



CALL FOR EXPRESSION OF INTEREST (EOI)

REQUEST FOR PROPOSALS

NUMBER: TJNA/ECONEWS/018/2021

Econews Africa (ENA) is a Pan-African research and advocacy organization based in Kenya that works to bridge the local, national, regional and global information gaps on development issues, in particular on trade and investments, the extractive industry and finance and development. Econews Africa undertakes training, advocacy, research, and community engagements on the three focus areas of trade and investments; extractive industry; and finance and development to not only bridge the knowledge gap but also increase citizens' actions on these issues.

Econews Africa, is inviting qualified companies/ Individuals to submit Proposals for **undertaking a Human Rights Impact Assessment of the Kenya-United States free trade agreement** as follows:

SECTION A: INFORMATION TO BIDDERS

1. RFP No.	TJNA/ECONEWS/018/2021
2. Issue Date	2 nd June 2021
3. Title	Undertaking a Human Rights Impact Assessment of the Kenya-United States free trade agreement.
4. Issuing Office & Email/Physical Address for Submission of Proposals	Tax Justice Network Africa P.O. Box 25112-00100 Nairobi, Kenya Tel: +254 728279368 Email: procurement@taxjusticeafrica.net Web: https://taxjusticeafrica.net/
5. Deadline for Receipt of Proposals.	14 th June 2021 at 5pm
6. Point of Contact on RFP issue	Attn: procurement@taxjusticeafrica.net
7. Point of Contact on TOR issues	Attn: info@econews-africa.org
8. Anticipated Award Type	<ul style="list-style-type: none"> • This award will be on Contract Agreement with a fixed transaction fee cost. • Issuance of this RFP in no way obligates TJNA to award a subcontract or purchase order and Bidders will not be reimbursed for any costs associated with the preparation of their quote.
9. Basis for Award	<ul style="list-style-type: none"> • An award will be made to the responsible bidder whose bid is responsive to the terms of the RFP and is most advantageous



	<p>to TJNA, considering price or/and other factors included in the RFP.</p> <ul style="list-style-type: none"> To be considered for award, bidders must meet the requirements identified in Section 12, “Determination of Responsibility”.
10. General Instructions to Bidders	<ul style="list-style-type: none"> Proposals must be received not later than 6th June 2021 at 5 pm. Late offers will be rejected except under extraordinary circumstances at TJNA’s discretion. Bidders shall submit quotes through email procurement@taxjusticeafrica.net quoting the Proposals Number. Proposals will be valid for one month. Bidders shall sign and date their Proposals.
11. Questions Regarding the RFP	<ul style="list-style-type: none"> Each Bidder is responsible for reading very carefully and understanding fully the terms and conditions of this RFP. All communications regarding this solicitation are to be made solely through the Issuing Office and must be submitted via email or in writing delivered to the Issuing Office no later than the date specified above. All questions received will be compiled and answered in writing and distributed to all interested Bidders.
12. Technical Specifications and requirements for Technical Acceptability	<ul style="list-style-type: none"> The winning bidder will provide a work schedule before commencement of the works.
13. Determination of Responsibility	<ul style="list-style-type: none"> TJNA will not enter into any type of agreement with a vendor prior to ensuring the vendor’s responsibility. When assessing a vendor’s responsibility, the following factors are taken into consideration: <ol style="list-style-type: none"> Provide copies of the required business Permits and licenses to operate. The source, origin and nationality of the services are not from a Prohibited Country (explained below). Ability to comply with required or proposed delivery or performance schedules.
14. Compliance with Terms and Conditions	<ul style="list-style-type: none"> Bidder shall be aware of the general terms and conditions for an award resulting from this RFP. The selected Bidder shall comply with all requirements mentioned in Annex 1
15. Procurement Ethics	<ul style="list-style-type: none"> By submitting Proposals, Bidders certify that they have not/will not attempt to bribe or make any payments to TJNA employees in return for preference. Any such practice constitutes an unethical, illegal, and corrupt practice.



SECTION B: TERMS OF REFERENCE

1.0 INTRODUCTION

1.1 About Econews

Econews Africa (ENA) is a Pan-African research and advocacy organization based in Kenya that works to bridge the local, national, regional and global information gaps on development issues, in particular on trade and investments, the extractive industry and finance and development. Econews Africa undertakes training, advocacy, research, and community engagements on the three focus areas of trade and investments; extractive industry; and finance and development to not only bridge the knowledge gap but also increase citizens' actions on these issues.

1.2 Background

In recent years there has been increasing demand for various actors to undertake Human Rights Impact Assessment (HRIAs) before adopting and implementing policies, projects, agreements and programs. The development of this tool is part of a growing effort by the human rights community to operationalize the relevance of human rights in various fields, including development, and thus to advance an understanding of the ways in which public policies and development projects affect the enjoyment of people's rights.

HRIAs provide a reasoned, supported and comprehensive answer to the question of "how does the project, policy or intervention affect human rights?" Their fundamental purpose is to help prevent negative effects and to maximize positive effects. As such, HRIAs are an indispensable part of making human rights considerations operational in a range of legal and policy contexts. They provide a framework for systematic human rights methodology and assist in advancing an understanding of the impact of a range of interventions on human rights and, conversely, of the multifaceted relevance of human rights to a broad spectrum of other sectors and spheres.

