

Addressing Sexual Offences Legislation in the Commonwealth: Opportunities for Reform

Terms of Reference



1. Overview of Services

The Trust requires the production of an internal piece of research identifying Commonwealth countries where there is meaningful potential in the next three years for legislative reform of discriminatory sexual offence laws that criminalise LGBT people and fail to protect them and other marginalised groups such as women, children and people with disabilities. This report will build on the Trust's existing catalogue of desk research on sexual offence laws, analysing the most promising prospects for reform, and complementing and validating them with key stakeholder interviews in identified countries.

- **Location:** Remote/home-based
- **Languages Required:** English (essential)
- **Starting Date:** As soon as possible
- **Duration of Assignment:** 25 days
- **End Date:** 28 February 2021
- **Fees:** Maximum £12,000
- **Application Deadline:** 21 November 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 people of the same sex is criminalised. 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.

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 offence laws that discriminate against or fail to adequately protect women, children and other marginalised groups. These laws are, in most cases, a legacy of British colonial times and they have long since been reformed in the UK and many other countries, but they still persist around much of the Commonwealth. Fortunately, in a growing number of cases, governments are sympathetic to the need for reform, but they may not have the local expertise, means or capacity to undertake it alongside other demanding legislative agendas. The Trust and our Commonwealth Group of Experts on legislative reform of out-dated sexual offence laws are able to work with such governments, at their request, to assist.

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. Since 2018 the Trust has been providing technical assistance to governments and other stakeholders to reform these laws.

In this latest phase of our work, “*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 – to continue our successful and well received work in this area.

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 offence laws as well as the enactment of protective legislation such as hate crime and anti-discrimination legislation.

We provide this support through legal research and tools, country and thematic policy papers, technical 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

In order to inform the future of our programme of expert technical assistance to Commonwealth governments and other stakeholders, the Trust is looking to commission an internal research report that analyses the Trust’s existing desk research to identify key prospects for reform and enriches and validates that analysis through key stakeholder interviews.

One key area of the Trust’s technical assistance programme, on which this Terms of Reference is exclusively focused, is the reform of discriminatory sexual offence laws. In many cases the sexual offence laws in Commonwealth countries are, to a large extent, legacies of the British Empire. In a number of cases, despite the subsequent enactment of modern Constitutions and the ratification of international human rights treaties these laws remain unamended and unfit for purpose.

The sexual offence laws of many Commonwealth member states require urgent reform to remove discriminatory provisions, address outdated and prejudicial myths about sexual offences, perpetrators and victim/survivors, and ensure better protection from violence for vulnerable groups. The failings of many legislative regimes include: exemptions for or lack of express criminalisation of rape in marriage; rape laws that fail to capture all forms of rape and to protect all victim/survivors of rape; the requirement of corroboration of a sexual assault complaint; allowing evidence of prior sexual conduct or reputation; providing no or unequal minimum ages of consent for sexual conduct; criminalising consensual same-sex activity; referring to people with disability in derogatory terms; and criminalising all sexual conduct involving people with a disability regardless of consent.

Since 2015 the Trust has developed a comprehensive suite of external and internal research mapping sexual offences legislation in the Commonwealth. This includes:

- A comprehensive analysis of the positive features, gaps and inadequacies in sexual offences legislation of every Commonwealth country;

- An analysis of the political context in a number of Commonwealth countries, including tracking government positions in UN and regional bodies, public statements by political figures and identifying national legislative reform activities and processes, and;
- A preliminary analysis of prospects for reform in a number of Commonwealth countries.

In order to inform where the Trust is most likely to be able to add value by providing technical assistance for legislative reform and to further develop the evidence on which this work is based, the production of an internal facing report that builds on, enriches and validates this desk research is required. This internal report will aid in the design of future phases of the Trust's legislative reform work and help shape international efforts to tackle discriminatory sexual offence laws.

4. Services

The Consultant(s) shall produce a report detailing concrete and evidence-based opportunities for reform of sexual offence laws that discriminate against LGBT people, women, children and other marginalised groups around the Commonwealth, with definitive recommendations of those countries in which reform is most likely to be achievable in the period 2021-2024. The prospective reform may be either wholesale reform of discriminatory sexual offences legislation that is inclusive of but not limited to decriminalisation of LGBT people or, at a minimum, targeted repeal of laws criminalising LGBT people.

We envisage the research project falling into two phases.

In the first phase, the Consultant(s) will review relevant internal and external research resources from the Trust's suite of desk research to assess and validate identified opportunities for reform, supplementing this material with additional secondary research to expand where necessary and to update it with developments that have occurred in the timeframe since the Trust's research products were developed. The existing research products include:

- A comprehensive analysis of the positive features, gaps and inadequacies in sexual offences legislation of every Commonwealth country;
- An analysis of the political context in a number of Commonwealth countries, including tracking government positions before UN and regional bodies, public statements by political figures and identifying national legislative reform activities and processes; and
- An analysis of the prospects for future reform of discriminatory sexual offences legislation.

