



## **TERMS OF REFERENCE (TOR)**

**PURPOSE:** CONSULTANCY FOR THE DEVELOPMENT OF THE ECOWAS REGULATION FOR GENDER ASSESSMENT IN ENERGY INFRASTRUCTURE DEVELOPMENT

**EXPERTISE:** A TEAM COMPRISED OF A REGULATORY, GENDER-INFRASTRUCTURE AND LEGAL SPECIALISTS

**LOCATION:** HOME BASED

**DURATION:** 100 DAYS

### **1. INTRODUCTION**

The Economic Community of West African States (ECOWAS) has developed, and endorsed at the technical expert level, a Policy for Gender Mainstreaming in Energy Access. And in due course, the same Policy will also be presented to and adopted by the region's Heads of State.

Developed by the ECOWAS Centre for Renewable Energy and Energy Efficiency (ECREEE) and the ECOWAS Department of Social Affairs and Gender, with the technical assistance of the National Renewable Energy Laboratory (NREL), the Policy, has as one of its objectives, to "Ensure that all energy policies, programmes and initiatives, including large energy infrastructures and investments, are non-discriminatory, gender-inclusive, gender-balanced and directed towards addressing inequalities, particularly energy poverty, differentially affecting men and women in the region"<sup>1</sup>.

The ECOWAS Policy for Gender Mainstreaming in Energy Access was validated at a 2-day workshop, held from 4 – 5 June 2015, in Dakar, Senegal. The workshop brought together the region's energy and gender experts, including other 80 persons representing civil society organizations (CSOs), non-governmental organizations (NGOs), academia, research institutions, development partners, and representatives of other relevant stakeholder institutions. One of the outcomes of the workshop was the recommendation for the development of a Regional Gender Code, a regulatory

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<sup>1</sup> ECOWAS Policy for Gender Mainstreaming in Energy Access (Validated Version)

instrument to ensure that gender considerations are taken on-board when energy infrastructure projects and investments are planned and executed<sup>2</sup>.

It is against this background that ECREEE and the ECOWAS Department of Social Affairs and Gender, in collaboration with the relevant ECOWAS energy agencies, are embarking on a project to develop the ECOWAS Regulation for Gender Assessment in Energy Infrastructure Development to support Member States to specifically address the omission of gender considerations in the planning and execution of energy infrastructure projects.

## **2. BACKGROUND**

Ensuring universal access to modern energy services continues to remain a pressing issue in countries of the ECOWAS region. The figures on energy access rates explain why: less than half of the households have access to electricity<sup>3</sup>. The situation is more severe in the rural areas where only about 8% of households have access to electricity<sup>4</sup>.

Accelerating investment in the energy sector is a key priority for Governments of the region, and is evident in the regional policies and instruments that have been put in place to create an enabling environment to attract investment for energy infrastructure development. Despite the need to pursue universal energy access, the ECOWAS people acknowledge that the ambition is best realized when done having a long-term view that aligns with the principles of development that is sustainable and inclusive. The region's stance in this matter is clear through the development, and adoption at the technical expert level, of the ECOWAS Policy for Gender Mainstreaming in Energy Access, a Policy that ensures the success of the SE4ALL goals while contributing, directly and indirectly, to each of the Sustainable Development Goals (SDGs).

The ECOWAS Policy for Gender Mainstreaming in Energy Access sets out the course of action, and principles, adopted by the region to ensure that its male and female population contributes equitably and benefits equally in the region's energy interventions.

Energy infrastructure development, both on generation and grid connectivity, is one area that is posed to experience rapid transformation, stimulated by regional and national level energy programmes and initiatives. Examples include: at the regional level, the activities of the West African Power Pool (WAPP), West African Gas Pipeline (WAGP), the ECOWAS Regional Electricity Regulatory Authority (ERERA); at the continental level, the African Union's Programme for Infrastructure Development in Africa (PIDA) – Energy Component.

