

Research Paper on the Development of the Law against Incest and Familial Sexual Activity

Terms of Reference

1. Overview of Services

The Trust is providing technical assistance to a number of Commonwealth governments to support the reform of discriminatory laws, with a particular focus on sexual offences laws that discriminate against women and girls and LGBT people, and requires the production of a comprehensive research paper on the law against incest and familial sexual activity.

- **Location:** Remote/Home-based
- **Languages Required:** English (essential)
- **Starting Date:** As soon as possible but no later than 26 October 2020
- **End Date:** 4 January 2021
- **Fees:** £3500
- **Application Deadline:** 19 October 2020

2. The Human Dignity Trust

2.1. About Us

The Human Dignity Trust (the Trust) is an organisation of international lawyers supporting local partners to uphold international and constitutional human rights law in countries where private, consensual sexual conduct between adults of the same sex is criminalised.

Over 70 jurisdictions globally criminalise consensual same-sex intimacy, putting LGBT people beyond the protection of the law and fostering a climate of fear, stigma, discrimination and violence. Many of these laws sit alongside other sexual offences laws that discriminate against or fail to protect women, children and other marginalised groups.

The Trust provides technical legal assistance upon request to local human rights defenders, lawyers and governments seeking to eradicate discriminatory laws and improve protection against violence and hate crimes.

2.2. Changing Laws, Changing Lives

Since 2015, the Trust has been analysing the need and options for legislative reform of sexual offences and related laws that discriminate against LGBT people, women, children and other marginalised groups.

In this latest phase of our successful, ongoing programme of supporting legislative reform, “*Changing Laws, Changing Lives*”, the Trust has secured funding from the Foreign, Commonwealth and Development Office’s Conflict, Stability and Security Fund – Commonwealth Equality Project.

This funding enables us to consolidate and build on work undertaken in the earlier phases and to lay the groundwork for future phases, leading the way in providing technical expertise and resources to deliver reform of sexual offences, hate crime and anti-discrimination legislation.

We provide this support through legal research and tools, country and thematic policy papers, technical legal assistance with legislative drafting, consultation mechanisms and related legal processes, and complementary technical assistance with media and communications strategies.

The services detailed under this Terms of Reference will therefore form part of our broader “*Changing Laws, Changing Lives*” programme, and an awareness of the Trust and the work we do is essential.

3. Background and Purpose

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. Apart from updating their sexual offences legislation, some countries also choose to pursue additional protective measures for vulnerable populations, including anti-discrimination and/or hate crimes legislation.

In order to develop and deliver expert technical assistance to Commonwealth governments and other state stakeholders seeking to reform laws or policies, the preparation of thematic and country level research papers are essential to aid in the design and implementation of law reform efforts in selected Commonwealth countries. Such research papers provide a concise and authoritative analysis of thematic areas, which can be then be used to inform our government partners and assist in the development of new sexual offences legislation.

4. Services

The Consultant(s) shall produce a comprehensive research paper on the law against incest and familial sexual activity. The research paper shall provide a historical account of the development of the law of incest (with a particular focus on the UK and other common law jurisdictions), exploring the evolution of the criminalisation of incest and the multiplicity of ways that familial sexual activity

is dealt with across systems of criminal law. The paper shall also examine critically the various arguments for and against retaining laws that criminalise incest.

5. Deliverables

The main output of the Services is a comprehensive research paper. The length of the paper shall be agreed with the Trust but should be no longer than 10,000 words, excluding the executive summary, tables and annexes. The following documents shall be submitted to the Trust.

Deliverables:

1. Inception Report, which shall include:
 - a. Detailed methodology;
 - b. Estimated word count;
 - c. Any research tools and key source material to be used;
 - d. Work plan;
 - e. Final timeline for completion of the assignment (but no later than 4 January 2021).

2. Full Research Paper, which shall include:
 - a. Table of contents;
 - b. List of tables and figures, including a table that shows all criminalising and non-criminalising jurisdictions;
 - c. List of case studies;
 - d. Case studies from different Commonwealth countries, in boxed text;
 - e. Comprehensive bibliography.

