Terms of Reference for a Safeguard Consultancy

<table>
<thead>
<tr>
<th>Location:</th>
<th>Home Based, with mission travel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Contract:</td>
<td>Individual Contract</td>
</tr>
<tr>
<td>Languages Required:</td>
<td>English</td>
</tr>
<tr>
<td>Duration of Initial</td>
<td></td>
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<tr>
<td>Contract:</td>
<td></td>
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<tr>
<td>Expected duration of</td>
<td>3 months</td>
</tr>
<tr>
<td>assignment:</td>
<td></td>
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<tr>
<td>Supervisor(s):</td>
<td>Project Coordinator</td>
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Background:

1. Background

1.1 The Orange Senqu River Commission (ORASECOM)

The Orange-Senqu River originates in the Lesotho Highlands, from where it flows westwards to its mouth at Alexander Bay/Oranjemund on the Atlantic West Coast. The river basin is the third largest in Southern Africa, after the Zambezi and the Congo, covering a total area of 1,000,000 km$^2$ of which almost 600,000 km$^2$ is inside the Republic of South Africa. Four countries – Botswana, Lesotho, Namibia and South Africa - share the Basin, and the river forms the border between South Africa and Namibia at its lower reaches.

Lesotho, the upstream country falls entirely within the basin and contributes over 40% of the stream flow from only 3.4% of the total basin area but is one of the smallest users of water from the basin. South Africa is by far the biggest user of water from the Orange-Senqu River Basin, and this use drives the economic heartland of South Africa. The Botswana part of the Basin is entirely covered by the Kalahari Desert with very little surface runoff, but groundwater contributes to the water demands in this portion of the basin.

The water requirements in the lower reaches of the river are driven primarily by irrigation demands from both Namibia and South Africa, and the need to maintain environmental flows to the estuary. As the most downstream portion of a heavily used basin, water resources quality in this stretch is a concern. Similarly, the middle and lower reaches of the river are subject to periodic and often devastating floods.
The Orange River estuary is ranked as one of the most important wetland systems in Southern Africa but has experienced environmental degradation. This wetland system was re-designated as a Ramsar Site, but because of its threatened status it was placed on Montreux Record in 1995.

The effective management of the Orange-Senqu River Basin is, therefore, particularly complex, but is also vital to the economy of the region. As a result, the riparian States prioritised this basin for the establishment of a Shared Watercourse Institution under the revised Southern African Development Community (SADC) Revised Protocol on Shared Watercourses. ORASECOM was one of the first of the Shared Watercourses Institutions to be established in SADC.

ORASECOM is an advisory body, issuing recommendations to its Member States (The Parties) aimed at optimizing the development and management of the water resources of the Orange-Senqu River Basin for the benefit of all the people in the Parties.

1.2 The ORASECOM Agreement

The Agreement establishes Council as a technical advisor to the Parties on matters relating to the development, utilization, and conservation of the water resources in the River System. The Parties may also assign other functions pertaining to the development and utilisation of water resources to the Commission. Article 5 of the Agreement empowers Council to take all measures to make recommendations on *inter alia*; water availability in the basin, equitable and reasonable sharing of water, studies on the development of the River System, the extent to which stakeholders should be involved in management of the system, the prevention of pollution and the control of aquatic weeds, and plans for emergency situations.

All recommendations provided by Council to Parties must be contained in a report, signed by the leader of each Delegation. These reports must also include estimates of the cost of implementing the recommendation and may suggest how these costs may be apportioned between the Parties. Recommendations to Parties must therefore not only indicate what must be done, but also how it must be done.

1.3 The ORASECOM UNDP-GEF Project to support the Strategic Action Programme Implementation

ORASECOM, with support from UNDP, managed to secure further financial support from GEF to implement selected priority activities of SAP. The UNDP-GEF project titled, Support to the Orange-Senqu River Strategic Action Programme Implementation, will be implemented by UNDP and executed by ORASECOM in the next 5 years to support ORASECOM and its member states to implement SAP. The project has been built on the Transboundary Diagnostic Analysis (TDA) which has carried out the necessary causal chain analyses in order to identify the transboundary threats to the sustainable development and management of the water resources of the Orange-Senqu Basin. Having identified and understood the threats and their causes, it was possible to identify the barriers which are preventing the removal of
these threats, so that sustainable development/management of the basins water and related resources can proceed.