The Regulation for Gender Assessment in Energy Infrastructure Development is therefore timely, to serve as the framework for enforcing the principles established and adopted through the ECOWAS Policy for Gender Mainstreaming in Energy Access. Moreover, the proposed Policy instrument addresses a gap in the regulatory framework for energy infrastructure development in West Africa, one that undermines the ability of the region to transition to sustainable and inclusive development.

While Environmental Impact Assessments and/or Social Impact Assessments have become popular practices for energy infrastructure projects to be authorized for implementation, gender considerations

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<sup>2</sup> Workshop Report available [here](#)

<sup>3</sup> ECOWAS Renewable Energy Policy

<sup>4</sup> Ibid

are rarely incorporated, as it is expected that these assessments should be sufficient to ensure that negative externalities do not ensue as a result of the intervention and, thus, undermine the long-term development objectives of the project.

These gender-blind approaches have shown that gender considerations in all interventions are necessary measures, as, in their absence, the impacts of a project's interventions on the lives of the male and female population have proved to be uneven<sup>5</sup>; sometimes impacting a gender group negatively and the other positively.

Despite the importance of incorporating gender considerations in energy infrastructure development, the practice is not wide-spread.

It should be noted that although development banks have developed guidelines for incorporating gender in energy projects and programs (the World Bank and the African Development Bank (AfDB) are two examples), these guidelines are, however, meant for projects which are funded by them and are quite distinctive in nature.

It is difficult to overemphasize the need to develop, for the ECOWAS region, clear and harmonized guidelines and procedures for incorporating gender in energy infrastructure development, and to, thus, create a strong regulatory framework which is presently lacking.

### **3. OBJECTIVE**

Broadly, the objective of this consultancy is to develop a regulation for conducting gender assessments and incorporating gender considerations in energy infrastructure development and operation in the ECOWAS region.

On one hand, the framework will set: the procedures for applying for a gender assessment for energy infrastructure project development and the conditions for being granted one; the regulatory instruments for ensuring compliance; the institutional structure (and roles and responsibilities) for regulating a gender-responsive energy sector at the national and regional level. And on the other hand, the framework will set out the modalities for ensuring that the operations of energy infrastructure are gender –responsive. This is to say that, while the infrastructure facilities are in operation, gender considerations are actively being carried out, monitored, evaluated, and reported on.

#### **3.1 SPECIFIC OBJECTIVES**

The specific objectives of this assignment are to:

- Conduct in-depth analysis of gender related issues associated with infrastructure development in the energy sector. Secondly, examine the regulatory framework in the region as it concerns energy infrastructure development, with the aim of assessing to what extent gender issues (and social issues in general) are included as conditions for a project's implementation, as well as if and how the stipulated conditions for authorizations are enforced throughout the project's execution. Furthermore, assess the awareness and perceived importance, by regulatory agencies, for the inclusion of gender impact assessments in the development of

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<sup>5</sup> ESMAP: Integrating Gender Considerations into Energy Operations (2013)

energy infrastructure projects in the region – giving reasons for the status quo. This should provide a strong justification for the development of a regulation that oversees and enforces the inclusion of gender impacts assessments in development of energy infrastructure.

- Develop an ECOWAS Regulation for Gender Assessment in Energy Infrastructure Development that addresses the issues identified through the background study conducted. The Regulation will set out what parts of the energy infrastructure sub-sectors will be regulated; how (procedures and conditions, etc.); and who (parties concerned, the roles and responsibilities of all concerned).
- Develop a training program targeting the regulatory institutions (national and regional) to support the enforcement of the instrument (more information detailed below).

#### **4. SCOPE OF WORK**

##### **Activity 1: Inception Report**

The consultants, following a debriefing meeting, with the responsible ECOWAS agencies, will submit an inception report within 10 days working. The meeting may or may not be face-to-face.

The report will detail the approach and timelines to be adopted by the consultants towards the fulfillment of the assignment. Appendixes of documents to be consulted, stakeholders to be interviewed, and country brief of case-studies will be included in the report. Upon acceptance of the inception report, the document will serve as the guidebook for the completion of the assignment.

