

# Call for Proposals – Review & Analysis of International Good Practice on Human Rights-Compliant Sexual Offences Laws



## Terms of Reference

*Research and drafting of a comprehensive international review and analysis of good practice standards for and models of human rights-compliant legislation on sexual offences, in particular to ensure they do not discriminate against women and girls or LGBT people.*

**Deadline for applications: Sunday 16 September 2018 at 23:59 (UTC/GMT +1)**

### I. The Equality & Justice Alliance

#### A) Introduction

During the Commonwealth Heads of Government Meeting in London in April 2018, UK Prime Minister Theresa May announced that as Chair-in-Office of the Commonwealth the UK would support Commonwealth governments that want to reform their laws that discriminate against women and girls and lesbian, gay, bisexual and transgender (LGBT) people, many of which are a colonial legacy. Mrs May acknowledged such laws were wrong then and are wrong now.

The Equality & Justice Alliance (the Alliance) was formed to provide part of this support, with funding from the UK Foreign and Commonwealth Office. It is a consortium of international organisations with expertise in advancing equality, addressing the structural causes of discrimination and violence, and increasing protection to enable strong and fair societies for all Commonwealth citizens, regardless of sex, gender, sexual orientation or gender identity. The Alliance will work with a range of stakeholders – governments, policy-makers, political leaders and civil society – to help chart the path to reform towards effective laws that protect all citizens from discrimination, violence and abuse.

The programme runs for two years, from 1 April 2018 to 31 March 2020. It has three main outcomes:

1. Support Commonwealth civil society organisations to work intersectionally and conduct advocacy to engage with the legislative and policy process;
2. Convene a series of regional dialogues to build a better understanding of international standards and best practice,

strengthen policy exchanges between civil society, officials and experts and to highlight the benefits of legal reform;

3. Develop and deliver a range of legal and policy research, tools and technical legal assistance and expertise to Commonwealth governments seeking to reform discriminatory laws, combat violence against women and girls, eliminate hate crimes and increase access to justice.

## **B) Members**

The members of the Alliance are The Human Dignity Trust, Kaleidoscope Trust, The Royal Commonwealth Society and Sisters for Change. Together these organisations bring expertise in law, diplomatic convenings and civil society strengthening to promote equality for and eliminate discrimination and violence against women and girls and LGBT people.

## **C) The Human Dignity Trust**

The Human Dignity Trust (the Trust) is a legal charity based in London, UK that supports local lawyers and human rights defenders to uphold human rights and constitutional law in countries where private, consensual sexual conduct between adults of the same sex is criminalised. The assignment under this Terms of Reference is managed directly by the Trust on behalf of the Alliance.

In 2014 – recognising the intersecting nature of sexual offences laws and the differing ways in which their colonial-era models act to undermine the equality of various groups and fail to adequately protect victims of violence, as well as the prospects presented by wholesale rather than piecemeal updating of such laws – the Trust began working on an analysis of pan-Commonwealth sexual offences and related laws (sometimes referred to as offences against the person), with a focus on the ways in which they discriminate against LGBT people, women, children and people with disabilities. In April 2017, the Trust finalised a detailed report analysing the sexual offences laws of 36 Commonwealth countries. The analysis explores laws ranging from the criminalisation of LGBT people to laws on rape and sexual assault, marital rape, ages of consent, minimum ages of marriage, child exploitation, sexual harassment and several other categories of laws. A revised internal report that expands that research across all 53 Commonwealth countries is currently being finalised. The Trust will share with the retained Consultant(s) existing research materials.

The assignment in these Terms of Reference will build directly on these extensive analyses and will form the next phase of work, specifically to consider options, models and good practice in sexual offences law reform

to better protect key marginalised groups with a focus on LGBT and women and girls.

As a founding member of the Alliance, the Trust is responsible for delivering part of the third outcome noted above, namely technical legal research and assistance on legislative reform, by providing a range of legal and policy research, tools and technical legal assistance and expertise to Commonwealth governments seeking to reform discriminatory laws, combat violence against women and girls, eliminate hate crimes and increase access to justice.

The Trust's current priority is to commission key pieces of thematic research, such as the one contemplated by these Terms of Reference, that will feed into all other technical legal assistance within this third outcome of the programme, as well as into other outcomes being delivered by other Alliance partners.

