

Terms of Reference – Senior Alternative Dispute Resolution Expert to Support the Drafting of the Philippine Alternative Dispute Resolution Code

**Required expert:
One (1) Senior Alternative Dispute Resolution Expert**

Purpose

The specialist contractor terms of reference (ToR) is a document that sets out the specialist contractor's contribution to the task. The template is designed to set out the aims of the task and what the contractor is responsible for in order to achieve those aims.

Document owner	British Council
Document authors	Carolyn Mercado
Current version	Version 1.0
Issue date	24 August 2023
Project reference	Governance in Justice II Programme
File location	

Consultancy role title:

Location: Philippines

Apply by: 30 September 2023; 11:59 PM Manila time

1. Background and context about the project

A. Overview of the British Council

We support peace and prosperity by building connections, understanding, and trust between people in the UK and countries worldwide.

We uniquely combine the UK's deep expertise in arts and culture, education, and the English language, our global presence and relationships in over 100 countries, our unparalleled access to young people and influencers, and our creative sparkle.

We work directly with individuals to help them gain the skills, confidence, and connections to transform their lives and shape a better world in partnership with the UK. We support them to build networks and

explore creative ideas, to learn English, to get a high-quality education and to gain internationally recognised qualifications.

We work with governments and our partners in the education, English language and cultural sectors, in the UK and globally. Working together we make a bigger difference, creating benefit for millions of people all over the world.

We work with people in over 200 countries and territories and are on the ground in more than 100 countries. In 2021–22 we reached 650 million people.

B. Background to the Programme

The Government of the Republic of the Philippines with the support of the European Union is implementing the Justice Sector Reform Programme: Governance in Justice II (GOJUST II). GOJUST II builds on and continues the work of the predecessor programme, GOJUST that was implemented from April 2016 to September 2020. GOJUST II is implemented in joint co-financing with the Spanish Agency for International Development Cooperation. The overall objective of GOJUST is *to contribute to inclusive and sustainable socio-economic development through improved access to justice for all in the Philippines. Specifically, it aims to develop more responsive and accountable justice services.* It includes two components focusing on justice and human rights, respectively. The programme is being implemented from December 2020 to June 2025.

GOJUST II seeks to achieve four major result areas, as follows:

- | | |
|----------|---|
| Result 1 | Justice sector coordination mechanisms are improved |
| Result 2 | Strengthened institutional efficiency and effectiveness in the delivery of justice services |
| Result 3 | Increased access to the justice system for vulnerable groups, including women |
| Result 4 | Justice policy and practice is informed by evidence and responds to justice needs |

Justice and Human Rights policies are at the heart of the Philippine Development Plan 2017-2022, which for the first time includes a dedicated chapter on justice, chapter 6, titled “Pursuing Swift and Fair Administration of Justice”. The chapter enshrines the principle of coordination as a mechanism for bringing about long term and sustainable justice sector reform. The focus is on the enhancement of “civil, criminal, commercial and administrative justice” and the improvement of sector efficiency and accountability while also directing the Commission on Human Rights (CHR) to intensify its efforts to facilitate access to justice by improving, monitoring and evaluation, empowering the people living in poor and marginalised situations to seek response and remedies for injustice, improving legal protection, awareness and aid, enhancing civil society and parliamentary oversight, addressing human rights violations in the justice sector and, strengthening linkages between formal and informal justice providers.

The justice component will continue and expand some previous GOJUST activities such as improved coordination between and within the justice sector agencies and case management automation interventions to strengthen capacities to decongest overburdened courts, prosecution offices, and reducing pre-trial detention. GOJUST II will also focus on new result areas such as increased access to justice for vulnerable groups and evidence-based policy research and advocacy to inform policy making for improved justice outcomes.

The programme is managed by a Programme Steering Committee (PSC) headed by representatives of the Supreme Court, Department of the Interior and Local Government, and the Department of Justice. A Programme Director has also been appointed to be the main focal point and point of coordination for the smooth implementation of the programme.

In line with the Direct Management component of the Financing Agreement, a Pillar-Assessed Contribution Agreement (ACA/2020/ 418-821) for the provision of *Technical Assistance for the Justice Sector Reform Programme: Governance in Justice II (GOJUST II)* was awarded to the **British Council** on 7 December 2020 for a period of implementation of 54 months. The PACA contract requires the provision of a Technical Assistance Team consisting of four (4) key experts that will be responsible for the four (4) result areas (justice sector coordination, effective institutions of justice, access to justice by the disadvantaged groups, and evidence-based policy research). In addition, the contract also includes the provision of 3,200 working days of non-key experts that will support the work of the key experts in the delivery of results under the programme.