##### **Activity 2: Background Study Paper.**

The consultant shall conduct a comprehensive study on gender in energy infrastructure development. As is the case with the Policy for Gender Mainstreaming in Energy Access, the regulation for gender assessments in energy infrastructure development will be a first of its kind for a Regional Economic Community at the global level. The background study will therefore work to clear all doubts regarding the contribution of this innovative policy instrument to sustainable and inclusive development through energy access. Secondly, the background study, through in-depth research, will serve to demonstrate the feasibility of implementing the regional gender code instrument.

Inter alia, the comprehensive study will focus on:

- a. The state of affairs vis-à-vis the inclusion of gender considerations in the planning and development stages of energy infrastructure projects.
- b. The barriers and challenges to assessing and incorporating gender dimensions in the design of energy infrastructure projects.
- c. The impacts, if any, on inclusive development and gender equality, from the lack of a regional gender code.

In addition,

- d. The study will examine cases from other countries outside the region to determine if gender considerations are incorporated through specific procedures and the effectiveness of the procedures. And in cases where they are not, state what negative impacts may have resulted, if any. The study will select at least a country from the different continents. The aim of which is to examine the importance (added benefit), and the universality of the necessity, of having a gender code for energy development that adheres to the principles of sustainable and inclusive development.
- e. The background study will describe and evaluate the results of:
  - Scenario 1: Having no Regional Gender Code
  - Scenario 2: Engendering the Environment Impact Assessment and/or Social Impact Assessment
  - Scenario 3: Having a standalone Regional Gender Code

Through these scenario analyses, the consultants should be able to produce a recommendation of which option best achieves the objective of establishing an effective framework for regulating a gender-responsive energy sector at the national and regional level.

- f. The legal elements and budgetary implication of the regulation will be presented as well.

### **Activity 3: Designing the regulatory framework**

- a. The consultant will review relevant regional and national laws, statutes, regulations, and authorizations related to the respective roles and responsibilities of the relevant Government Ministries (particularly the Energy Ministries) and ECOWAS institutions.
- b. Design institutional structures and arrangements that clarify the appropriate roles, responsibilities, staffing needs, funding sources, and legal, statutory, or licensing requirements of the regulator, as well as the roles and responsibility of the relevant ECOWAS regional agencies.
- c. Describe the legislative and/or administrative measures needed to formalize the regulatory institutions and arrangements that will be fair to all parties concerned.
- d. Drafting of regulations.

Specifically, the regulation will include, but not limited to:

- Duties/functions of the regulatory institution
- Duties of the authorization applicant
- The criteria to be used in the evaluation of the gender impact assessment report and remedial/management plan by the authorizing/regulatory institution
- Monitoring of compliance and reporting of impacts
- The role of public participation in the process

- e. Develop license templates which could be readily modified and refined according to Member States' needs. The licences should state what is required to legitimize the appropriate regulatory institutions and arrangements in the countries.
- f. Design a training program for the relevant ECOWAS agencies and Member States Institutions that will allow them to fulfill their responsibilities once the Regulation is adopted.

With gender-responsiveness as a guiding principle, the training program will consist of the following:

- Analysis on the existing capacity, skill requirements and training needs – at the national and regional level
- Suggestion on appropriate training options for these bodies

## 5. Output and Timeframe

- i. Inception report
- ii. A background study paper
- iii. ECOWAS Regulation for Gender Assessment in Energy Infrastructure Development (Gender Code) document
- iv. Report on Training Needs and Options for Regulatory Skill Development
- v. Workshop Reports: The workshop will provide a platform to discuss the role and activities of accountable regulators, skill requirements for such regulation, and available training options; and - Necessary legislative and administrative changes to ensure the regulators' independence and accountability.