## II. Background and purpose of the assignment

As listed above, one of the outcomes of the Alliance's programme is to develop and deliver expert technical assistance to Commonwealth governments and other state stakeholders seeking to reform laws or policies, which discriminate against or fail to protect women, girls and LGBT people, such as sexual offences laws, laws combating violence against women and girls, and laws to protect against crimes motivated by bias against people on the basis of their sexual orientation or gender identity. This outcome includes, among others, the preparation of thematic and country level research papers to aid in the design and implementation of law reform efforts in selected Commonwealth countries. One key area of law, on which this Terms of Reference is exclusively focused, is **sexual offences laws**.

In many cases the sexual offences laws across the Commonwealth are, to a large extent, legacies of the British Empire. While these laws have long since been amended, updated or repealed in the UK, they remain on the statute books in many of the former colonies, despite the subsequent enactment of modern Constitutions and ratification of international human rights treaties with which many of these laws do not comply.

In some countries, sexual offences laws have been updated to reflect international norms and good practice. On occasion, such change has been effected through targeted reform of specific provisions and, in other cases, through a wholesale re-writing of the sexual offences legislation. In some cases, this has been driven by political leadership and in other cases it resulted from judicial decisions or other domestic and international pressure.

As a member of the Alliance, the Trust is seeking to recruit a consultant or team of consultants to conduct research and produce a high-quality comprehensive report (to be published by the Alliance) on international good practice on human rights-compliant legislation on sexual offences, in particular to ensure it does not discriminate against women and girls or LGBT people. With direct reference to the comprehensive report prepared by the Trust on the range of human rights issues presented by existing (often colonial-era) sexual offences laws around the Commonwealth, including for instance different legal provisions and sentencing for rape committed against female versus male victims, exemptions for marital rape, criminalisation of adult consensual same-sex intimacy, criminalisation of trans identity, differing ages of consent and marriage for males and females, and references to 'imbeciles' and 'idiots' in some sexual offences laws, the report should detail what international good practice requires for contemporary, human rights-compliant sexual offences laws that are, for example, consent-based and that do not discriminate on grounds of sex, gender, sexual orientation or gender identity as well as on grounds of disability or other factors. It should be both theoretical and practical, identifying both (a) the need and legal/policy justifications for and benefits of reform of various types of sexual offences provisions around the Commonwealth and (b) practical and concrete examples of different formulations of various types of provisions from around the Commonwealth that would be human rights-compliant, conscious of the fact that there will often not be a one-size-fits-all model and that overly prescriptive approaches often do not work.

The objective of the research is to provide an authoritative, Commonwealth-focused analysis of human rights-compliant sexual offences legislation, which can be used to inform, educate and inspire government actors from around the Commonwealth seeking to embark on law reform in these areas. After reviewing the Trust's existing work on this issues, the consultant(s) will conduct a comprehensive review and analysis of human rights-compliant legislation on sexual offences with a particular focus on inclusion of Global South Commonwealth countries. To ensure proper regional balance, the research and analysis should cover Commonwealth countries from all regions (Europe, Africa, Asia, Pacific and Americas), with examples of good practice and legislative models of different sexual offences provisions from all regions. The findings of the research and the models of good practice identified through this assignment will be used to support technical assistance in order to aid legislative reform in other Commonwealth countries and contribute to the elimination of discriminatory legislation affecting in particular women and girls and LGBT people.

### III. Methodology and Tasks

The consultant(s) will be responsible for producing the methodology for this assignment, which will be presented in their Technical Proposal. The methodology and other relevant aspects of the proposal will be further developed and refined in the inception report in collaboration with the Trust's Programme Manager, Legislative Reform.

The consultant(s) is/are expected to complement desk-based research and literature reviews with consultations and interviews of relevant stakeholders, which may include academics, legal practitioners, legislative drafters, judges, Attorneys General, policy makers, key officials, human rights activists, and experts of UN and regional bodies. A preliminary stakeholder mapping and a work plan for data collection and travel shall be included in the inception report.

The review and analysis shall include:

1. A background review of the Trust's research on the existing status of sexual offences laws around the Commonwealth and the various ways they discriminate against and fail to properly protect different groups including women and girls and LGBT people (comprising an internal report of approximately 100 pages);
2. A comprehensive analysis of relevant international legal instruments, policy documents and jurisprudence of international and regional mechanisms on sexual offences laws and international human rights standards in respect of them;
3. A comprehensive review of relevant international literature on sexual offences laws and international/regional human rights standards;
4. A comprehensive compilation and analysis of good practice principles for and different models of human rights-compliant domestic legislation on sexual offences, covering all Commonwealth regions. The analysis shall focus on:
  - a. Analysing laws, policies and principles for sexual offences legislation that duly align with international/regional legal and human rights standards, including on issues such as rape and sexual assault (including of both male and female victims, with objects, and rape/sexual assault in marriage), ages of consent, minimum ages for marriage, incest, gender-specific *versus* gender-neutral provisions on sexual offences, consent-based and harm-based sexual offences policy, criminalisation of consensual adult same-sex intimacy, and criminalisation of trans identity (through for example cross-dressing and vagrancy laws), all of which should factor in non-discrimination on grounds of sex, gender, sexual orientation

or gender identity as well as the impact on children and persons with disabilities. Certain sexual offences, such as those related to prostitution and abortion, are to be considered beyond the remit of this assignment.