The overall objective of the SAP Implementation project is the strengthening of joint management capacity for implementation of the basin-wide IWRM Plan and demonstrating environmental and socioeconomic benefits of ecosystem-based approach to water resources management through the implementation of SAP priority actions in the Orange-Senqu River basin.

In terms of demonstration sites, the project will set up the project will have the following:

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>OUTCOME/OUTPUT</th>
<th>DEMONSTRATION SITE</th>
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<tbody>
<tr>
<td>Botswana</td>
<td>Outcome 2.3: Quantity and quality of groundwater resources determined, and low-cost groundwater desalination plants piloted in Botswana</td>
<td>Demonstration sites will be set up in Botswana to pilot water resource quality monitoring system (to pilot low cost groundwater desalination)</td>
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<tr>
<td>Lesotho</td>
<td>Outcome 2.2: Point source pollution in Lower Mohokare Catchment reduced and improved industry standards implemented.</td>
<td>The demonstration site will be set up in Lesotho in lower Mahokare to pilot a water resource quality monitoring system (to monitor the effects of the textile industry as a source of water pollution)</td>
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<tr>
<td>Namibia</td>
<td>OUTCOME 4.1: Invasive species controlled through integrated management in pilot areas in the Orange–Fish River basin and livelihood options based on invasive species control developed</td>
<td>Invasive species control sites will be set in pilot areas in the Orange–Fish River so as to undertake integrated management in the basin with application of livelihood options based in he control of invasive species(Prosopsi).</td>
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<tr>
<td>South Africa/Namibia</td>
<td>Outcome 3.2: Critical ecosystem</td>
<td>Rehabilitation of the River mouth based on the Draft</td>
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of the Orange-Senqu River Mouth rehabilitated and sustainably managed | Orange River mouth Ramsar site Strategic Estuarine management plan (oct 2015) linked to outcome 3:

2. Purpose of the study:
The purpose of this study is to facilitate undertaking of Social and Environmental Screening Process at each of the demonstration sites as required for every UNDP Project. The Social and Environmental Standards (SES) underpin UNDP’s support sustainable development. The objectives of the standards are to:

- Strengthen the social and environmental outcomes of Programmes and Projects
- Avoid adverse impacts to people and the environment
- Minimize, mitigate, and manage adverse impacts where avoidance is not possible
- Strengthen UNDP and partner capacities for managing social and environmental risks
- Ensure full and effective stakeholder engagement, including through a mechanism to respond to complaints from project-affected people

A key mechanism to ensure these standards are applied is through UNDP’s project-level Social and Environmental Screening Procedure (SESP), which is a requirement for all proposed projects. The objectives of the SESP are to: (a) integrate the SES Overarching Principles (human rights, gender equality and environmental sustainability); (b) identify potential social and environmental risks and their significance; (c) determine the Project’s SES risk category (Low, Moderate, High); and (d) determine the level of assessment and management required to address potential social and environmental risks and impacts. All guidance on UNDPS Social and Environmental Safeguards can be found in the SES Toolkit.

3. Scope of the assignment:
UNDP seeks the service of a consultant with experience in Free, Prior and Informed Consent (FPIC) to support the ORASECOM SAP project. The focus of the support will be on ensuring compliance with UNDP’s SESP, as detailed below and the work will include 4 missions (one to each of the 4 Demonstration sites the 4 member states during the course of the assignment. Mission dates will need to be agreed in advance with the UNDP GEF ORASECOM SAP Implementation Project and with the relevant UNDP Regional Technical Advisor.

Outputs:
The consultant will be responsible for the following outputs and related activities:

- **Output 1**: Coordination with and support to the Project Manager.
- Review the SESP in the ProDoc.
- Agree to a project-specific detailed safeguards approach, workplan and mission schedule with the UNDP Country Office, UNDP-GEF Regional Technical Adviser and the Project Manager – including the application of Free, Prior and Informed Consent (FPIC) in the relevant project sites.
- Familiarize the project management unit (PMU) with UNDP’s SES and specific requirements.
- **Time Estimate:** 4 working days

**Output 2:** Targeted environmental and social assessment(s) with support from the PMU, as agreed in Output 1.
- Assist and/or advise the PMU in documenting and initiating the FPIC process, in the relevant sites required.
- Conduct required assessment(s).
- Deliver brief assessment report(s), to be used as the basis for the management plan(s).
- **Time Estimate:** 20-30 working days (mission included)

