

HOUSING LAND & PROPERTY AND RULE OF LAW ASSESSMENTS // TERMS OF REFERENCE

SOUTH SUDAN // MARCH 2019

01. BACKGROUND AND CONTEXT

The Danish Refugee Council (DRC) has been operational in South Sudan since 2005, working with the overall aim of achieving durable solutions for displaced populations affected by conflict and food insecurity. DRC implements a multi-sector response to support Sudanese refugees, internally displaced persons (IDP) and host populations with projects and activities being tailored according to the needs and gaps in the local contexts. Its current programming components include: protection; camp coordination and camp management (CCCM); provision of emergency and transitional shelters within and outside of camp environments; distribution of non-food items (NFIs); food security and livelihoods (FSL); multi-sectoral needs assessments, rapid multi-sector emergency response and the deployment of international NGO safety advisors who support the humanitarian community.

With the signing of the recent peace agreement in 2018, significant population movements are taking place and spontaneous returns or relocations of IDPs and refugees are being seen. Although a number of obstacles are facing the establishment of durable solutions across Unity state and Upper Nile State and South Sudan more broadly, one of the most frequently cited issues pertains to Housing, Land and Property, and the lack of Rule of Law.

Many areas changed hands between the government and opposition forces during the conflict leading to new groups or political entities taking control of land. Furthermore, civilians facing displacement often lost access to their property or members of another group may be occupying their residence. Such issues are to be found across the state in most of the main populated areas and are currently presenting a significant challenge to the process of solutions for IDPs.

Bentiu and Rubkona towns in Unity State, and Malakal town in Upper Nile State, have been identified as an especially complex and challenging environment given the nature of its demographic, socio-historical makeup, natural resources, and governing authorities. DRC is currently seeking to understand these complexities and set in motion a timely and appropriate HLP and legal aid response that can support persons wanting to relocate, return to their habitual residence or to integrate into local communities to have safe access to land rights and legal remedies in the case of disputes.

DRC in Bentiu is planning to lead an assessment of the legal and justice sector across Bentiu town and possibly Rubkona town (a town with high number of IDPs in Unity State), to understand the existing capacities and gaps in local customary courts in Bentiu and Rubkona towns, including the challenges that people face (especially GBV survivors) in seeking justice. DRC will use this assessment to mobilize stakeholders to develop a strategy and roadmap for improving access to justice.

02. PURPOSE

The purpose of the consultancy is to carry out an extensive analysis of the existing legal structures and processes in place in relation to Housing, Land and Property issues in Bentiu and Malakal, as well as Rule of Law in Bentiu.

The assignment will be composed of three assessments which will identify the key actors and stakeholders, current capacities of legal practices and perceptions of legitimate HLP rights and access to justice, the main issues and challenges being faced by the community and the main opportunities and constraints, including protection risks, for HLP and legal programming and assistance.

The consultancy will develop a roadmap and plan for appropriate HLP programming within Rubkona and Bentiu towns of Rubkona county and Malakal county, in order to provide both short and long term solutions to some of the key challenges that are prohibiting durable solutions, adopting a conflict-sensitive and protection-focused approach.

- 01.** The HLP assessments in Bentiu and Malakal will identify gaps and needs in the HLP intervention and will provide recommendations and guidance for further activities on HLP rights in Rubkona and Malakal counties for DRC and other humanitarian actors. The 2009 Land Act provides men and women with equal access to land holdings. The 2011 Transitional Constitution likewise states that “women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased”. The HLP assessment will identify of legal frameworks in Rubkona and Malakal counties; specific support on access to land tenure for women. The Assessment will include practical steps on what needs to be addressed for women to fully participate on an equal basis in the HLP process and claim their rights. The HLP assessments also will include questions around access to arable land in Rubkona and Malakal Counties for the local community and for the internally displaced population (IDP).
- 02.** The Rule of Law assessment will include an extensive analysis of the rule of law in Bentiu town and possibly Rubkona town in Rubkona county of former Unity State (current Northern Liech state). The assessment will include a comprehensive stakeholder analysis of the operational justice mechanisms, existing legal structures and processes in place, and formal and informal justice mechanisms. The study will identify the key actors and stakeholders, current capacities of legal practices and community perceptions of access to justice, gaps and opportunities for strengthening a rights-based system, focusing on transitional justice. The consultancy will develop recommendations and support planning for appropriate legal aid programming within Bentiu in order to provide both short and long term solutions to some of the key challenges that are prohibiting access to justice, adopting a conflict-sensitive and protection-focused approach.

