

**TERMS OF REFERENCE**  
**PROCUREMENT NUMBER: APRM/AU/GSR/NRGA/TOR/02/2024 INDIVIDUAL CONSULTANCY SERVICES**  
**SKILLS**  
**LEGAL AND INSTITUTIONAL ANALYST AT THE**  
**AFRICAN PEER REVIEW MECHANISM CONTINENTAL OFFICE, SOUTH AFRICA**

## **1. BACKGROUND**

The African Peer Review Mechanism (APRM) is an autonomous entity of the African Union (AU) established as a governance self-assessment and peer review instrument. The APRM has the mandate to promote and facilitate self-monitoring by participating Member States, to ensure that their policies and practices conform to the agreed political, economic, corporate governance and socio-economic values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance; and the African Charter on Democracy, Elections and Governance (ACDEG), as well as other relevant African Union and international treaties, conventions and instruments.

In keeping with its mandate, the APRM is establishing a flagship programme on Natural Resource Governance in Africa.

Considering the APRM's Democracy and Political Governance (DPG) thematic area, the objective of the programme is to ensure that democracy and political governance contribute to strengthening the political and administrative structures that govern natural resources in African countries, in line with the principles of democracy, transparency, accountability, integrity, respect for human rights and promotion of the rule of law.

In alignment with the APRM's Economic Governance and Management (EGM) thematic area, the objective of the programme is to ensure that the broad national economic policy framework, the institutions, processes, and practices in place that are aimed at facilitating natural resource governance also supporting and promote an economic climate that encourages growth, poverty reduction and the general welfare of the citizens.

To ensure good Corporate Governance (CG) in companies within sectors that manage natural resources of a country, and as the APRM thematic area on the same, the objective of the programme is to ensure that there are systems by which companies are directed and held to account, through leadership, sustainability, and good corporate citizenship.

As with the APRM's thematic area on broad-based sustainable socio-economic development (SED), the objective of the programme is to ensure continuous improvement in the well-being and the standard of living of the people as a result of good natural resource governance. The outcomes of good natural resource governance will thus include improved income, health, education, environment, and freedoms. This will also include countries demonstrating policy, legislative, and participatory institutional frameworks to promote State Resilience to Shocks and Disasters (SRSD). SED and SRSD are the areas through which the impacts from other themes will be assessed.

Similarly, the advent of the 4th Industrial Revolution (4IR) has ushered in a new dawn for governance, which provides an opportunity for African countries to charter new pathways to the future. This includes technological advancements through fields such as artificial intelligence, robotics, automation, the internet of things, quantum computing, nanotechnology, biotechnology, and energy storage, for example.

## 2. DESCRIPTION OF THE PROJECT

The African Peer Review Mechanism (APRM) Continental Secretariat, an autonomous entity of the African Union, is establishing a continental programme on natural resource governance in Africa. To this end, the Secretariat is conducting reviews and studies to inform the approach and strategy of the programme. The purpose of the assessment and/or review is to examine the sufficiency and coherence of natural resource governance legislation and institutional arrangements on the continent. It is envisaged that the outcome of the review will inform the development of a normative framework for natural resource governance in African countries.

The overarching focus of the assessment review will be undertaken through a legal and institutional analysis study covering three (3) natural resource sectors. These are:

- a) Water resources governance – Transboundary Principal Focus,
- b) Land resources governance – Land Access and Use,
- c) Mineral resources governance (including energy resources) – Extractives Industries

