC and CLMCs, the Consultant should prepare a 10-year LRP to optimise land use and enhance land rights through harmonized, efficient and equitable interventions in planning, allocation, adjudication, surveying, valuation, registration, taxation and dispute resolution of rural and urban lands. Each of these areas should

have strategic objectives and action plans.

The reform plan should be guided by medium-and long-term socio-economic development objectives and goals including the Big 4 Priorities (affordable housing; food security; manufacturing and jobs; and health care) and Vision 2030 with a target economic growth of 10 percent per annum.

The key operational goals and strategic objectives of the LRP will be informed by the findings and recommendations from the land sector assessment, and should include to fully computerize all land administration and management services so as to operate in a paperless environment, and to work toward the regularization and recording or registration of communal and individual land rights in community and public land as well as in rural and urban informal settlements. Similarly, the action plans should also be informed by the assessment.

Findings and recommendations of the other consultancy services procured in this Project should be built into the LRP.

The LRP should include also financial resources as well as a capacity building plan to implement it. Both of these should be articulated and computed as laid out in the sections below.

The Consultant will prepare an LRP report.

3. A capacity assessment and capacity building plan

The Consultant should also make an assessment of the capacity of land agencies and their human resources and skills with a view to identifying gaps that need to be filled to implement the LRP. The consultant should prepare a capacity building plan to implement the LRP.

The capacity assessment and the development of the capacity building plan should be coordinated with the capacity building plans across all the other consultancies procured under this Project to build synergy across the interventions. The budget for implementation of the capacity building plan should be included in the budget estimates for funding the LRP (see details in the next section).

4. Preparation of a roadmap, budget estimates and M&E arrangements for the LRP and capacity building plan

The Consultant should also prepare a road map to implement the LRP. The road map should embrace a phased implementation in short, medium and long term phases and should highlight the need for harmonisation of strategies and output deliveries of various operational land agencies and departments, such as the production and sharing of spatial data and physical plans, to ensure that all operational units are mobilized to contribute to the common goals and objectives of the land sector as articulated in the LRP.

In addition, the Consultant should make estimates of budgets required to implement the LRP and the capacity building plan. To facilitate budget planning and the sourcing of financial resources, the implementation of the 10-year LRP should be split into 2 successive 5-year periods or other periods which facilitate its alignment with the Medium-Term Planning of the GoK. Furthermore, the Consultant should prepare M&E arrangements to track implementation of the capacity building plan.

5. Preparation of a public information and sensitization campaign

The Consultancy should also include support to the Client to prepare and undertake a public information and sensitization campaign. This should include: assistance in formulation of key messages; support in the design of dissemination materials

including leaflets and posters to be used in the campaign; preparation of presentations; preparations necessary for media campaigns; participation in the campaign; support in preparation of seminars for the stakeholders; documentation and incorporation of feedback from the campaigns; and carrying out any other measures that will make the public information and sensitization campaign successful. Detailed support for the public information and sensitization campaign should be discussed and agreed at the Inception Stage.

IV. Required Consultant Inputs

The assignment will cover both national and county level aspects of land management and administration and is expected to be completed within 19 months (76 weeks), and the estimated consultancy staff inputs is 80 person months. This includes the inputs of the team leader, and experts with international and local experience.

Indicative List of Experts and Inputs

Experts	Person Months
Team Leader	15
Land Registration	10
Land Survey and Cadastre	10
Physical Planning	10
Property Valuation	10
Land Law	10
Public Economics	3
Human Resource Development	4
Land Information & Communication Technology	5
Monitoring and Evaluation	3
TOTAL	80

Qualifications of the consultant, team leader and key experts

The **Consultant** should have a strong experience in land sector reform assessments and preparation of strategic plans, with experience and knowledge in all facets of land administration and management including physical planning, surveying, valuation, registration, human resource management and computerized land information systems in the context of Sub-Saharan Africa.

In addition, the Consultant shall have knowledge and experience of land policy and legal reforms in East Africa, preferably in Kenya, and have demonstrated experience in successfully producing documentation of land sector assessments and strategic plans.

The Consultant should propose a Team of professional specialists and experts and a Team Leader for this assignment.