With regards to international trade and investment, free trade negotiations have been increasingly accompanied by demands to take greater account of human rights aspects because trade liberalisation does not automatically reduce poverty and improve standards of living in the countries involved. While liberalization of trade has often contributed to stimulating development and increasing prosperity, there are two main concerns associated with free trade agreements.

On the one hand, liberalisation of trade can lead to the displacement of local production, and thus cause unemployment and social problems. To cite one example from the sphere of agriculture, competition sharpened by free trade can increase rural unemployment, threaten the food security of the rural population and cause migration to the cities. If these risks have been assessed in advance, appropriate exceptions can be made for agriculture and/or appropriate transitional periods and accompanying measures agreed. It is the



responsibility of the state to fulfil its human rights obligations and take action to protect vulnerable groups, secure the food supply, improve social welfare, and so on. Trade agreements must not impinge upon the state's ability to do so.

The second central concern is that free trade agreements can excessively restrict governments' policy space and make it impossible for them to fulfil their human rights obligations. So, trade agreements must avoid generating a threat to state revenues, for example if import duties are suddenly lost.

In recent years, many countries including the European Union and the United States have already concluded free trade agreements containing clauses on sustainability and human rights backed up with instruments for impact assessment and monitoring. Kenya should not be exempt from such analysis. While there is no internationally agreed methodology for measuring the impacts of free trade agreements, some instruments such as the "Guiding Principles for Human Rights Impact Assessments for trade and investment agreements" developed in the UN context can guide the negotiating states in ensuring that they fulfil their duty to ensure that free trade agreements respect human rights and associated obligations.

Kenya is negotiating a comprehensive FTA with the United States. However, how the US-Kenya FTA will intersect with human rights, interests and obligations is unknown considering that no human rights impact study or sustainability study has been undertaken. Kenya's constitution guarantees a long list of economic, social and cultural rights. Further, Kenya has ratified numerous international and regional human rights instruments which will certainly intersect with the proposed FTA. It has also ratified a host of multilateral environmental treaties including the Convention on Biological Diversity, the Cartagena Protocol on Biosafety, the Vienna Convention for the Protection of the Ozone Layer, and the Montreal Protocol on Substances that Deplete the Ozone Layer. A human rights impact assessment of the Kenya-US FTA is therefore imperative so that international trade and investment agreements acceded to by the Kenyan government comply with human rights obligations and do not undermine human rights guaranteed under Kenya's Constitution as well as rights guaranteed under international, regional and domestic human rights instruments.

2.0 OBJECTIVE AND PURPOSE OF THIS STUDY

It is based on above background that Econews Africa seeks the services of highly qualified consultant to undertake a comprehensive ex-ante human rights impact assessment examining the potential economic, social, and environmental issues of the US-Kenya FTA currently under negotiation. It is expected that the assessment delves in a penetrative analysis of the intersection of trade and investment agreements with human rights from a broader perspective and then narrow down to; a) the impact of liberalizing agricultural sector through the US-Kenya FTA on the rights of small-holder farmers, vulnerable farmer



groups, regulatory space by County governments to deliver on their agricultural function and b) the impact of US-Kenya FTA on gender.

The outcome of the assessment will be extremely important and shall be used for dialogue and advocacy seeking to influence trade and investment agreements negotiations by Kenya government, support the realization of human rights for small holder farmers, ensure compliance with human rights interests and obligations guaranteed under Kenya's constitution, regional and internal human rights instruments. The outcome of this assessment will also help ensure that government does not make demands or concessions that will make it more difficult for government (national and county) or other party or parties, to comply with their human rights obligations and in particular to deliver on agriculture.

3.0 THE SCOPE OF WORK

- 1) Undertake a review and analysis of the international, regional and domestic legal human rights instruments that guarantee human rights and obligations in respect to trade and investment:
 - a) Carryout a broad assessment of selected international and regional instruments Kenya has ratified while exposing their intersection with trade and investment and how they guarantee respect, protection, and fulfilment of attendant rights
 - b) Thrush out any specific focus of such international and regional instruments with respect to agriculture
 - c) Undertake a comprehensive analysis of the Kenya's Constitution and establish how it intersects with trade and investment and specifically how it respects, protects, and seeks fulfilment of human rights in this respect
 - d) Undertake an analysis of human rights guarantees in the constitution with regard to agricultural sector and narrow further to small-holder farmers
 - e) Take a more focused look of Chapter Four of Kenya's constitution (Bill of Rights) and with respect to agriculture analyze the potential effects of US-Kenya FTA on the following:
 - Right to food
 - Land rights
 - Right to an adequate standard of living
 - Right to work and social security
 - Right to a clean and safe environment
 - Right to development
 - Public participation
 - Consumer rights