### Transboundary Water Resources

Water resources provide sustenance for all living organisms and as material for various industries. The volume, quality of, and access to water affects use across various activities such as agricultural production, hydro-power generation, industrial processes, recreational as well as household use. Water resource use is usually sourced from either ground water or surface water. The surface water is accessed within a river basin and related catchment area. Often, catchment areas expand over national and regional boundaries. Transboundary water resources (TWR) constitute 80% of Africa's total freshwater resources<sup>1</sup>. Beyond enabling access to and use of water, the improvement of infrastructure along transboundary rivers has the potential to provide the necessary supply of energy needed for the demand of one or more countries along that water course. Therefore, governing the use of these water resources is critical. Africa has several policy frameworks which relate to TWR, including: the SADC Revised Protocol on Shared Watercourses (2000), the Africa Water Vision 2025, the Abuja Ministerial Declaration on Water: A Key to Sustainable Development in Africa (2002), the Sirte Declaration on the challenges of implementing integrated and sustainable development on agriculture and water in Africa (2004), the Declaration of Water and Energy Ministers of Johannesburg (2006), Ministerial Declaration of Tunis from the first African Water Week (2008), as well as the Sharm El Sheikh Declaration on Water and Sanitation (2008). In addition to this, the African Union has mandated the African Minister's Council on Water (AMCOW) to effectively manage the continent's water resources and provision of water supply services. Despite these efforts, there is a need for coordinated and appropriate governance and institutional arrangements in managing national and transboundary water basins.

### Land Resources

In Africa, land serves as both economic and socio-cultural capital. The dependence on land is a feature of both urban and rural areas on the continent. With 65% of the world's arable land<sup>2</sup>, Africa has the potential to develop agricultural industries that support global food and green-industry needs. The continent is also home to extraordinary biodiversity which regulate climatic conditions and provide ecosystem services. Individual access to these services is often determined by the extent of land ownership. Additionally, there is need for infrastructure and technology, often on land, to sufficiently harness these resources. Therefore, land

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<sup>1</sup> PIDA, n.d., Africa Transboundary Water Resources Sector Outlook 2040

<sup>2</sup> <https://www.unep.org/regions/africa/our-work-africa#:~:text=It%20holds%2065%20per%20cent,50%20percent%20of%20total%20wealth.>

governance is necessary for the realisation of African countries visions and goals, national development plans, as well as the continental Agenda 2063. Although there are a myriad of ways through which land governance occurs at the national, regional, and continental levels, guided by agreements such as the AU Declaration on Land Issues and Challenges in Africa (2009) and the Malabo Declaration on Accelerated Agricultural Growth and Transformation (2014), among others, there is need for comprehensive harmonisation and thorough review to assess the progress made in implementing key African Union (AU) decisions on land policy and governance.

### Mineral Resources

The African Union (AU) recognises the need to enable the minerals resource sector to play its role in the social and economic transformation, inclusive growth, and sustainable development of African economies, in conjunction with Member States, Regional Economic Communities (RECs), the private sector, civil society organizations including women and youth organizations, collaborating institutions and other key stakeholders<sup>3</sup>. According to the United Nations<sup>4</sup>, 'Africa is home to some 30 percent of the world's mineral reserves, eight per cent of the world's natural Gas and 12% of the world's oil reserves. The continent has 40% of the world's gold and up to 90% of its... platinum'. Noteworthy reserves of copper (10%), Lithium (30%), chromium (95%), manganese (30%)<sup>5</sup>, and other minerals in the world are also in Africa. Having abundant reserves of minerals should make Africa a key global player in critical industries. In recognition of this immense potential, African countries are actively moving towards solidifying an African Green Minerals Strategy<sup>6</sup>, which follows the Africa Mining Vision (2009) and many other continental instruments seeking to enhance optimal beneficiation from mineral resources towards broad-based sustainable growth and socio-economic development. In order to reach this goal, it is necessary to fully guide the processes, policies and institutions which govern these the extractives industries. In this regard, a continental framework would be useful to guide how decisions and policies may be implemented at the local level.

It must be noted that 50% of Sub-Saharan Africa's population still lacks access to electricity<sup>7</sup>. In a bid to increase access to energy sources for local use, the continent has made strides for countries to transition from high-polluting energy sources to renewables<sup>8</sup>. However, non-renewable energy sources or fossil fuels such as coal, crude oil and natural gas are important for economic development. Although the importance of critical minerals in accessing clean energy infrastructure has been highlighted, the African Common Position encourages striking a balance between ensuring access to electricity to catalysing the much-needed socio-economic growth in Africa and smoothly transitioning towards an energy system based on renewable and clean energy sources matching the ambitions of Agenda 2063.<sup>9,10</sup> Therefore, the AU, through the Statute establishing the African Minerals Development Centre (AMDC) which was adopted by the Twenty-Sixth Ordinary Session of the African Union Assembly in January 2016 (Assembly/AU/Dec.589(XXVI)), provides for the AMDC to coordinate and oversee the implementation of the Africa Mining Vision and its action plan.