The three assessments will include comprehensive suggestions outlining the aforementioned factors and setting clear operational guidelines/next steps for the suggested DRC HLP and legal programmes in both locations. The consultant will support in the building of capacity of DRC protection staff, during the field work, by working closely with DRC protection and legal staff.

Lastly, the consultancy is also to equip key DRC staff in Bentiu, Malakal, and Juba with contextual knowledge and understanding of key HLP dynamics in Rubkona and Malakal counties through a final post-fieldwork workshop where the consultant will present and discuss preliminary findings and recommendations.

03. KEY RESPONSIBILITIES

03.1 Scope of consultancy

The consultancy will focus on the desk and field research and data collection for the actor mapping, and HLP/justice mechanisms analysis in Bentiu and Malakal. The deliverables of the assignment consist of one HLP assessment in Malakal, one HLP assessment in Bentiu, and one Rule of law assessment in Bentiu. It is anticipated that this would involve around 14 days of consultancy time in Malakal Town and 14 days in Bentiu, but consultants are free to propose an alternative methodology.

03.2 Key tasks

- 01.** Preparation (approx. 14 days)
 - 01.1.** Develop inception report for the three assessments, including the HLP/legal analysis/actor mapping methodology appropriate for the Bentiu and Malakal contexts.
 - 01.2.** Conduct desk review and identify gaps in available research
- 02.** Field research (approx. 28 days)
 - 02.1.** Conduct primary field research in Malakal and Bentiu, including engagement with communities, implementing agencies, and other key stakeholders. Ensure all key stakeholders' perspectives are taken into consideration through multiple FGDs, KIIs, and other tools.
 - 02.2.** Work closely with the DRC Bentiu and Malakal teams, particularly with the Area Managers, Protection Managers, and Safety Advisors, on methodology and implementation of the assessment, as well as consult the Head of Programmes, MEAL Coordinator, and Protection Coordinator, based in Juba. DRC Field teams will support with setting up of appointments.
 - 02.3.** Compile and analyse field research data in a clear manner and format.
 - 02.4.** When feasible, provide capacity building to DRC field staff on identified HLP concerns, legal structures, and processes in place, and conflict-sensitive approaches to HLP and legal programming. This could be in the form of discussions and capacity building sessions on issues and concerns identified.
- 03.** Reporting (approx. 18 days)
 - 03.1.** Present preliminary findings to key DRC staff (presentation of findings through validation session/workshop). Provide programme guidelines outlining opportunities and constraints.
 - 03.2.** Share draft reports with DRC staff.
 - 03.3.** Incorporate DRC feedback into the final reports.
 - 03.4.** Submit three final assessment reports.

03.3 Methodology

The methodology should include an initial desk review of key literature available combined with qualitative interviews with key informants in Bentiu and Malakal. Attention should also be given to ensure perspectives from women and from marginalized groups are taken into account, and confidentiality procedures should be in place to ensure the safety of informants. Care will be taken to ensure that the different stakeholders are free to express their views without interference or concerns of reprisals. The precise methodology will be agreed upon between the consultant and DRC before assessment activities commence, with the methodological outline provided by the consultant as per this tender at on the Inception Report. DRC shall provide copies of relevant documentation deemed essential for effective assessment. The methodology shall include a review of other HLP and rule of law assessment initiatives around the country, to ensure that the methodology and terminology used are in line with ongoing Protection cluster efforts to map and analyse HLP concerns and local justice mechanisms in South Sudan.