- b. Highlighting how human rights-compliant legislation addresses key human rights concerns, in particular in relation to most adversely affected groups, such as women and girls, LGBT people, children and persons with disabilities.
  - c. Identifying any regional or international trends, with inclusion of all five Commonwealth regions including a strong emphasis on Global South Commonwealth countries.
5. A comparative analysis of relevant legislation and policies on sexual offences with a view to compiling checklists of good practice principles and standards of legislation on sexual offences.
  6. Development of a compendium of different examples of legislative models for various types of sexual offences, based on good practices identified through the research, with a breakdown of the impact on advancement of human rights of the most adversely affected societal groups and thematic areas as listed in point 4 above.

The findings of the research should provide guidance for the development of human rights-compliant legislative models that would enhance protection of the most adversely affected societal groups such as women and girls, LGBT people, children and persons with disabilities. It should be analysed and written in a way that will encourage, inspire and educate a range of Commonwealth governments that have yet to embark on a process of law reform of sexual offences legislation in their national interest.

The geographic focus of the research shall include all five Commonwealth regions as listed above, with an emphasis on strong inclusion of Global South Commonwealth countries. Good practice standards emanating from all relevant International and regional bodies should also be included in the report.

In order to ensure the greatest possible practical impact of the findings including amongst Commonwealth policy-makers, the report should be very user-friendly and visually engaging, for example by using plain language, using tables and charts where possible to capture and highlight relevant data, and developing easy to digest case studies of particular examples of good practice models. It should also, where possible, identify the impact of implementing specific good practice models for different sexual offences laws, for example by summarising any literature from the relevant countries on the way human rights-compliant sexual offences provisions have reduced crimes, eliminated stigma, enhanced child

protection, improved data collection or otherwise advanced anti-discrimination to benefit most adversely affected societal groups.

#### **IV. Outputs/Deliverables**

The main output of this research assignment is a comprehensive report of 30,000 words (including 20% leeway), excluding the executive summary, charts and annexes. However, the following documents shall also be submitted to the Trust to ensure satisfactory completion of the job.

##### **Deliverables:**

1. Inception Report, which should include:
  - a. Table of contents;
  - b. Detailed methodology, including assumptions, risks and mitigation strategies;
  - c. Research tools;
  - d. Stakeholder mapping;
  - e. Work plan for data collection, including travel plans;
  - f. Final timeline for completion of the assignment.
  
2. Full Report, which should include:
  - a. Table of contents;
  - b. List of tables and figures;
  - c. Lists of relevant international and regional legal instruments, legal and policy commentary or guidance, and jurisprudence on sexual offences laws;
  - d. Checklists or other tools to assess compliance of domestic legislation with international legal standards;
  - e. Matrix of different legal models developed on identified good practices;
  - f. Case study examples of good practice models, how they comply with human rights standards especially in respect of non-discrimination, and their impact where possible;
  - g. Comprehensive bibliography;
  - h. Research tools, including:
    - I. Research questions;
    - II. Questionnaires;
    - III. List and contacts of stakeholders and interviewees.
  
3. Executive Summary.
  
4. A PowerPoint presentation on overview of findings and key recommendations.

## V. Time-frame

The assignment is expected to start in early October 2018 and be completed, with the submission of all the deliverables listed in these Terms of Reference, by 13 January 2019. A detailed timeline for the production of the deliverables will be agreed with the consultant(s) and will form part of the contract that will be signed upon commissioning the work. The following is a preliminary identification of tasks to be reflected in the Technical Proposal.