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<sup>3</sup> [African Minerals Development Centre | African Union \(au.int\)](https://www.africanmineralsdevelopmentcentre.org/)

<sup>4</sup> <https://www.unep.org/regions/africa/our-work-africa#:~:text=The%20continent%20has%2040%20percent,the%20world%20are%20in%20Africa.>

<sup>5</sup> [https://wedocs.unep.org/bitstream/handle/20.500.11822/43012/minerals\\_africa.pdf?sequence=3&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/43012/minerals_africa.pdf?sequence=3&isAllowed=y)

<sup>6</sup> [https://www.afdb.org/sites/default/files/documents/publications/approach\\_paper\\_towards\\_preparation\\_of\\_an\\_african\\_green\\_minerals\\_strategy.pdf](https://www.afdb.org/sites/default/files/documents/publications/approach_paper_towards_preparation_of_an_african_green_minerals_strategy.pdf)

<sup>7</sup> <https://unctad.org/news/improving-energy-access-key-meeting-development-goals->

[africa#:~:text=Although%20access%20to%20energy%20has%20still%20lacks%20access%20to%20electricity.](https://unctad.org/news/improving-energy-access-key-meeting-development-goals-#:~:text=Although%20access%20to%20energy%20has%20still%20lacks%20access%20to%20electricity.)

<sup>8</sup> <https://www.unep.org/news-and-stories/press-release/africa-climate-week-2023-charting-fresh-course-climate-action>

<sup>9</sup> In dealing with fundamental energy issues, the African Union Executive Council in its Thirteenth Ordinary Council held on 24 – 28 June in Sharm El Sheikh, Egypt endorsed the Algiers Declaration on the official launching of the Africa Energy Commission - AFREC (Decision EX.CL/Dec.432 (XIII)). It is of importance that the mandate of AFREC and related continental frameworks align with Africa's common position on energy and energy transitions.

<sup>10</sup> <https://au.int/en/pressreleases/20220722/africa-speaks-unified-voice-au-executive-council-adopts-african-common>

The development, management, and conservation of natural resources for the well-being of Africans is an imperative now, more than it has been before, as a consequence of increased extreme climatic conditions and the need for those with a reliance on these resources to adapt adequately.

Consequently, good governance of natural resources comprises but is not limited to the following norms, institutions, and processes, among other aspects:

- a) Inclusive decision-making regarding natural resource policies and practices, which is based on the full and effective participation of all relevant actors, with particular attention to the voice and inclusion of rights-holders and groups at risk of marginalisation.
- b) Recognition and respect for tenure rights, including rights to lands, resources, and waters, with particular attention to the customary, collective rights of Indigenous peoples and local communities, and to women's tenure rights.
- c) Recognition of and respect for diverse cultures, knowledge, and institutions that is grounded in sound and diverse forms of knowledge and respect for diverse cultures, values, and practices.
- d) Devolution of decisions, which are also taken at the lowest possible level appropriate to the social and ecological systems being governed, with particular attention to empowering the roles and authority of Indigenous peoples and local communities in natural resource governance.
- e) Strategic vision, direction, and learning Natural resource governance is guided by an overall vision of desired environmental and social outcomes and allows for adaptation in response to learning and changing conditions.
- f) Coordination and coherence between all actors involved in or affecting natural resource governance in order to coordinate around a coherent set of strategies and management practices.
- g) Sustainable and equitably shared resources, where actors responsible for natural resources have the means necessary to carry out sustainable management and governance activities, including from the equitable sharing of benefits generated from natural resources.
- h) Accountability by all actors regarding the environmental and social impacts they produce.
- i) Fair and effective rule of law to ensure that all natural resource-related laws and their application are fair and effective and protect the fundamental rights of the state.
- j) Access to justice and conflict resolution for resolution of grievances and conflicts regarding land and natural resources.<sup>11</sup>

The Programme takes cognisance of the interlinkages of each area of focus, and the inter-disciplinary nature required to research the afore-mentioned sub-sectors.