03.4 Key deliverables/outputs

- 01.** Inception Report with finalized methodology for the legal analysis/actor mapping, adapted to the Malakal and Bentiu contexts. The Inception Report should also include the finalised activity plan with timeframe and a structural outline of the three assessment reports. The inception report should be shared and approved by DRC before commencement of the data collection and analysis.
- 02.** An initial desk review that will inform the focus of key informant qualitative interviews.
- 03.** Validation Workshop/presentation where preliminary findings, analysis and recommendations are presented to key DRC staff in Malakal, Bentiu, and in Juba.

04. Three synthesis reports with research findings, analysis and recommendations

05. Review and integration of DRC feedback into synthesis reports.

The final reports (maximum 30 pages, excluding cover pages and annexes) with photos and infographics should be submitted to DRC no later than one week after the consultant has received feedback from all relevant programme staff on the Draft Report.

The above deliverables shall be presented as follows:

- Inception Report
- Draft Reports and powerpoint presentation with synthesised findings and recommendations
- Three Final Reports: HLP assessment in Malakal, HLP assessment in Bentiu, and Rule of law assessment in Bentiu. The aforementioned deliverables will be accompanied by regular communication with and feedback to the DRC Team.

04. DRC'S RESPONSIBILITIES

DRC/DDG will:

01. Cover and arrange the consultant's travel (International and in-country), visa cost and accommodation in the field, including identifying and paying enumerators (if necessary).

02. Provide ongoing security advice and support as necessary for travel to field sites

03. Facilitate engagement with key stakeholders

04. Provide all necessary project documents

Note:

05. The payments will be in two instalments, 30% after submission of Inception report, and 70% after the completion of the task and submission of final acceptable report to DRC/DDG.

06. Please note that a partial payment hold-back will be in effect until a final report has been approved by DRC/DDG.

05. REPORTING ARRANGEMENTS

The consultant will report to the DRC/DDG Area Managers and the Protection Coordinator (at Juba level) during the period of the consultancy.

06. DURATION OF ASSIGNMENT

The assignment will be approximately 60 days, with a minimum of 28 days spent in the field (Malakal and Bentiu) conducting the research. Days will also be considered for preparation/desk review and post-fieldwork analysis and report compilation.

The field research will start as soon as possible, with the final data and synthesis report submitted to DRC. The assignment should last no longer than three months, including desk reviews, field work, finalization of reports and validation workshop with DRC staff (prioritisation of work will be decided on in collaboration with DRC upon signing of contract).

07. EXPECTED PROFILE OF CONSULTANT

01. Diploma/degree in relevant field of law, social sciences

02. Excellent understanding of relevant legal issues and legal mapping, previous proven experience of conducting HLP and legal systems analysis

03. Strong and proven research skills and experience

04. Strong understanding of the South Sudan context (Bentiu and Malakal context is desirable), the humanitarian system, protection risks, and conflict dynamics in South Sudan

05. Willingness and ability to travel to Bentiu and Malakal
06. Good communication skills, including report writing in English
07. Cover expences related to food, insurance and any other cost which is not covered/mentioned by DRC

08. TERMS & CONDITIONS

The consultant must abide by all of DRC/DDG's standard procedures, including the Code of Conduct and confidentiality policies. All data and information collected, and any reports, as well as the methodology of the study will be the property of DRC/DDG.

The research is expected to require at least 28 days of field research, in addition to preparation and post-fieldwork analysis and report compilation, which would not be longer than 60 days total.

09. GENERAL

DRC/DDG has a Humanitarian Accountability Framework, outlining its global accountability commitments. All staff and consultants are required to contribute to the achievement of this framework (<http://bit.ly/2rhGjKG>).

10. APPLICATION PROCESS

Interested applicants who meet the required profile are invited to submit an Expression of Interest (EoI) in English to DRC online via www.drc.dk under vacancies.

The EoI should include:

01. A suitability statement including CV of consultant with details of qualifications and experience.
02. Technical proposal that summarizes understanding of the ToR, methodology and tools to be used.
03. Work plan indicating the activity schedule.
04. Financial proposal providing cost estimates and consultancy fees.

NB applications that fail to include one or more of these elements cannot be considered.