	<b>Tasks</b>	<b>Estimated Maximum Work days</b>
1	Preliminary research & submission of inception report	
2	Finalisation of inception report	
3	Development of research tools, desk-based review, identifying and contacting relevant stakeholders	
4	Data collection: interviews and/or consultations	
5	Drafting and submission of first draft of report	
6	Consideration and integration of feedback on report	
7	Preparation of draft PowerPoint summary of report	
8	Attendance and presentations at validation meeting(s) with the Trust and other stakeholders including of PowerPoint summary of report contents	
9	Further edits to report and PowerPoint presentation	
10	Final reviews and submission of final report and deliverables	
<b>Total Estimated Maximum Work Days</b>		

## VI. Qualification and Experience of the Consultant(s)

The Trust aims to contract an experienced consultant(s) meeting the following criteria:

- Advanced degree (preferably PhD) in a relevant field of international law, human rights or social science, relevant to the assignment;
- Extensive, demonstrated experience of international research and report writing on topics of international human rights law and standards, comparative legal analysis and/or related topics relevant to this assignment;
- Extensive knowledge of relevant international and regional legal frameworks and instruments;
- Sound knowledge of international human rights of women, girls and LGBT people;
- Demonstrated academic or practical experience in comparative criminal law and policy, sexual offences law and policy, legislative reform and/or related fields;
- Demonstrated experience in conducting qualitative research, data collection and analysis;
- Strong ability to review, summarise and present research, data and information in an accessible and compelling way for multiple audiences including at the level of senior government officials or similar;
- Excellent writing and analytical skills for high-quality report writing in English.

The Trust strongly encourages applications from teams that include experts from the Global South and invites proposals that specify how they meet regional, cultural and gender diversity.

## **VII. Reporting**

The consultant(s) will report to the Trust's Programme Manager, Legislative Reform who will closely and regularly monitor progress made on the research, analysis and deliverables. During the reporting process, the consultant(s) also will seek written approval from the Programme Manager, Legislative Reform should any need to depart from the agreed outline arise or for any other issue entailing a change of the conditions detailed in these Terms of Reference.

## **VIII. Code of Conduct and Confidentiality**

The consultant(s) is/are under an obligation to confirm that they have no conflicts of interest and to report all potential conflicts of interest prior to the signing of a contract for this assignment, including all personal or

professional relationships that may compromise their independence or objectivity on the assignment.

The Consultant(s) shall act in a respectful and professional manner and shall not disclose information or make statements that could harm the Trust, its staff or Board or its partner organisations. The Consultant shall not disclose any confidential or classified information connected to this research assignment to any third party, either during or after the consultancy. The obligation of confidentiality includes information on personnel matters obtained during this contract period. The consultant(s) will be subject to confidentiality and non-disclosure obligations as part of the Trust's standard consultancy contracts and must comply with all relevant data protection laws and regulations including the General Data Protection Regulation.

## **IX. Ownership**

In the consultancy contract for this assignment, the selected consultant(s) shall agree to assign to the Trust all right, title and interest in and to all the deliverables produced, including without limitation all questionnaires, research questions, analyses, reports, charts, presentations and lists of key stakeholders, which shall be the sole and exclusive property of the Trust. The Consultant(s) will not make any use of any of the deliverables in any manner whatsoever without the Trust's prior written consent.

## **X. Payment**

The consultant(s) should submit the total budget in the proposal with detailed breakdown including any applicable government taxes. Payments will be effected upon receipt of invoices and according to the following milestones:

<b>Tranches</b>	<b>Milestones</b>	<b>Amount</b>
<b>I</b>	Signing of the contract	10% of Budget
<b>II</b>	Approval of Induction Report	20% of Budget
<b>III</b>	Approval of First Draft of the Report	30% of Budget
<b>IV</b>	Satisfactory completion, submission and approval of all the deliverables indicated in these Terms of Reference	40% of Budget

Travel expenses will be paid separately upon receipt of an itemised invoice reflecting approved travel plans and of receipts of expenses.

The consultant(s) is/are expected to be available to undertake international travel for consultation with key stakeholders where necessary and appropriate for the quality and integrity of the research. An indicative travel plan should be included in the budget proposal. The Trust will cover all travel expenses, including flights, accommodation and per diem, using economy class flights and standard business hotels. Actual travel related costs must be agreed in writing in advance upon submission and approval of a detailed work plan. The Trust will not take responsibility for visas and other permissions necessary for data collection.

## XI. Submission of Proposals

The applicant(s) shall submit both a Technical and a Financial Proposal. The Technical Proposal shall include the methodology, ethical standards, sample work products of a similar nature prepared exclusively by the consultant(s), and an updated CV of the consultant(s). The Financial Proposal shall provide a detailed breakdown of units and unit rates for professional fees, travel costs and applicable government taxes required to complete the assignment. **The deadline for submission of proposals is Sunday 16 September 2018 at 23:59 (UTC/GMT +1).** Proposals not meeting the requirements will be automatically disqualified. Please send your application to the Trust's Programme Manager, Legislative Reform: Ms Grazia Careccia, at [graziacareccia@humandignitytrust.org](mailto:graziacareccia@humandignitytrust.org)