



## **Terms of Reference**

### **Call-down Contract**

**for**

### **Fragile and Conflict Affected States**

### **Framework Agreement PO 5651**

### **Service Providers to Implement South Sudan's Access to Justice Programme (ATJP)**

## **INTRODUCTION**

- 1) The DFID South Sudan (DFIDSS) Operation Plan sets out our vision and strategy for 2011-2015. Our aim is a peaceful and stable South Sudan. DFID is also determined to ensure that UK aid reaches the people who need it the most. Following the outbreak of conflict in December 2013, DFIDSS initiated a reassessment of its strategic objectives and a review of the practical ability of existing programmes to deliver in the new environment. This process informed DFIDSS' Interim Strategy to March 2015 which aims to respond to the human impact of the crisis and safeguard the most vulnerable, through increased humanitarian programming and continued support for basic services, including security and justice.
- 2) DFIDSS is also focused on helping South Sudan develop in ways which empower poor people, particularly girls and women, to realise their rights and freedoms. In the aftermath of the conflict, DFIDSS is increasing its focus on service delivery at the community level, with specific priority given to protection, promoting human rights and tackling gender based violence.
- 3) The Programme's **Impact** will be: Stronger foundations for sustainable peace in South Sudan
- 4) The **Outcome** will be: Poor and vulnerable groups targeted by the programme feel that their justice and dispute resolution needs are being met. Through this Programme, DFID expects to achieve the following results:
  - changes in attitudes, behaviours and practices towards justice service delivery;
  - increased access to justice for vulnerable citizens; more effective responses to gender-based violence (GBV);
  - greater human rights awareness amongst citizens; increasing dialogue and actions by state and non-state entities; and
  - communities gradually more equipped to resolve disputes and conflicts without violence.
- 5) The Programme will need to be technically robust, with a strong evidence base, drawing on the experiences of interventions which have delivered good results in South Sudan, and (as appropriate) in the region and more broadly. The Programme will need to apply the principles of 'do no harm' through inception and implementation. This includes effective use of political economy analysis; the need to be politically/culturally sensitive and flexible in view of the unpredictability of the operating environment and; increased risk in terms of operating at the state/community level.

- 6) The SP is expected to manage the inception and implementation phases of its new Access to Justice Programme (ATJP). The SP must demonstrate creativity and innovation in delivering results, including effective use of national civil society and the media, community based organisations and tribal/community leaders.

**THE RECIPIENT:**

- 7) The primary recipients of this programme are targeted communities in South Sudan. It will also involve working with civil society & community based networks, including women's groups; tribal/community leaders and media campaigners. Selected Government of the Republic of South Sudan (GRSS) Justice Sector institutions may also benefit to support justice delivery at the community level.

**SCOPE OF WORK:**

- 8) The SP is expected to effectively manage the Inception and Implementation phases of ATJP. ATJP is a **pilot** programme which seeks to deliver justice as a basic service direct to targeted communities, working with non-state partners primarily. However, there should also be state partner involvement to create a balanced approach, and ensure GRSS participation, commitment and ownership.
- 9) The design phase has already been completed during which a number of potential areas in the supporting business case were identified. However additional information might result from analysis of pilot activities to be carried out during inception, which will further refine the approach to programme implementation of ATJP. The SP is therefore required to make adjustments to the programme design during the Inception Phase, to fully inform its implementation.
- 10) The SP is encouraged to test these potential interventions areas for feasibility, appropriateness during the Inception Phase and more importantly in terms of delivering expected results, primarily working directly in and with target communities.
- 11) In terms of location, ATJP will seek to pilot interventions in Central Equatoria State initially, expanding as the security situation allows to those states not affected by the conflict.
- 12) DFID has introduced Payment by Results to incentivise suppliers, into this contract. A 'Payment by Results' mechanism which aligns with key milestones was finalised with the SP during the contract award process, and is set out at paragraph 14 below.

## REQUIREMENTS

13) The SP is expected to implement ATJP over a period of five years. The programme will include:

- an Inception phase of 9 months;
- an Implementation phase which will include a pilot period of up to 24 months and a Roll-Out period of up to 27 months;
- There will also be: a specific focus on addressing gender inequalities in line with the International Development Act (Gender Equality) 2014, including the needs of the most vulnerable;
- Embedding the practice of conflict sensitivity ('do no harm' approach) in programme delivery.

14) There will be a break point after completion of the 9-month inception phase.

Progression by the SP from Inception to Pilot and subsequently Rollout phase, will be subject to satisfactory performance of the SP (which includes agreement on the milestones to be delivered during implementation) In addition to the Inception phase break-point there will be a second break-point after the Pilot phase, which will be subject to the same conditions as the first break-point. Work to be carried out by the SP during the Pilot phase must be agreed between DFID and the SP during the Inception phase.

