

Research Paper on Indecency within Sexual Offences Frameworks



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 indecency within sexual offences frameworks.

- **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:** £6500
- **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 indecency within sexual offences laws. The research paper shall provide the Trust with a comprehensive understanding of the concept of indecency in sexual offences legislation, and how and why indecency laws were originally enacted and/or developed through the common law. The paper shall also provide a detailed comparative analysis of the different types of laws that have subsumed or been enacted across the Commonwealth to replace provisions relating to indecency.

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 should include:
 - a. Detailed methodology;
 - b. Estimated word count;
 - c. Any research tools and key source material;
 - d. Work plan;
 - e. Final timeline for completion of the assignment (but no later than 4 January 2021).
2. Full Research Paper, which should include:
 - a. Table of contents;
 - b. List of tables and figures;
 - 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	£1000
III	Approval of First Draft of the Research Paper by 30 November 2020	£2500
IV	Satisfactory completion of Final Research Paper and all remaining deliverables by 4 January 2021	£3000

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:

- Examination of the concept of indecency within the Commonwealth, how that concept was incorporated into the criminal law and specifically sexual offences laws, and what the legislative intent was behind those provisions (i.e. what conduct were legislatures seeking to prohibit);
- Overview and analysis of the types of indecency offences (public and private) that were enacted or developed as part of the common law and how those provisions have been defined, interpreted and applied, including examining any changes in that interpretation and application over time;
- Discussion of the inherent issues with the interpretation and application of the concept of indecency;
- Consideration of how and why indecency laws have been repealed, reformed and/or retained;
- A comparative review of what offences have subsumed, replaced, or been used in place of indecency laws (focusing on *Indecent Assault*, *Gross Indecency*, *Indecency with a Child*, *Indecent Practices between Persons of the Same-Sex*, *Indecency/Indecent Act in Public*, *Outraging Public Decency*), including analysing the relative strengths and weaknesses of those changes/new offences (giving due consideration to whether any previous conduct that should continue to be prohibited is no longer captured or captured inappropriately), and examining the different experiences under those laws in achieving the stated policy goals and objectives (using case study examples from the Commonwealth);
- Evaluation of how unwanted bodily exposure and public sex acts should be criminalised and whether they should be categorised as a sexual offence;
- Brief overview of any other legal and policy considerations for the enactment of laws to replace indecency provisions, such as consideration of what transitional arrangements should be put in place.

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 (particularly sexual offences), policy and criminal justice, comparative legal analysis and related topics relevant to this assignment;
- Knowledge of relevant criminal legal frameworks and instruments, particularly those from the Commonwealth and other common law jurisdictions;
- Demonstrated academic or practical experience in comparative criminal law and policy, sexual offences law and policy, legislative reform and related fields;
- 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 the 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) shall 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 – Indecency".