INDIVIDUAL CONSULTANT PROCUREMENT NOTICE

Date: 24th February 2021

Country: Botswana

Description of the assignment: Individual Consultancy-Gender Equality Assessment – Constitution of Botswana


Project number: 00102697

Period of Assignment / Services: As set out in the proposed workplan subject to agreement and available budget. The final report must be received not later than 30 April 2021

Proposals  should be submitted in a sealed envelope / email clearly labelled:

“Individual Consultancy-Gender Equality Assessment – Constitution of Botswana” should be submitted at the following address no later than: 05th March 2021 at 12Noon (Botswana Time) to:

The Resident Representative
United Nations Development Programme
P.O. Box 54
Gaborone, Botswana

OR by email to procurement.bw@undp.org

Any request for clarification must be sent in writing by e-mail to enquiries.bw@undp.org. UNDP Botswana will respond by standard electronic mail and will post the response on the procurement website without identifying the source of the request.
1. BACKGROUND

A consultant is required to produce a report assessing gender equality in the Constitution of Botswana and relevant jurisprudence to inform upcoming Constitutional reform processes and the development of a Gender Equality Law.

Botswana’s National Vision 2036: Pillar 2 on Human and Social Development recognises gender equality as being central to socio-economic, political and cultural development in Botswana. The eleventh National Development Plan also provides for gender mainstreaming and prevention and elimination of Gender Based Violence under the Governance, Safety and Security Thematic Area as aligned to Sustainable Development Goals particularly Goal 5 on achieving gender equality and empowering all women and girls. In 2015, the Government of Botswana adopted the National Policy on Gender and Development and in 2016, the National Gender Commission was established to monitor implementation of the Policy.

Botswana ratified the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1996. Botswana signed and acceded to the Revised SADC Protocol on Gender and Development in 2017. The Revised SADC Protocol provides for the empowerment of women, elimination of discrimination, and the promotion of gender equality and equity through gender-responsive legislation, policies, programmes and projects. Botswana is also party to several other international and regional human rights conventions that have a bearing upon gender equality.

Botswana has a dualist and pluralist legal system. International treaties and convenants that Botswana ratifies are not automatically imported into the domestic legal system without domesticating legislation. Botswana has committed to the domestication of CEDAW and has passed several laws towards this objective including the Abolition of the Marital Power Act 2004, the Employment Act (1996 as amended), the Public Service Act (2000 as amended) and the Domestic Violence Act (2008). Unlike the Childrens Act 2009 which domesticates the UN Convention on the Rights of the Child, there is no comprehensive Gender Equality law to domesticate CEDAW into the laws of Botswana.

The Bill of Rights, which contains the scope of fundamental rights recognised and protected in Botswana, is contained in Chapter II—‘Protection of Fundamental Rights and Freedoms of the Individual’—of the Constitution. Provisions that impact on gender equality appear throughout the Constitution, including outside Chapter II. Several judicial decisions interpreting the Constitution have laid down important principles and developed human rights and constitutional law in Botswana. Examples include Attorney General v. Dow, Court of Appeal, 1992, and Ramantele v. Mmusi and Others, Court of Appeal, 2013. The Constitution also interacts with customary law, including customary laws and practices that have an impact on gender equality. Customary law is the primary source of justice in Botswana with an estimated 80% of legal issues being resolved through the customary courts.
In 2019, the Government of Botswana committed to a Constitutional review process. Details on the scope and process for the Constitutional review have yet to be announced, including whether Chapter II will form part of the review.

UNDP is supporting the Ministry of Nationality, Immigration and Gender Affairs (MNIG) to strengthen the legislative framework for gender equality in Botswana under the auspices of the UNDP “Support to the Fulfilment of Human Rights, Access to Justice and the Empowerment of Youth, Women and Girls Project (2018 – 2021).” At the request of the Ministry, UNDP is therefore seeking a consultant to review the Constitution of the Republic of Botswana (including relevant jurisprudence) to assess compliance with gender equality principles as enshrined in international and regional human rights instruments including (but not limited to) CEDAW. The review will assess the Constitution against gender equality indicators to be proposed by the consultant and agreed with the Ministry, and make recommendations based on international and regional human rights instruments that impact upon gender equality.

