Terms of Reference

Title: Consultant (Rule of Law Small States study in the Commonwealth)

Organizational Section/Unit: Rule of Law Section, Governance and Peace Directorate, Commonwealth Secretariat

Duty Station: Home based

Proposed period: 19th April - 31st May

Actual work time: 20 workdays in a period of 6 weeks

1. INTRODUCTION

This document sets out the terms of reference to guide the work of the consultant engaged by the Commonwealth Secretariat (“the Secretariat”), to conduct evidence-based research on recruitment of foreign judicial officers and judicial diversity in Commonwealth Small States.

2. BACKGROUND

In November 2019, Law Ministers meeting in Colombo, Sri Lanka considered a paper prepared by the Commonwealth Secretariat (Secretariat), titled: ‘Promoting diversity in judicial appointments across the Commonwealth.’ The paper recommended the development of Commonwealth guidelines on the promotion of judicial diversity.

Law ministers noted that judicial diversity, including among judicial administrative staff was an important factor in increasing access to justice. They expressed strong support for the continuation of the Secretariat’s work in this area. They requested the Secretariat to undertake an assessment of the issue of judicial diversity in the Commonwealth with a view of developing Commonwealth strategic guidelines on promoting judicial diversity. The study will complement Commonwealth best practice, consolidated in a Commonwealth publication, The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice, also available at https://binghamcentre.biicl.org/documents/38_van_zyl_smit_2015_commonwealth_compendium.pdf.

Law Ministers acknowledged that the nature and scale of the problem differed between different Commonwealth countries and recognised the importance of addressing separately challenges faced by small Commonwealth jurisdictions, such as their reliance on foreign judges and the implications, if any, of such recruitments on judicial diversity and access to justice in those jurisdictions.
The Commonwealth Secretariat is seeking to engage a qualified consultant to design and undertake evidence-based research and produce a report, which analyses across the Commonwealth, policy and legal frameworks and captures key lessons to date (i.e. successes and areas for further improvement), in consultation with the Secretariat team. The results of this consultancy, captured in a report and a paper highlighting recommendations and good practices, will support broader efforts in Commonwealth countries to improve access to justice.

The expected deliverables of this consultancy are a detailed report and a paper that sets the issues, opportunities and challenges pertinent to judicial diversity in Commonwealth Small States, arising from the recruitment of foreign judicial officers with a view to providing the perspective of Small States in contribution to a wider study on judicial diversity.

3. PURPOSE OF THE ASSIGNMENT

The purpose of the assignment is to undertake an evidence based study with a view to presenting a report and developing a paper that navigates the issues, opportunities and challenges related to the recruitment of foreign judicial officers in Commonwealth Small States and the implications on judicial diversity and access to justice, with a view to making recommendations.

4. METHODOLOGY

The Consultant in close consultation with the Project Manager will be expected to:

a) conduct desk reviews of literature and materials from across the Commonwealth.

b) Write and present a report to the Secretariat

c) Write a paper for presentation to Law Ministers.

5. SPECIFIC TASKS TO BE PERFORMED BY THE CONSULTANT

Under the guidance of the Project Manager, the Consultant will be required to:

a) Review existing literature on judicial diversity and recruitment of judicial officers in Commonwealth Small States;

b) To deliver an interpretation of the Terms of Reference and a work plan for execution of the assignment by no later than 21st April 2021;

c) To deliver an expanded outline of the report and paper by no later than 29th April 2021.

d) To present draft versions of the report and paper by 17th May 2021 and receive thereafter any comments on the draft paper from the Secretariat and to take these into account in drafting the final draft of the paper;

e) To deliver by no later than 31st May 2021 a satisfactory final version of the paper to the Secretariat.

Note: The above mentioned tasks to be performed are intended as a guide and should not be viewed as an inflexible specification as it may be modified following discussion with the selected consultant.
6. EXPECTED TANGIBLE AND MEASURABLE OUTPUT(S)

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Timeline</th>
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<tbody>
<tr>
<td>a) Interpretation of the Terms of Reference and a work plan for execution - 5-page maximum</td>
<td>21st April 2021</td>
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<tr>
<td>b) Draft outline of the report and paper</td>
<td>29th April 2021</td>
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<tr>
<td>c) Presentation of draft version of the report and paper</td>
<td>17th May 2021</td>
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<tr>
<td>d) Presentation of final version of the report and paper highlighting recommendations and good practices that will form the basis of a proposed draft of Commonwealth strategic guidelines on promoting judicial diversity to complement the Compendium and Analysis of Best Practice on the Appointment, Tenure and Removal of Judges under Commonwealth Principles.</td>
<td>31st May 2021</td>
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7. INDICATORS TO EVALUATE THE CONSULTANT’S PERFORMANCE

All outputs shall be assessed in accordance with the following indicators:

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Indicators</th>
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<tbody>
<tr>
<td>a, b and c</td>
<td>• Technical precision of the proposal</td>
</tr>
<tr>
<td></td>
<td>• Clear and policy-relevant analysis</td>
</tr>
<tr>
<td>a, b, c and d</td>
<td>• All Secretariat comments reflected appropriately</td>
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<tr>
<td></td>
<td>• Excellent English drafting style</td>
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<tr>
<td></td>
<td>• Political nuances fully considered</td>
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<td></td>
<td>• Technical excellence.</td>
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8. QUALIFICATIONS/EXPERTISE SOUGHT (REQUIRED EDUCATIONAL BACKGROUND, YEARS OF RELEVANT WORK EXPERIENCE, OTHER SPECIAL SKILLS OR KNOWLEDGE REQUIRED)

a) Preferably an advanced university degree (Masters or equivalent) in law or a closely related field or a first degree with 10 years of professional experience in any of the above fields.

b) Minimum ten years of experience in leading the design, execution, and/or management of legal research and administration of justice.

c) Relevant experience can include areas such as designing projects and/or programmes on law, civil or criminal justice and working on multi-sectoral initiatives.
d) Strong research design skills, including capacity to prepare logical, coherent, and consistent reports.
e) Prior demonstrated experience from designing and conducting research for institutional donors and for multilateral, bilateral and vertical funding sources.
f) Proven ability to work well under pressure and meet strict deadlines.
g) Flexibility to adapt to any subsequent changes in the terms of reference.
h) Excellent English speaking/writing skills required;
i) Strong interpersonal and communication skills.
j) Strong analytical, reporting and writing abilities.
k) Very good understanding on using MS Word and Excel as well as other relevant MS office software.
l) Openness to change and ability to receive/integrate feedback.
m) Positive, constructive attitude to work.
n) Displays cultural, gender, religion, race, nationality and age sensitivity and adaptability.
o) Demonstrates integrity and ethical standards.

9. ADMINISTRATIVE ARRANGEMENTS

The tasks associated with this Terms of Reference are expected to be completed through a home-based preparatory and coordination work. Virtual conference calls will be the main mode of meetings with the Secretariat and other key stakeholders.
The consultant will receive payments on a payment schedule and in accordance with the terms of the consultancy offer letter.