### Specific requirements

15) DFID expects the programme to be delivered over a period of five years. Specific requirements have been set for the **9-month Inception Phase** which includes key milestones that the SP is required to deliver. These are set out below:

#### By the end of month 3

- Generic political economy and conflict sensitivity analysis submitted;
- Draft gender and inclusion strategy submitted;
- Project risk matrix submitted;
- Initial focal states and project site localities agreed;
- Due diligence analysis (including review of financial and fraud assessments for inception phase) of project partners completed;
- Terms of reference and membership of Advisory / Steering Committee agreed;
- Draft procurement plan submitted in line with DFID Procurement guidelines;
- Quarterly progress report, including draft inception phase work plan, submitted.

By the end of month 6

- Final detailed political economy analysis completed;
- Gender and inclusion strategy completed;
- Final procurement plan<sup>1</sup> completed.
- Advisory / Steering committee meeting convened;
- Implementation of selected interventions commenced;
- Quarterly report submitted, to include as annexes
  - o agreed geographical focus;
  - o updated project risk matrix
  - o draft implementation phase work plan
  - o proposed draft content and format of inception phase report

By the end of month 9

- M&E strategy completed;
- VFM strategy completed;
- Implementation phase plan with agreed deliverables approved;
- Criteria for grant funding agreed;
- Advisory / Steering committee meeting convened;
- Full Inception phase report pack approved.

100% output deliverables will be maintained by the SP for the Inception Phase. These will be reviewed for the Implementation Phase and revised targets set in agreement with DFID. Where there are likely to be risks to delivery, DFID must be informed in good time so that appropriate discussions with the SP can take place, to inform any decision by DFID on how best to address the issue and move forward.

16) DFIDSS will be engaged throughout both Inception and Implementation phases to ensure the objectivity and independence of baseline and subsequent monitoring and evaluation. In addition, DFID has commissioned a separate tender for an Independent Impact Evaluation (IE) to conduct a phased impact evaluation at key strategic points of the programme. The main objective of the IE is:

- a. to assess the extent to which improving access to justice for women and girls impacts on violence against women and girls (VAWG) and;
- b. to ensure that the evidence is used to inform the DFID decision leading to and through the roll-out stage of ATJP.

17) The ATJP Implementation SP is not expected to manage the IE SP. Rather, the IE SP will be expected to collaborate with the ATJP SP, mutually agreeing

---

<sup>1</sup> On the procurement of goods, the SP will be required to work with the DFID dedicated procurement agent in South Sudan, International Procurement Agency (IPA).

a framework for how both teams would work together throughout the various stages of the programme.

To NOTE:

- a) **Programme Management Arrangements:** The SP presented in its tender, evidence of the technical capacity and South Sudan knowledge within the Inception and Implementation teams being put forward during the bidding process. A consortium arrangement has been agreed, which includes evidence of effective and cohesive partnering on previous interventions. This was previously presented as part of the SP's tender package.
- b) **Risk Management:** A high risk and unpredictable operating environment is likely to persist for the full duration of this intervention; therefore adaptability and effective risk identification and management will need to be demonstrated in the programme design and practiced during implementation. Risk management should also feature as an on-going part of monitoring and evaluation;
- c) **Progress and Financial Reporting:** The SP has agreed with DFID on reporting arrangements during the Inception phase. This is captured at paragraph 14 above. Reporting during Implementation will be agreed by the end of Quarter 3 of the Inception Phase.
- d) **Asset Management:** The SP will describe in its procurement plan, how assets procured under the programme will be managed and maintained, including ensuring third party responsibilities are clear, as part of ensuring cost effectiveness and value for money.
- e) **Audit:** The SP will describe in its Implementation phase Plan (agreed for delivery by the end of month 6 of Inception), how it will respond to audit requirements during the Implementation phase, including for its partners, to ensure funds will be spent as intended and that partner organisations are delivering value for money.

**TIMING**

- 18) The contract for Implementation will begin no later than early May 2015 and run for 60 months. This will include:
  - Inception Phase – 9 months.
  - Implementation Phase –
    - up to 24 months for piloting and;
    - up to 27 months for roll-out.

**HMG JUBA CO-ORDINATION**

- 19) DFID South Sudan's Justice Delivery Adviser (DFID) will provide the technical lead. The Programme Manager for the DFID SS Governance & Peacebuilding Team (GPT) will maintain overall responsibility for ensuring an effective response to these ToRs and for supporting the SP as appropriate throughout the programme's duration.

**DUTY OF CARE**

- 20) As part of its Duty of Care Policy, DFIDSS has assessed the country and project risks in order to allow Service Providers (SPs) to take reasonable steps to mitigate those risks during the duration of the contract. Below is the key for attributing overall scoring.