3. Executive Summary.

4. A PowerPoint presentation on overview of research and findings.

Please note, 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 everything outlined above and any analyses and research material (as may be requested by the Trust), which shall be the sole and exclusive property of the Trust. The Consultant(s) shall not make any use of any of the deliverables in any manner whatsoever without the Trust's prior written consent.

6. Payment

Milestone Payments shall be effected upon receipt of invoices and according to the following Milestones:

Milestone Payment	Milestone(s)	Milestone Payment Amount
I	Signing of the contract by 26 October 2020	
II	Approval of Inception Report by 2 November 2020	£500
III	Approval of First Draft of the Research Paper by 30 November 2020	£1500
IV	Satisfactory completion of Final Research Paper and all remaining deliverables by 4 January 2021	£1500

7. Methodology

The Consultant(s) shall be responsible for producing the methodology for this assignment, which will be presented in their 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 Senior Lawyer and Head of Legal. The Consultant(s) is/are expected to undertake comprehensive desk-based research and literature reviews.

The research and analysis to be included in the paper shall cover:

- The concept of incest and the prohibition on familial sexual activity;
- Historical background of the incest prohibition to explain its continued existence today in many Commonwealth countries and a brief account of the historical change in legislation affecting incestuous sexual activity;
- Comparative analysis of the multiplicity of ways that familial sexual activity is dealt with across systems of criminal law (with Commonwealth case studies), and including some examples of non-Commonwealth and non-common law jurisdictions that do not treat it as a crime at all;
- A critical examination of the various arguments for and against criminalising incest;
- Consideration of the question of whether the criminalisation of 'incest' is justified/continues to have its place within a modern legislative framework;
- Examine whether there is a need or rational basis for a separate legislative provision addressing familial sexual offences involving children, where such conduct could be dealt with under other general sexual offences laws;
- An analysis of any particular legal and policy considerations for the repeal, enactment, or retention of laws against incest, including whether consent to prosecute should be sought and, if so how and when such consent should be sought;
- Key guiding principles on how any offence of incest should be defined – in terms of the specific type of sexual conduct prohibited, the manner in which the parties must be related (i.e. should the law apply to looser family structures), whether they should have to be aware

of the relation, and whether the term “incest” should continue to be used in legislation and discussion thereof and consideration of what other language may be more appropriate.

8. Experience Required

Consultant(s) shall meet the following knowledge and experience criteria:

- Advanced degree (preferably PhD) in criminal law and policy;
- Extensive, demonstrated experience of international research and report/article writing on topics of criminal law, policy and criminal justice, comparative legal analysis and related topics relevant to this assignment;
- Demonstrated academic or practical experience in comparative sexual offences law and policy, and related law reform or legislative drafting;
- Knowledge of relevant criminal legal frameworks and instruments, particularly those from the Commonwealth and other common law jurisdictions;
- Sound knowledge of human rights law and international human rights of women, girls and LGBT people;
- Demonstrated experience in conducting qualitative and quantitative 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 research report/article writing in English.

9. Reporting

The Consultant(s) shall report to the Trust’s Senior Lawyer and Head of Legal who will closely and regularly monitor progress made on the Services. During the reporting process, the Consultant(s) shall seek written approval from Senior Lawyer and Head of Legal should any need to depart from the agreed methodology arise or for any other issue entailing a change of the terms and conditions detailed in these Terms of Reference.

10. 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 in relation to the Services detailed under this Terms of Reference, including all personal or professional relationships that may compromise their independence or objectivity.

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(s) 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 contracts and must comply with all relevant data protection laws and regulations including the General Data Protection Regulation.

11. Submission of Proposals

To apply, applicant(s) should submit a proposal. The proposal shall include an outline of the methodology that would be used for the purpose of the research paper (max. 2 pages). Applicant(s) should also provide a CV and sample of work of a similar nature prepared exclusively by them.

The deadline for applications is 19 October 2020 at 23:59 (UTC/GMT +1). Applications will be considered on a rolling basis and early application is encouraged. Applications not meeting the requirements set out above will be automatically disqualified.

Please send your application to administrator@humandignitytrust.org with the subject header "Research Paper – Incest".