Deliverables	Working Days	Indicative Deadline
i. Inception report	10	11 Dec
ii. A background study paper	30	12 Feb
iii. ECOWAS Regulation for Gender Assessment in Energy Infrastructure Development (Regional Gender Code) document	30	31 March
iv. Report on Training Needs and Options for Regulatory Skill Development	20	15 April
v. Workshop Reports	10	When validation workshop is held
	<b>100</b>	

## **6. MANAGEMENT PLAN**

### **6.1 Qualifications**

The assignment is for a team led by a senior utility regulation specialist supported by a gender and energy infrastructure specialist(s), an international lawyer(s) expert in energy laws and regulations, a local lawyer(s) familiar with workings of ECOWAS's legal system.

The regulation specialist should have extensive experiences with designing infrastructure regulatory systems and be familiar with best practices for institutional arrangements for energy related regulation. The gender and energy infrastructure specialist should have experience in mainstreaming gender in energy infrastructure development. The international lawyer should have expertise in energy and gender related laws. The local lawyers should be familiar with the legislative elements of countries of the ECOWAS region, as it concerns this assignment.

The lead expert (or the team) is expected to have the following profile:

- Advanced university degree in energy, social development, economics, engineering or any related field;
- At least 10 years of applicable regional work experience, preferably in the ECOWAS region; working with regulatory agencies relevant to energy infrastructure development;
- Knowledge of the environmental/social issues and regulations/permits that apply to the energy industry;
- Working knowledge of the regulatory framework related to the energy infrastructure, at the regional level and in a number of countries in the region.
- Legal experience in drafting normative acts; Experience in comparative analysis, research, assessment on the implementation of the international legislation and policies;
- Relevant experience and involvement in gender in energy infrastructure development;
- Involvement in complex assignments with similar scope and focus
- Sufficient knowledge of the ECOWAS energy policies, legal and regulatory frameworks;
- Ability to undertake research and lead strategic dialogue on key development issues;
- Ability to coordinate inter-disciplinary teams and manage complex assignments in a multi-cultural setting;
- Strong problem solving, communication, research and analytical writing skills;
- At least fluency in two ECOWAS working languages required (English, French, and Portuguese)

### **6.2 Form of Proposals**

#### **Technical Part:**

- Description of the expert or expert team
  - Detailed CV (annexes)
  - List of references of assignments with similar scope and focus (annexes)

- First outline of the inception report
- Description of approach, methodology, process management and reporting
- Implementation plan including expert diagram indicating the working days of the offered experts

### **Financial Part:**

- Personnel Costs: budget table according to the expert diagram (showing the individual daily fees of the experts in EUR)
- Other costs (e.g. translations; travel cost of selected Member States)

### **6.3 Evaluation of proposals:**

The best offer will be determined as following:

#### **70% Quality of technical part**

- Professional experience and profile of consultant/team (see below)
- Quality of technical document (approach, methodology, suggested process and reporting framework)

#### **30% financial part**

- For the evaluation of the best financial offer only the following costs will be considered:
  - Personnel cost
  - Other costs

### **6.4 Coordination**

The team contracted will work under the direct supervisor of the ECREEE Project Manager and the NREL Project Manager, for substantive and administrative aspects of the assignment.

Proposal should be submitted by e-mail in electronic form (PDF-format) at latest by 16 November, 2015 to [gender@ecreee.org](mailto:gender@ecreee.org)

## **ANNEX A: RELEVANT ECOWAS AGENCIES<sup>6</sup>**

### *a) The West African Power Pool (WAPP)*

The West African Power Pool (WAPP) is a specialized institution of ECOWAS. It covers 14 of the 15 countries of the regional economic community (Benin, Côte d'Ivoire, Burkina Faso, Ghana, Gambia, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo).

International organization of public interest, the WAPP is to ensure Regional Power System integration and realization of a Regional Electricity Market.

WAPP is made up of Public and Private Generation, Transmission and Distribution companies involved in the operation of the electricity in West Africa. It has to date, 26 member companies.