2. About the role of the specialist contractors

In 2022, GOJUST II supported the Office of the Alternative Dispute Resolution (OADR) in the development of a policy and governance framework for the office. The study serves as a comprehensive reference document for the ADR governance framework in the country, with case studies on particular government ADR policies and programmes as well as concerns about ADR in the private sector. A significant portion of the study reviewed the current legal and institutional framework of ADR, particularly for the executive branch vis-à-vis the Barangay Justice System. Among the results of the study are proposed amendments to the current ADR Act taking into consideration the consultations undertaken in the course of the study and earlier outputs of various technical working groups for the amendment of the ADR Act.

The current legal framework, composed of different governing laws and other legal/policy instruments issued across the span of several decades, is incoherent, fragmented, and partly outdated. At the core of these are the following, apart from other laws involving or requiring the use of ADR:

1. Republic Act No. 876 (Arbitration Law of 1953)
2. Presidential Decree No. 242 (intra-government disputes) and its 2015 Department of Justice-Office of the Solicitor General-Office of the Government Corporate Counsel Uniform Rules
3. *Katarungang Pambarangay* under the Local Government Code of 1991
4. Republic Act No. 9285 (ADR Act of 2004) and its 2009 Implementing Rules and Regulations
5. Executive Orders No. 523 (2006) and 97 (2012) (ADR in Executive Branch)
6. Executive Order No. 78, s. 2012 (ADR in Public-Private Partnerships contracts)
7. Department of Justice Circular No. 49, s. 2012 (ADR accreditation and training standards)

Further, as pointed out by the GOJUST II study, the following key areas of concerns can be addressed by updating and harmonising the legal framework via an ADR Code:

1. Mandating and mainstreaming ADR in the public sector
2. Inclusive and efficient resolution of intra-government disputes
3. Judicial recognition and enforcement of emergency interim measures
4. Quality and ethical standards for ADR providers and practitioners
5. Inclusive and gender-sensitive/responsive use and practice of ADR
6. Recognising online dispute resolution as among the modes of ADR
7. Adoption of the 2006 amendments to the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, 2019 UN Convention on international settlement agreements form mediation, and other relevant frameworks

This Mission aims to continue support to the Office of the Alternative Dispute Resolution (OADR) in the drafting of the Philippine ADR Code.

Global Objective

The over-all objective of this mission is to support the drafting of the Philippine Alternative Dispute Resolution Code for submission to the Philippine Congress.

Specific Objectives

Specifically, the non-key expert is expected to achieve the following objectives:

1. Examine the current ADR legal framework, standards, available research, studies and information/data both at the domestic and international levels, taking into consideration the previous GOJUST II OADR Governance Framework study, including gender equality and social inclusion (GESI) considerations.
2. Engage and consult the key public and private sector stakeholders in developing the Philippine ADR Code, including stakeholders with insights into gender and other aspects of inclusion.
3. Develop and draft the Philippine ADR Code with an updated and harmonised legal framework on the use, promotion, and development of ADR throughout the country.

Outcome and outputs

The **scope of work** of the expert shall include leadership and support for the following activities, among others:

- a. A kick-off meeting and discussion with the GOJUST Technical Assistance Team (TAT) on the scope of the assignment
- b. A kick-off meeting with the DOJ, OADR, and relevant ADR offices, both public and private
- c. Conduct of consultation meetings with relevant key ADR stakeholders from both the public and private sectors
- d. Drafting of a Workplan and Inception Report, to include the following:
 - Project design, including scoping and initial consultations/engagements with the OADR and GOJUST II team
 - Further examination of ADR-related laws and other legal/policy instruments, including results of the ADR Policy and Governance Framework Study under GOJUST II and other available information, research, studies, and reports
 - Formulation of the initial proposed draft of the ADR Code based on the current legal/policy framework, existing research/studies and available information and international standards and best practices with GESI considerations
 - Key stakeholder engagements/consultations, to include women and other marginalised individuals, in collaboration with the OADR by way of a forum, workshop, focus group discussion, and/or informant interview, as appropriate, and subject to available time and resources
 - Updating and finalising the draft ADR Code taking into consideration the inputs from stakeholders
- e. Presentation and formal turnover of the full project report and draft ADR Code to the OADR, DOJ, and key stakeholders
- f. Submission/endorsement of the draft Bill to the House of Representatives and the Senate, and participation in the legislative process