The lead Ministry for the project is the MNIG (Gender Affairs Department). The consultant will report to the Human Rights Specialist at UNDP and the Director of the Gender Affairs Department at MNIG. A Reference Group will be established by the Ministry (including UNDP, relevant Government institutions and civil society representatives) to review the draft and final assessment reports and facilitate access to documentation that may be requested by the consultant(s).

This consultancy may be performed remotely. Travel to Botswana and within Botswana will not be required, due to covid-19 travel restrictions. The final report must be submitted no later than 30 April 2021.

2. SCOPE OF WORK, RESPONSIBILITIES AND DESCRIPTION OF THE PROPOSED ANALYTICAL WORK

The Consultant’s duties and responsibilities are as follows:

- Produce and present an Inception Report to the Reference Group. The Inception Report must include the methodology, the proposed gender equality quantatitative and qualitative indicators/ criteria against which the assessment will be conducted, the proposed list of court judgements to review and a workplan;
- Produce and present a final Draft Assessment Report for review by the Reference Group; and
- Produce and present a Final Assessment Report which addresses comments and feedback on the draft assessment report provided by the Reference Group.

The scope of the assessment includes the Constitution of Botswana and relevant jurisprudence. Other laws relevant to gender equality and customary laws and
jurisprudence are excluded from the scope of the assessment but may be the subject of recommendations arising from the assessment.

The report should be approximately 20 – 30 pages in length, fully referenced and written in plain English suitable for a broad audience.

3. REQUIREMENTS FOR EXPERIENCE AND QUALIFICATIONS

I. Academic Qualifications:
- Minimum Masters degree in Law (specialization in Gender or Human Rights and Constitutional law preferred).

II. Required experience:
- Minimum of 5 years’ experience in Constitutional law whether in academia, Parliament, practitioner or other;
- Previous demonstrated experience in conducting gender analysis of Constitutions;
- Fluency in both written and spoken English and the ability to write in plain English.

III. Competencies:
- Uses substantive mastery of technical content to deliver accurate and comprehensive knowledge products;
- Excellent oral and written communication skills.

4. DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE PROPOSALS.

Interested consultants must submit the following documents/information to demonstrate their qualifications:

1. Technical Proposal:
   (i) Explain why they are the most suitable for the work, clearly matching expertise to the selection criteria;
   (ii) Provide a draft Methodology and Work Plan outlining approach and delivery of the scope of work, taking into account social distancing requirements and travel restrictions due to COVID-19;
   (iii) Provide examples of previous gender analysis of Constitutions demonstrating experience of similar assignment, indicating client(s) name(s), nature and scope of work.
2. **Financial proposal** including the costs of inclusion and accessibility;

3. **Personal CV** including the names of 3 referees.

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5. **FINANCIAL PROPOSAL**

The financial proposal will specify the daily fee. Payments will be made to the Individual Consultant based on an agreed schedule of deliverables.

No travel costs should be included in the financial proposal because the assignment will be performed remotely.

In the case of unforeseeable travel (or essential local travel within Gaborone for any consultant already located in Gaborone), payment of travel costs including tickets, lodging and terminal expenses should be agreed upon, between the respective business unit and Individual Consultant, prior to travel and will be reimbursed.

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6. **EVALUATION**

Bids will be evaluated based on the following methodology:

* **Cumulative analysis**

When using this weighted scoring method, the award of the contract should be made to the individual consultant whose offer has been evaluated and determined as:

a) responsive/compliant/acceptable, and

b) Having received the highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation.

* **Technical Criteria weight:** [70%]

* **Financial Criteria weight:** [30%]

Only candidates obtaining a minimum of 50 points will be considered for the Financial Evaluation

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<td>Minimum Masters degree in Law</td>
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<td>Complete technical and financial proposal submitted as per Item 4 “Documents to be Included when Submitting the Proposal.”</td>
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Fluency in both written and spoken English.

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<td>Additional years of experience in Constitutional law over and above 5 years (1 point for each additional year to a maximum of 5 points)</td>
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<td>Previous demonstrated experience in conducting gender analysis of Constitutions</td>
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<td>Technical proposal clearly matches skills and experience to the selection criteria and demonstrates competency to complete the scope of works and the ability to write in plain English.</td>
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Financial