See: <http://www.ecowapp.org/>

### *b) ECOWAS Centre for Renewable Energy and Energy Efficiency (ECREEE)*

The ECOWAS Centre for Renewable Energy and Energy Efficiency (ECREEE) is a specialized agency of ECOWAS established with a public mandate to promote renewable energy and energy efficiency markets. Overall Objective of ECREEE: To contribute to the sustainable economic, social and environmental development of West Africa by improving access to modern, reliable and affordable energy services, energy security and reduction of energy related externalities (GHG, local pollution). The specific objective of ECREEE is to create favorable framework conditions for regional RE&EE markets by supporting activities directed to mitigate existing technology, financial, economic, business, legal, policy, institutional, knowledge and capacity related barriers. See: <http://www.ecreee.org/>

### *c) ECOWAS Regional Electricity Regulatory Authority (ERERA)*

The ECOWAS Regional Electricity Regulatory Authority (ERERA) is the regulator of regional cross-border trade of electricity in West Africa.

The commitment of ECOWAS Member States to achieve electricity interconnections for the pooling and sharing energy resources in the region is translated into action through the adoption of a number of provisions to establish appropriate legal and institutional framework for the development of the electricity sector in West Africa. See: <http://www.erera.arrec.org/>

### *d) ECOWAS Infrastructure Projects Preparation and Development Unit (PPDU)*

The PPDU is an ECOWAS Specialized Agency which is in charge of the preparation and development of regional infrastructure projects (Transport, Energy, Water and ICT). It aims among others to make financial regional infrastructure projects through the elaboration of feasibility studies

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<sup>6</sup> These are agencies that will be actively involved in the development of this regulation.

(economic, financial, social, environmental, impact, etc.). The viability of the studied projects will ease the investment and resource mobilization for their implementation.

Specifically, the PPDU shall perform the following functions:

- Identify, select and prioritize regional integration infrastructure projects, in consultation with the ECOWAS Commission, member States and the private sector;
- Mobilize the resources required for project preparation and infrastructure financing;
- Strengthen capacities, assist/support national and intergovernmental structures in charge for the implementation of infrastructure programs and projects and
- Promote public-private partnerships in infrastructure financing.

*e) ECOWAS Department of Social Affairs and Gender*

The Department works to ensure that gender equality and equity are considered as an integral part of the region's development interventions.

## **ANNEX B: POINTS TO NOTE, FROM AN INDEPENDENT REVIEWER<sup>7</sup>**

(a) Dispute Resolution Mechanisms: are there administrative remedies available to an aggrieved person where there is an improper appointment or removal of a staff in energy sector (infrastructure) and if any should such remedies be exhausted before an aggrieved person can go to court? Should the national court or regional court (ECOWAS Court) have a sole jurisdiction or concurrent jurisdiction? Or even operates as an Appellate court as a final arbiter?

(b) Legal Transplant outside ECOWAS's Jurisdiction – are there any other code/instrument outside ECOWAS sub-region with such or similar outlook that this consultancy can draw from in energy project for gender balance? And if any, how should such legal transplant be made in such a way that it remains effective and viable in the ECOWAS sub-region given that laws and regulations are affected and influenced by many variables including but not limited to culture, social, economic and political considerations? (Bear in mind that law or regulation does not operate in isolation working best where some of these factors above are relatively functional).

(c) ECOWAS Judicial Implementation Organ: are there adequate mechanisms/resources in place to enforce or implement any decision or judgment emanating from ECOWAS Court with respect to gender issues in energy sector if enacted?

(d) Inter-agency collaborations – are these agencies (such as WAPP, ECREEE, ERERA, and PPDU) effectively structured to carry out their prospective regulatory roles? Should these agencies collaborate for effective regulatory performance and if so, what should be the limit of their collaborations? How should the regulatory regime be structured to ensure that there are no role conflicts (clash of interests) among these agencies in carrying out their mandated duties?

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<sup>7</sup> These are concerns raised by a legal practitioner. The consultant(s) will be required to take into consideration the issues raised and to address them.