### **3. DESCRIPTION OF THE ASSIGNMENT**

The APRM is soliciting the services of a Legal and Institutional Analyst to assess the natural resource governance landscape and develop a report on the current normative instruments in the areas of water resources, land resources and mineral resources. Analysis of the three areas (3) shall ensure that the political, economic, social, and environmental governance aspects are examined.

Specifically, these include:

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<sup>11</sup> Springer, J., Campese, J. and Nakangu, B. (2021). The Natural Resource Governance Framework – Improving governance for equitable and effective conservation. Gland, Switzerland: IUCN

- i) Mechanisms for inclusive governance and participation of non-state actors in natural resource governance processes,
- ii) Assessment of the integrity of laws and institutions that govern the economic and commercial use of natural resources,
- iii) Protections for human rights as relates to issues such as gender-biased legislation and unlawful dispossession of natural resources from vulnerable groups, as well as,
- iv) Environmental guidelines regarding access to and use of natural resources and related ecosystems in which they are found.

#### **4. OBJECTIVE**

The study seeks to examine the legislative and institutional landscape of natural resource governance in Africa. It assesses the state of the legislation and institutions that govern natural resources in APRM member states and proposes an integrated framework for enhancing regional economic integration in the African context.

The objectives of the study are to:

- a) Undertake comprehensive legislative review of the normative frameworks for the governance of natural resources at i) the African Union continental level, ii) Regional Economic Communities (RECs) level, and iii) the National level.
- b) Undertake stakeholder mapping of key governance institutions at national, regional, and continental level.
- c) Interrogate the challenges of institutional and corporate compliance in natural resource governance in Africa.
- d) Develop a conceptual framework for draft guidelines for natural resources governance on land, transboundary water resources, and mineral resources.

#### **5. SCOPE OF WORK**

Under the guidance and strategic direction of the APRM, the Legal and Institutional Analyst shall, within the policies and procedures of the African Union APRM:

- a) Undertake a comprehensive analysis of the evolution and effectiveness of the normative frameworks for natural resource governance in Africa. A historiography is required,
- b) Provide national data on natural resources access, use, and management in AU member-states, including legislative and institutional processes as they relate to national resource rights, natural resource-use patterns, urban-rural access, etc.
- c) Undertake a legislative gap analysis and report on the same.

#### **6. FACILITY AND SERVICES TO BE PROVIDED TO THE CONSULTANT**

The Consultant will be provided with the following:

- a) Access to information and stakeholders to facilitate the assignment.
- b) Adequate office space with essential office furniture and office equipment, when necessary; and
- c) Access to the Internet, network resources and any relevant records that may be required.

## 7. TIMEFRAME/DURATION

The expected commencement date for the assignment is January 2024 and the duration shall be 2 calendar months.

## 8. DELIVERABLES

- a) **Inception Report** - on the legislative frameworks for and institutional map of natural resource governance structures and instruments in African countries.
- b) **A Research Report** - On a comprehensive legislative review of the normative frameworks for the governance of natural resources in Africa, sectioned into the thematic focus areas of transboundary water resources, land resources, mineral resources, and energy.
- c) **A Key Highlights Report** - On Natural Resource Governance in Africa – Key Findings and Recommendations. An extract from the Research Report on *A Comprehensive Legislative Review of the Normative Frameworks for the Governance of Natural Resources in Africa*. The same to be presented in a comprehensive PowerPoint.
- d) **Weekly updates to the Director of the Governance and Specialised Reporting Directorate** - through the APRM Continental Secretariat coordinator on the Natural Resource Governance in Africa Programme.

## 9. LOCATION

APRM shall supervise the assignment every week at the APRM Continental Secretariat in Midrand, South Africa or where necessary, through video conference, telephone, and emails to assess the progress. The Consultant shall therefore be required to prepare progress reports for discussion.

## 10. CO-ORDINATION

The Co-ordinator shall assign tasks to the Consultant in line with the Terms of Reference. Performance will be assessed based on deliverables outlined in Section 8 above.