**Output 3:** Drafts of the required management plan(s) for the project, including:
- Indigenous Peoples / Ethnic Minorities Plan in line with UNDP’s Guidance Note on Standard 6 (confirmed; see annex to this TOR)
- Updated Stakeholder Engagement Plan (confirmed)
- Updated Gender Action Plan (confirmed)
- Site-specific ESMPs and/or stand-alone management plans, in line with (to be confirmed during Outputs 1 and 2)
- **Time Estimate:** 20-30 working days (depending on the need for site-specific ESMPs)

**Output 4:** Final management plan(s) and training to PMU.
- Support the mandatory disclosure process for draft management plans.
- Finalize the management plan(s) based on feedback received during disclosure period.
- Train and advise PMU on the implementation of the plan(s).
- **Time Estimate:** 6 working days

All outputs must fulfill UNDP’s SES requirements as described in UNDP’s Guidance Note on Assessment and Management and other resources in the SES Toolkit.

4. **Duration of the Work:**
The maximum number of days under this assignment is **70 working days** to be worked over a 4 months period from 1st March 2020. This includes 30 home-based days, 30 days on mission, and 10 travel days.

5. **Qualifications:**
   - **Education:** Master’s degree in field related to international development, environmental science, anthropology or similar field.
   - **Experience:**
- At least 5 years of experience related to social and environmental impact assessment in southern Africa.
- Professional or academic / or 5 years of experience related to Free, Prior and Informed Consent (FPIC).
- Professional or academic / or 5 years of experience with the San or any other marginalized people is an advantage.

- **Language:** Fluency in English.

### 6. Submission:
Electronic Technical and Financial proposals should be submitted with a subject line clearly titled: "Safeguard Consultancy” through email to Ms Naume Kupe, (naume.kupe@orasecom.org) with a copy to communication.orasecom@gmail.com and info@orasecom.org no later than 1600hrs on Monday 20th January 2020.

Requests for clarifications should be emailed (preferred mode of communication) to the above contacts, mobile +27 83697 4059, no later than 1600hrs on Monday 13th January 2020.
Annex: Indicative Outline of an Indigenous Peoples Plan

UNDP Social and Environmental Standards:
Indigenous Peoples Plan – Indicative Outline

Please refer to the UNDP SES Guidance Note: Standard 6: Indigenous Peoples for additional information.

If the proposed Project may affect the rights, lands, resources or territories of indigenous peoples, an "Indigenous Peoples Plan" (IPP) needs to be elaborated and included in the Project documentation. The IPP is to be elaborated and implemented in a manner consistent with the UNDP Social and Environmental Standards and have a level of detail proportional to the complexity of the nature and scale of the proposed Project and its potential impacts on indigenous peoples and their lands, resources and territories. With the effective and meaningful participation of the affected peoples, the IPP shall be elaborated and contain provisions addressing, at a minimum, the substantive aspects of the following outline:

A. Executive Summary of the Indigenous Peoples Plan: Concisely describes the critical facts, significant findings, and recommended actions

B. Description of the Project: General description of the project, the project area, and components/activities that may lead to impacts on indigenous peoples

C. Description of Indigenous Peoples: A description of affected indigenous people(s) and their locations, including:
   i. description of the community or communities constituting the affected peoples (e.g. names, ethnicities, dialects, estimated numbers, etc.);
   ii. description of the resources, lands and territories to be affected and the affected peoples connections/relationship with those resources, lands, and territories; and
   iii. an identification of any vulnerable groups within the affected peoples (e.g. uncontacted and voluntary isolated peoples, women and girls, the disabled and elderly, others).

D. Summary of Substantive Rights and Legal Framework: A description of the substantive rights of indigenous peoples and the applicable legal framework, including:
   i. An analysis of applicable domestic and international laws affirming and protecting the rights of indigenous peoples (include general assessment of government implementation of the same).
   ii. Analysis as to whether the Project involves activities that are contingent on establishing legally recognized rights to lands, resources, or territories that indigenous peoples have traditionally owned, occupied or otherwise used or acquired. Where such contingency exists (see Standard 6 Guidance Note, sections 6 & 7), include:
      a. identification of the steps and associated timetable for achieving legal recognition of such ownership, occupation, or usage with the support of the relevant authority, including the manner in which delimitation, demarcation, and titling shall respect the customs, traditions, norms, values, land tenure systems and effective and meaningful participation of the affected peoples, with legal recognition granted to titles with the full, free prior and informed consent of the affected peoples; and
      b. list of the activities that are prohibited until the delimitation, demarcation and titling is completed.
   iii. Analysis whether the Project involves activities that are contingent on the recognition of the juridical personality of the affected Indigenous Peoples. Where such contingency exists (see Standard 6 Guidance Note, section 7):
      a. identification of the steps and associated timetables for achieving such recognition with the support of the relevant authority, with the full and effective participation and consent of affected indigenous peoples; and
      b. list of the activities that are prohibited until the recognition is achieved.