The **Team Leader** will be responsible for the organisation of the work of the team and for the implementation of the assignment; he or she will be the official contact person for the Client in matters related to the assignment.

1. The Team Leader minimum qualification requirements are as follows:

- Master's degree or equivalent in land administration and management, land law, land survey, land economics or related disciplines, and with a minimum of 15 years of practical experience in land administration and management after graduation;
- A minimum of 10 years of experience in international projects or studies in land administration and management in developing countries, preferably in Sub-Saharan Africa;
- A minimum of 5 years of experience at the positions of project manager or team leader for similar assignments and documented confirmation of the successful completion of such projects;
- Good understanding of land administration and management reform;
- Past experience in undertaking land sector assessments and preparation of sector reform and 9s;
- Familiarity with land administration and management laws, regulations and methodologies from different developing countries, preferably in Sub-Saharan Africa;
- Good reporting and presentation skills and experience in writing land sector reports;
- Good organisation and communication skills and ability to work in multi-cultural environments, to organise team work and to work and cooperate with stakeholders; and
- Good English language skills at professional level.

2. The Key Experts qualification requirements are as follows:

The Consultant should propose a Team of key experts based on its experience of similar assignments that will guarantee the best quality professional consultancy services and the achievement of the results of this assignment as per this TOR requirements.

In general, the key subject matter experts should be in at least 9 areas of: Land Registration (covering registration aspects), Land Survey and Cadastre (covering survey and cadastre aspects), Physical Planning (covering physical planning aspects), Property Valuation (covering valuation aspects), Land Law (covering legal aspects), Public Economics (the economic aspects), Human Resource Development (covering HR aspects), Land Information and Communication Technology (covering ICT aspects), and M&E.

The Minimum Qualification Requirements for the key Experts depending on their proposed positions are as follows:

- a) A Masters degree or equivalent in the relevant disciplines for each expert and with a minimum of 15 years of experience in land administration and management sector after graduation;
- b) A minimum of 10 year of experience as key experts in international projects or studies in a land administration and management-related area in developing countries, preferably in Sub-Saharan Africa;
- c) Proven experience of successful assignments in similar positions in land administration and management in developing countries, preferably in Sub-Saran Africa;
- d) Documented experience in the assigned position in the team;
- e) Good communication skills and ability to work in multicultural environment, under pressure, and with participation of clients and other stakeholders;

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- f) Good reporting, writing and presentation skills; and
 - g) English language skills to carry out the assignment.

3. Local Experts and Personnel Qualification requirements

A combination of international and local expertise is important for the success of the assignment. The Consultant should include local experts in the team as the source persons in different domains relevant to the assignment.

The Local Experts should be included in all areas where they have a comparative advantage including Land Law and Land Regulations (covering legal aspects), Land Registration and Cadastre (covering registration and cadastre aspects), M&E and budget planning (covering budget planning aspects).

The Minimum Qualification Requirements for the Local Experts depending on their proposed positions are as follows:

- a) Masters degree or equivalent in the relevant disciplines for each expert, with a minimum of 10 years of practical experience in the relevant area after graduation;
- b) A good professional record and proven experience in the area;
- c) Must be registered with the relevant professional body in Kenya;
- d) Practical experience in assessments and situation analysis in the designated assignment area within land administration and management, and in articulating recommendations based on evidence drawn from assessments;
- e) Experience in or knowledge of implementing projects or studies supported by development partners;
- f) Experience in land sector assessments and preparation of sector reform and strategic plans in developing countries, preferably in Sub-Saharan Africa, would be an advantage;
- g) Good communication skills and ability to work in multicultural environment and achieve results under time pressure;
- h) Good reporting, writing of documents and presentation skills; and
- i) Fluent spoken and written English language skills.

The Consultant can hire other local personnel as considered necessary to complete the assignment successfully.

V. Client's Input and Responsibilities

The client, MLPP, will provide required services including: working space and meeting rooms; professional and support counterpart personnel to work with the consultants; existing reports on relevant studies; and information on any on-going but related initiatives.

VI. Estimated Outputs

The Consultant should produce at least 5 outputs: an inception report; a report on the assessment of the land sector, institutions and capacity; an LRP and capacity building report; a budget planning and M&E report; and a final assignment report.