



TERMS OF REFERENCE (TORs) FOR A CONSULTANT TO UNDERTAKE A LEGAL AND POLICY ANALYSIS OF KENYA'S COMPENSATION AND RESETTLEMENT FRAMEWORKS TO IDENTIFY GAPS AND STRATEGIC ENTRY POINTS FOR REFORM, WITH A FOCUS ON ENHANCING RESPONSIBLE BUSINESS CONDUCT AND SAFEGUARDING HUMAN RIGHTS

1) BACKGROUND

Kenya's economic development trajectory across the various sectors necessitates land acquisition which often leads to involuntary resettlement and compensation issues. Kenya is currently implementing the National Action Plan on Business and Human Rights which explicitly identifies land and natural resources as a priority thematic area and acknowledges existing gaps in legal, policy, and institutional frameworks in connection with business impacts on human rights, including those concerning land acquisition, compensation and resettlement. The NAP calls for policy reforms in land acquisition and compensation regimes emphasizing the need to harmonize resettlement and compensation frameworks and develop procedural guidelines or policies to guide businesses, individuals, and communities in negotiating land access and acquisition.

Kenya currently operates under a patchwork of laws and policies governing land acquisition and compensation across sectors such as extractives, agriculture, and infrastructure. This fragmented legal landscape often results in inconsistent practices, leading to widespread public dissatisfaction and human rights concerns. Common issues include forced evictions, inadequate consultation with affected communities, and delayed or insufficient compensation awards. These challenges are largely attributed to the absence of a comprehensive, cross-sectoral policy on resettlement and compensation. As a result, different sectors

apply varying principles—many of which fall short of aligning with international best practices and human rights standards.

To support the implementation of the Kenya National Action Plan on Business and Human Rights, the Kenya Human Rights Commission (KHRC) and the Danish Institute for Human Rights (DIHR), in collaboration with the Department of Justice under the Office of the Attorney General, seek to undertake a legal review and analysis as a critical first step in assessing the current policy landscape, identifying existing gaps, and informing the necessary policy reforms aimed at establishing a robust, rights-based framework for land acquisition, compensation, and resettlement across sectors in Kenya.

2) **PURPOSE/OBJECTIVE OF THE TASK**

The primary objective of this consultancy is to conduct a comprehensive, desk-based analysis of Kenya’s legal and policy frameworks governing compensation and resettlement—focusing on legislation, regulations, policy documents, and select judicial decisions. The study will identify key gaps, inconsistencies, and areas of overlap to inform future multi-stakeholder dialogue on reform aimed at promoting responsible land acquisition, compensation, and resettlement practices across sectors

SCOPE OF WORK

The consultant will undertake the following tasks:

- ❖ Map and critically analyse Kenya’s legal, policy, regulatory, and institutional frameworks—including relevant case law—governing land acquisition, compensation, and resettlement. The analysis should identify key gaps, inconsistencies, and areas of weakness across sectors, and compare how various frameworks address compensation and resettlement, using a well-defined analytical framework.
- ❖ Where feasible, draw on real-life examples from Kenya—such as Resettlement Action Plans (RAPs) and Resettlement Policy Frameworks (RPFs)—to illustrate how compensation and resettlement frameworks are applied in practice, and highlight any human rights implications or implementation challenges.
- ❖ Identify comparative approaches and lessons from other jurisdictions that have addressed compensation and resettlement challenges in a manner consistent with international human rights standards. Examples should reflect diverse land-use contexts (e.g., infrastructure, agriculture,

extractives) and inform future discussions without prescribing policy solutions.

- ❖ Benchmark Kenya's legal and policy frameworks against relevant international and regional standards—such as the UN Guiding Principles on Business and Human Rights (UNGPs), IFC Performance Standards, and the World Bank Environmental and Social Framework—to assess alignment with established human rights principles.

3) METHODOLOGY

This will be a desktop-based, qualitative study relying primarily on secondary data sources such as legal texts, policy documents, academic research, institutional guidelines, and existing project reports. No primary fieldwork is anticipated at this stage. However, the consultant is encouraged to propose appropriate analytical and theoretical frameworks to support the review.

The final report must include a section on the methodological limitations of relying exclusively on secondary data, which while expected is not a constraint as long as it is acknowledged and appropriately framed from the beginning.

4) ASSUMPTIONS

The study is premised on the assumption that comprehensive, harmonized, and rights-based legal and policy frameworks are critical to addressing the persistent settlement, resettlement, and compensation challenges experienced by states and corporations—particularly in the extractive and broader land-based sectors. It further assumes that meaningful reform must be anchored in both domestic obligations and Kenya's regional and international human rights commitments.

5) PROFILE OF THE CONSULTANT/FIRM

- ❖ A human rights expert with minimum of 7 years of demonstrable experience in land policy/governance, natural resource management and should be based in Kenya
- ❖ Proven experience in conducting legal and policy analysis; previous experience on land acquisition, compensation and resettlement highly preferred
- ❖ Conversant with national legal and policy frameworks on land, resettlement and compensation

- ❖ Advanced degree (Master's or PhD) in Law, Land Economics, Political Science, Development Studies, Human Rights, International Relations, Public Policy, or a related field
- ❖ Excellent research, analytical, and report writing skills. The consultant must be able to write concisely in English

6) DURATION AND TIMELINE

- ❖ The consultancy is expected to be completed within 30 working days spread over a period of 6 weeks from the date of contract signing.
- ❖ The first draft must be completed and submitted by end of September 2025

7) APPLICATION REQUIREMENTS AND SUBMISSION

- ❖ Interested consultants are invited to submit a technical proposal articulating applicants' understanding of the ToRs, proposed methodology that include suggested framework for analysis, updated detailed CV(s) of the consultant (s) and the financial proposal. The applicant must also send at least two soft copy samples of relevant/similar work previously undertaken.
- ❖ Application must be submitted electronically to consultancy@khrc.or.ke by **12th AUGUST 2025 at 5:00P.M.** Please indicate "Consultancy for the Legal Analysis Compensation and Resettlement" in the subject line.