E. Summary of Social and Environmental Assessment and Mitigation Measures
   i. A summary of the findings and recommendations of the required prior social and environmental impact studies (e.g. limited assessment, ESIA, SESA, as applicable) – specifically those related to indigenous peoples, their rights,
lands, resources and territories. This should include the manner in which the affected indigenous peoples participated in such study and their views on the participation mechanisms, the findings and recommendations.

ii. Where potential risks and adverse impacts to indigenous peoples, their lands, resources and territories are identified, the details and associated timelines for the planned measures to avoid, minimize, mitigate, or compensate for these adverse effects. Identification of special measures to promote and protect the rights and interests of the indigenous peoples including compliance with the affected peoples’ internal norms and customs.

iii. If the Project will result in the relocation of indigenous peoples from their lands and territories, a description of the consultation and FPIC process leading to the resulting agreement on relocation and just and fair compensation, including the possibility of return.

iv. A description of measures to protect traditional knowledge and cultural heritage in the event that the Project will result in the documentation and/or use and appropriation of such knowledge and heritage of the indigenous peoples and the steps to ensure FPIC before doing so.

F. Participation, Consultation, and FPIC Processes

i. A summary of results of the culturally appropriate consultation and, where required, FPIC processes undertaken with the affected peoples’ which led to the indigenous peoples’ support for the Project.

ii. A description of the mechanisms to conduct iterative consultation and consent processes throughout implementation of the Project. Identify particular Project activities and circumstances that shall require consultation and FPIC (consistent with section 4 of the Standard 6 Guidance Note).

G. Appropriate Benefits: An identification of the measures to be taken to ensure that indigenous peoples receive equitable social and economic benefits that are culturally appropriate, including a description of the consultation and consent processes that lead to the determined benefit sharing arrangements.

H. Capacity support

i. Description of Project activities aimed at increasing capacity within the government and/or the affected indigenous peoples, and facilitating exchanges, awareness, and cooperation between the two.

ii. Description of measures to support social, legal, technical capabilities of indigenous peoples’ organizations in the project area to enable them to better represent the affected indigenous peoples more effectively.

iii. Where appropriate and requested, description of steps to support technical and legal capabilities of relevant government institutions to strengthen compliance with the country’s duties and obligations under international law with respect to the rights of indigenous peoples.

I. Grievance Redress: A description of the procedures available to address grievances brought by the affected indigenous peoples arising from Project implementation, including the remedies available, how the grievance mechanisms take into account indigenous peoples’ customary laws and dispute resolution processes, as well as the effective capacity of indigenous peoples under national laws to denounce violations and secure remedies for the same in domestic courts and administrative processes.

J. Monitoring, Reporting, Evaluation

i. Mechanisms and benchmarks appropriate to the Project for transparent, participatory joint monitoring, evaluating, and reporting, including a description of how the affected indigenous peoples are involved.

ii. Define the mechanisms put in place to allow for periodic review and revision of the IPP in the event that new Project circumstances warrant modifications developed through consultation and consent processes with the affected indigenous peoples.

K. Institutional Arrangements: Describes institutional arrangement responsibilities and mechanisms for carrying out the measures contained in the IPP, including participatory mechanisms of affected indigenous peoples. Describes role of independent, impartial entities to audit, conduct social and environmental assessments as required, and/or to conduct oversight of the project.

L. Budget and Financing: An appropriately costed plan, with itemized budget sufficient to satisfactorily undertake the activities described.

Note: The IPP will be implemented as part of Project implementation. However, in no case shall Project activities that may adversely affect indigenous peoples – including the existence, value, use or enjoyment of their lands, resources or territories – take place before the corresponding activities in the IPP are implemented. The relationship between the implementation of
specific IPP measures and the permitted commencement of distinct Project activities shall be detailed within the IPP to allow for transparent benchmarks and accountability.

Where other Project documents already develop and address issues listed in the above sections, citation to the relevant document(s) shall suffice.