The **output** of this engagement includes the following:

- a. A workplan and an Inception Report that will include the approach and methodology for the consultation and drafting of the Philippine ADR Code, among other outputs, for submission to the TAT no later than 5 days after the commencement of the assignment

- b. A Mid-term Report on the consultations conducted and a draft ADR Code
- c. A Final Mission Report, structured as follows:
 - Executive Summary
 - Introduction and Background
 - Draft Philippine ADR Code
 - Plans for submission to and lobbying with Congress
 - Relevant annexes including the following:
 - A presentation ready, summary slide deck of the objectives, support provided, outputs and outcomes, and further recommendations for future consideration by the OADR
 - A presentation and discussion of the slide deck with the GOJUST team
 - A written report, containing the highlights of the consultations and the draft Philippine ADR Code, including recommendations for filing, and working with Congress for approval into law
 - List of persons and institutions consulted

All reports and correspondence must be in English.

All reports must be submitted by the expert electronically in the format provided at the start of the mission. Comments by the Technical Assistance Team and key stakeholders on the various reports, will be provided to the experts as soon as possible. Draft final reports must be submitted before the debriefing by the experts to the Technical Assistance Team.

Indicative Activities and Number of Days Required

Expertise required and number of days needed

Number of Position/s	Designation	Type of Expertise	Duration (months)
1	Senior Non-Key Expert	Alternative Dispute Resolution Expert	40 days intermittent

For guidance of suppliers, the indicative activities for the assignment are the following:

ACTIVITIES	Day
Kick-Off Meeting	1
Draft Workplan and Inception Report	2
Desk Review	3
Consultation meetings with key public and private ADR stakeholders	25
Drafting of the Bill	5
Presentation of Draft Bill for Comments/Validation	1
Finalisation of Draft Bill and Report (Including Plan for Advocacy/Campaign)	2

ACTIVITIES	Day
Presentation of final report to the TAT and key officials of the DOJ and OADR	1
Total Days	40

3. Timeline

Activity	Date / time
TOR is posted	31 August 2023
Deadline for clarification questions (Clarification Deadline)	07 September 2023
British Council to respond to clarification questions	14 September 2023
Deadline for submission of Proposals by potential suppliers (Response Deadline)	30 September 2023; 11:59 PM Manila time
Final Decision	06 October 2023
Contract concluded with winning supplier	20 October 2023
Contract start date	23 October 2023 A maximum of 40 days

4. Fee & expenses

Please submit a Pricing Approach using the template in Annex 1.

5. Reporting and communication

The NKE will be under the supervision of the Technical Assistance Team.

The expert will be required to provide the Services in **the Philippines** and such other locations as may be agreed between the parties in writing from time to time.

All working days for preparatory work, comprehensive desk review and report writing are foreseen to be performed by the expert from his/her home base, i.e., at his/her usual place of residence, both at the initial stages of the mission and later on during the whole assignment.

6. Qualifications and experience required

Skills and Competencies

The expert should have the following **skills and competencies**:

- Fluent in spoken and written English
- Excellent research and analytical competence, and detail oriented

- Can work effectively in a team organisational environment
- Excellent interpersonal skills
- Active listening skills and strong writing skills
- Excellent ability to coordinate and communicate with key stakeholders

Qualifications

- Advanced degree in law or other relevant degrees or equivalent in experience
- Proven high-level knowledge and skills in ADR (private or government ADR)
- Strong analytical skills as demonstrated by a strong relevant track record in ADR practice

General Professional Experience

- Minimum of 10 years of relevant experience in the ADR private or public sector
- Sufficient familiarity and knowledge of ADR stakeholders, whether private or public
- Experience in handling ADR cases, whether public or private

Specific Professional Experience

- Broad and deep knowledge of ADR
- Proven experience in ADR in the public or private sector or development sector
- Extensive work experience and proven professional record in ADR practice

7. How to apply

Send your cover letter and CV to Lalaine.Alfaro@britishcouncil.org by 30 September 2023; 11:59 PM Manila time.

8. Criteria for evaluation

Criteria	Weighting
Qualifications and skills	25%
General professional experience	25%
Specific professional experience	30%
Pricing Approach	20%