- f) Assess (if any or lack thereof) the explicit and implicit desire or spirit of the legal instruments (International, regional and Kenya's constitution) to ensure inclusivity and participation of the people including vulnerable groups in trade and investment decision making processes
- 2) Review and analyze one or two previous trade and investment agreement (s) involving the US with any other country preferably within the East Africa Community or in the African continent otherwise USMCA FTA will apply
 - a) Identify and analyze the specific safeguards, clauses and/or flexibilities included in such a trade and investment agreement to preserve the role of the state to effectively comply with human rights obligations
 - b) Comment about how the safeguards and flexibilities identified in (a) protect or undermine the agricultural sector, protect or undermine socio-economic rights of small holder farmers and foster gender empowerment/inclusion.
 - c) Find out the remedy mechanisms put in place to mitigate or address any (potential) adverse human rights resulting from the trade agreement
 - d) In view of insights from the previous trade and investment agreement involving the US and in view of the US-Kenya FTA negotiation objectives, draw the likely scenario for the US-Kenya trade agreement with respect to human rights safeguards and remedies
- 3) Determine the impact of liberalizing agricultural sector through the US-Kenya FTA on the
 - a) Small-holder farmers ability to access farm inputs
 - b) Access to markets
 - c) Regulatory space by County Governments to Deliver on their agricultural function and relevant attendant issues
- 4) Determine the potential human rights impacts including economic, social, and environmental risks associated with liberalizing agriculture under US-Kenya FTA on the most vulnerable groups such as:
 - a) small-holder farmers
 - b) women and women rights
 - c) youth and children
 - d) indigenous peoples
- 5) Examine the potential implications of a Kenya-U.S FTA on Kenya's domestic policy and regulatory space to ensure the protection of its citizens rights and livelihoods
- 6) Analyze the human rights implications of the Kenya-U.S FTA on regional agreements to which Kenya is party specifically focusing on the EAC and the AfCFTA
- 7) Generate recommendations and actionable policy suggestions towards addressing adverse and all human rights impacts that would be associated with the Kenya-U.S FTA.
- 8) The final analysis, report and action plan should:



- a) Pass the test of an inclusive process which is to say that this entire process should ensure vibrant stakeholders' participation
- b) Present key *ex-ante* human rights considerations and recommendations that can be used to inform ongoing negotiations of the US-Kenya FTA
- c) Give proposals suggesting ways human rights can be mainstreamed into Kenya's trade agreements and trade policy
- d) Identify what should be monitored and evaluated in the future (*ex-post*) not only to develop awareness of the human rights situation of vulnerable groups identified in the assessment, but also to appreciate the extent to which the HRIA's recommendations are considered
- e) Suggest which monitoring and evaluation mechanisms can best serve to provide ongoing evidence as to the evolving impact of the FTA

4.0 EXPECTED KEY DELIVERABLES

The expected key deliverables/milestones shall be as follows:

- a) Carry out a **preparatory consultation meeting** with Econews Africa to establish and agree on a limited number of valid and reliable human rights indicators to focus data collection that will demonstrate changes between the baseline and future enjoyment (or otherwise) of a right after the introduction of the new trade measure (US-Kenya FTA). The meeting will also be used to reach consensus on the assignment, accountabilities, and expected milestones
- b) **Inception report** indicating how the consultant proposes to carry out the tasks which include among others preliminary background analysis, proposed approach and methodologies, the rationale, the timelines, data sources and expected results.
- c) Undertake **inception workshop** with stakeholders for the consultant to discuss his/her inception report for stakeholders to sharpen the proposed approach and methodology.
- d) **Draft study report** supported by a slide-deck of key findings and recommendations.
- e) The **final study report**
- f) A **policy brief** articulating and isolating clear steps of action by Econews Africa, key policy actors and stakeholders (including county governments)

5.0 TIMEFRAME AND DELIVERABLES

It is expected that the study shall be undertaken for a period not exceeding 45 calendar days until the production and submission of the final report and policy brief. However, due to the current Covid-19 situation, we will discuss and agree on an appropriate implementation timeframe, with the selected consultant.



6.0 MINIMUM QUALIFICATIONS

Desired qualifications for the person undertaking the study whether individual consultant or on behalf of a firm are as follows:

- Demonstrable knowledge and experience of at least 10 years on regional and international trade issues
- Extensive experience and engagements in the field of human rights. Having undertaken HRIA will be an added advantage
- Practical experience in governance, private sector engagements and community development
- Minimum of an advanced degree in Economics, International Trade, Law, Sociology or equivalent and a good working experience in a policy research for public policy action
- An excellent communicator with strong English language, writing and presentation skills

7.0 EXPRESSION OF INTEREST

The interested consultants should submit an EOI and other required information and details through these two emails; procurement@taxjusticeafrica.net and info@econews-africa.org not later than **Monday 14th June 2021**. The application document should include:

- Cover letter expressing the consultant's (or company's) suitability for the assignment and contact details of the applicant
- A response to the ToR in the form of technical proposal of maximum 7 pages outlining proposed evaluation methodology to be used. The methodology must be alive to the contextual limitations in the phase of the Covid-19 global pandemic.
- Financial proposal with a budget breakdown
- CV of consultants' explicitly detailing experience in the relevant areas including two referees.
- A list of previous evaluation works (and who commissioned it)
- Two samples of relevant work previously undertaken