<b>1</b> <b>VERY LOW RISK</b>	<b>2</b> <b>LOW RISK</b>	<b>3</b> <b>MED RISK</b>	<b>4</b> <b>HIGH RISK</b>	<b>5</b> <b>VERY HIGH RISK</b>
<b>LOW</b>		<b>MEDIUM</b>	<b>HIGH RISK</b>	

- 21) A matrix showing the latest risk scores for South Sudan as at January 2015 is set out below. These continue to remain valid at the time of these ToRs being developed:

**PROJECT: DEVELOP AND IMPLEMENT DFID SOUTH SUDAN'S ACCESS TO JUSTICE PROGRAMME (ATJP)****COUNTRY: SOUTH SUDAN****DATE OF ASSESSMENT: JANUARY 2015****ASSESSING OFFICIAL:**

<b>Theme</b>	<b>DFID Risk score: Juba</b>	<b>DFID Risk score: Other Parts of South Sudan</b>
FCO travel advice <sup>2</sup>	4	4
Host nation travel advice	Not available	Not available
Transportation	3	4
Security	4	4
Civil unrest	3	3
Espionage	3	3

<sup>2</sup> Please visit the Foreign and Commonwealth Office (FCO) travel website for South Sudan: [http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/sub-saharan-africa/south\\_sudan](http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/sub-saharan-africa/south_sudan).

Theme	DFID Risk score: Juba	DFID Risk score: Other Parts of South Sudan
Violence/crime	4	4
Terrorism	2	2
War	3	3
Hurricane	0	0
Earthquake	2	2
Flood	0	3 <sup>3</sup>
Medical Services	3	4
Nature of Project/ Intervention	3	3
<b>OVERALL RATING</b>	<b>4</b>	<b>4</b>

South Sudan has been assessed as '4', which is medium to high risk. Travellers and Suppliers should consult FCO travel advice and DFID South Sudan for the latest identification of high risk areas.

- 22) The SP should be comfortable working in South Sudan and will be responsible for their own safety and well-being as well as that of their staff whilst they are in South Sudan (as defined in the Contract Terms of the Contract) and Third Parties affected by their activities under this Contract, including having appropriate security arrangements in place.
- 23) The SP will also be responsible for providing their own suitable security arrangements for their domestic and business property in-country and for ensuring appropriate on-going safety and security of their deployed whilst in-country for the duration of this contract.

## BACKGROUND

- 24) DFID considers justice (and security) as basic services and amongst the core state functions required for strengthening accountability and democratic governance systems in fragile states.<sup>4</sup> These services are also critical for improving human security, increasing stability and accelerating progress on the millennium development goals (MDGs). ATJP will be designed to pilot and roll-out approaches for improving justice services to the poor and most vulnerable, addressing the need to improve access and accountability in response to increasing grievances and concerns amongst citizens. Delayed justice and inadequate resolution of conflict are common complaints<sup>5</sup>, leading to prolonged grievances, community tensions and in some cases revenge killings, when patience runs out. This has created an increasing sense of impunity and insecurity within South Sudan.

<sup>3</sup> Flooding does occur during the rainy season between August and November in the North and North-Eastern States of Warrap, Lakes, Unity, Jonglei and Upper Nile.

<sup>4</sup> Building Peaceful States and Societies, A DFID Practice Paper

<sup>5</sup> Local Justice in Southern Sudan, USIP/RIFT Valley Institute, p39



- 25) International support has largely focused on state institutions, with the UK, Canada, Norway, Netherlands and Sweden working through a Strategic Partnership with the United Nations Development Programme (UNDP) until 2012. The United States has also been a major player, providing support through the US Agency for International Development (USAID) and the Bureau of International Narcotics and Law Enforcement (INL). There is little evidence of the impact of international support to justice service delivery since 2005, particularly at the state and community level.<sup>6</sup> In addition, whilst there is an increasing understanding of the challenges and constraints within the sector, there is still the need to establish what actually works and how to deliver better results to the most vulnerable, particularly women.
- 26) ATJP also recognises the severely limited capacity on the part of government to respond to the needs of citizens country-wide. DFID has a strong comparative advantage from experiences elsewhere, to propose practical alternative mechanisms (tested in other fragile environments) and using non-state actors to supplement justice service delivery at the community level. The programme also seeks to position itself strategically by potentially supporting the judiciary to also deliver services to communities. This ensures a critical balance of support between state and non-state partners in terms of DFID's engagement.
- 27) The Programme will support DFID's Strategic Vision for Girls and Women, in line with the Structural Reform Plan (SRP) priority, to improve the role of women in development. It will contribute towards the delivery DFID South Sudan's Results Offer to improve access to justice for 250,000 women by 2015. There will also be a focus on encouraging women to engage with the programme as service providers, as well as beneficiaries, utilising their increased knowledge and awareness of the law. ATJP will also contribute towards eliminating violence against women and girls (VAWG), supporting a transformation process where women and girls know more about their rights and are empowered, supported and resourced to claim them as individuals, and individual and collective values, beliefs, behaviours and practices shift to recognise VAWG as unacceptable and a crime. This will occur through evidence-based approaches to ensure sustainable impact and results for women.

---

<sup>6</sup> "The Strategic Partnership Arrangement, managed by UNDP, spread itself too thinly over too many different programmes to have any significant impact in any particular area. A narrower remit would have enabled keener focus on the outcome, better oversight and clearer results." Strategic Partnership Programme Completion Review. July 2012