## 11. RESERVATIONS AND CONFIDENTIALITY

APRM reserves the right to withhold all or a portion of payment if performance is unsatisfactory, if work/output is incomplete, not delivered, or for failure to meet deadlines. In the event of the producer ending the contract prior to delivering all agreed upon products, a portion of the payments shall be returned to the APRM.

The consultant undertakes to maintain confidentiality on all information that is not the public domain and shall not be involved in another assignment that represents a conflict of interest to the prevailing assignment. The Consultant shall undertake to refrain from promoting any political or religious beliefs in the documentary movie which is the subject of this contract.

## 12. GENERAL INFORMATION

All consultancies will be advertised on an equal opportunity basis. The performance criteria to be used to assess the consultant shall be based on the deliverables and scope of work defined in these TORs.

### 13. LANGUAGE OF ASSIGNMENT

The Inception report for the Review of the Normative Framework on Natural Resource Governance in Africa must be presented in English or French.

### 14. PAYMENT

Payment breakdown:

- Pay 15% of Contract price upon submission and acceptance of the first draft of the Inception Report.
- Pay 35% of Contract price upon submission and acceptance of the second draft report and related outputs; and
- Pay 50% of Contract price upon submission and acceptance of the Final draft Report.

### 15. REPORTING

The Consultant reports to the Director of the Governance and Specialised Reporting Directorate at the APRM on all issues pertaining to the management of the project and progress on technical aspects of the assignment.

### 16. EVALUATION CRITERIA

Technical Evaluation Criteria		Weight
LLM in relevant discipline (10-15 years)	20	20
PHD in Law (10 years)	25	
PHD in Law (over 15 years)	30	
Understanding of the TORS, Methodology and Workplan		20
Work Experience		
Relevant experience in legal analysis and stakeholder mapping in Africa with an African Union or national institution. Relevant experience with international institutions will be considered as 60% of the specification.  Demonstrated ability to write to a very high standard as evidenced by previous examples of relevant work accomplished in the field.		30
Strong technical background in Law, Management, Economics, Environmental Law, Legal Studies and/or African Jurisprudence, Natural Resource Governance, Political Science, Public Administration, International Relations, and any other relevant field.		20
TOTAL		100

Only Candidate/Consultants who obtain a technical score of 70% and above shall be considered for financial evaluation.

## 17. CLARIFICATION

Clarification can be sought through email: [tenderinfo@aprm-au.org](mailto:tenderinfo@aprm-au.org) and Interested Consultants may obtain further information by contacting the APRM Procurement Office during office hours (08h00 - 17h00 SAST). Clarification shall be published on the APRM website (<https://aprm.au.int/>) and **MUST** be requested not less than seven days before the closing date of the bid.

## 18.MODE OF APPLICATION/ SUBMISSION AND DOCUMENTS TO BE SUBMITTED BY CONSULTANTS.

i)The consultant **MUST** submit a combined Technical and Financial Proposal, containing his/her **up-to-date Curriculum Vitae** with contactable references (names and addresses of referees) one of which should be the last consultancy **and supporting document** (s). The technical proposal should demonstrate an understanding of the ToRS, the methodology and the detailed workplan. All applications in writing should be accompanied by **Certified copies of all academic qualifications**. The Financial proposal should provide a breakdown of the proposed cost and should be in USD.

ii)The Proposal shall be marked: **PROCUREMENT NUMBER: APRM/AU/GSR/NRGA/TOR/12/2023: INDIVIDUAL CONSULTANCY LEGAL AND INSTITUTIONAL ANALYST REVIEW OF THE NORMATIVE FRAMEWORK ON NATURAL RESOURCE GOVERNANCE.**

3)The proposal/bid shall be submitted through email: [tender@aprm-au.org](mailto:tender@aprm-au.org) on or before **21<sup>st</sup> February 2024 at 11.00hrs South Africa local time**. Eligible women are encouraged to apply. The Bids shall be opened immediately after the closing date and time.

All applications in writing should be addressed to:

African Peer Review Mechanism  
Private Bag XO8, Halfway House  
Physical Address: 230 15th Road, 1st Floor,  
Randjespark, Midrand, 1685,  
South Africa  
Tel: +27 11 256 3401  
**Submission Email:**[tender@aprm-au.org](mailto:tender@aprm-au.org)