This phase will identify three to five Commonwealth countries, with detailed input from the Trust, where reform is most likely and where the activities of phase two are most viable.

The second phase will focus on enriching and deepening our understanding of the possibility of legislative reform in these countries. The Consultant(s) will do this by undertaking a series of stakeholder interviews with key stakeholders. These stakeholders should include:

- National and regional civil society organisations and leaders from the LGBT rights, women's rights and other related sectors;
- Relevant national and regional legal and academic experts;
- Key government figures include Attorneys General, senior law ministry officials, law reform commissions, human/social development ministries, women's ministries and the like; and,
- Members of the diplomatic community.

These interviews should gather evidence to support the recommendations within the report, and will cover topics including, but not limited to, the legal, political and cultural context, the areas of law most in need of reform, ongoing engagement between civil society and government, any foreseeable challenges including the strength of cultural or religious opposition, the willingness and appetite for technical assistance for legislative reform, the elections schedule and other relevant timetables over the relevant period that may affect reform agendas, and the overall likelihood of reform in the relevant timeframe.

The format of stakeholder interviews is to be determined between the Trust and the Consultant(s). International travel is not anticipated in light of restrictions in place due to the ongoing COVID-19 pandemic, but may take place with the prior agreement of the Trust.

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. Findings of the review of the Trust's internal and external research products, including countries proposed for phase two research;
 - b. Proposed methodology for phase two research including:
 1. Proposed stakeholder interview format and a full list of proposed interviewees from target countries;
 2. Sample stakeholder interview questions;
 3. Work plan;
 - c. Final timeline for completion of the assignment (but no later than 28 February 2021).

2. Full Research Paper, which should include:
 - a. Table of contents;
 - b. List of any tables and figures;
 - c. Executive summary;
 - d. Brief review of phase one research and the findings of the desk research component;
 - e. In-depth findings from stakeholder interviews;
 - f. Assessment of the suitability of identified countries for potential reforms;
 - g. Recommendations of next steps;
 - h. Any relevant annexes, e.g. stakeholder interview transcripts.

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 research material, interview recordings or transcripts, 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 and confidentiality will be paramount both during and after the delivery of the Services.

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 30 November 2020	20%
II	Approval of Inception Report by 15 December 2020	-
III	Approval of first draft of the Report by 15 February 2021	40%
IV	Satisfactory completion of final Report and all remaining deliverables by 28 February 2021	40%

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 Programme Officer and Senior Advocacy Advisor. The Consultant(s) is/are expected to complement desk-based research with detailed stakeholder interviews.

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

- A review of all relevant sexual offences research produced by the Trust and a broad summary of the key themes/findings;
- Desk-based research to document any legal developments relevant to the sexual offence laws covered in the research developed by the Trust and any political or contextual developments relevant to the environment for reform, such as changes in leadership or in policy direction or public statements, that have occurred after the research was completed;

- An assessment of countries that have meaningful prospects for reform, e.g. those;
 - That have successfully implemented some relevant reforms but where there is scope for further reform;
 - Where reform work is ongoing but has stalled or has not yet been finalised;
 - Where reform work had made progress but was not carried forward (e.g. government review, consultations, draft bill etc.);
 - Where there are recent favourable statements made publicly by current political leaders or law makers about the need for reform, or reliable private insight into the likely favourable stance of key political figures if assistance for reform were available.
- A detailed reasoning for these assessments based on the above as well as any other relevant legal and cultural context, including the strength of opposition to reform such as on religious or cultural grounds;
- Key stakeholder interviews in three to five countries with the best prospects for reform to elaborate on desk-based research and support recommendations.

8. Experience Required

- Advanced degree (preferably PhD) in criminal law and/or policy, human rights law or a related field, or equivalent experience;
- Extensive, demonstrated experience in conducting qualitative research, in particular the design and analysis of stakeholder interviews, with a range of interviewees, including high level stakeholders;
- Extensive, demonstrated experience of international research and report/article writing on topics of criminal law (preferably 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, children and LGBT people;
- 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;
- Strong demonstrated commitment to equality, inclusion, and high standards of legal integrity and confidentiality.

9. Reporting

The Consultant(s) shall report to the Trust's Programme Officer and Senior Advocacy Advisor who will closely and regularly monitor progress made on the Services. During the reporting process, the Consultant(s) also will seek written approval from the Programme Officer and Senior Advocacy Advisor 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.

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 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, applicants should submit a detailed written proposal. The proposal shall include an outline of the methodology that would be used for the purpose of the report (max. 4 pages) and a budget which shall not exceed £12,000 in total. Applicants should also provide a CV and sample of written work of a similar nature prepared exclusively by them.

The deadline for applications is 21 November 2020 at 23:59 (GMT). Applications not meeting the requirements set out above will be automatically disqualified. The Trust will interview all shortlisted candidates by video conference and will seek to appoint the successful candidate(s) as soon as possible.

Please send your application to administrator@humandignitytrust.org with the subject header "Addressing Sexual Offences Legislation in the Commonwealth: Opportunities for Reform".