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Our Ref: SN/mn/IJLP-21

CALL FOR EXPRESSION OF INTEREST FOR SADC-LA REGIONAL WORKING GROUP ON INDEPENDENCE OF THE JUDICIARY & LEGAL PROFESSION (RWG-IJLP) – REGIONAL ADVOCACY TO ENHANCE JUDICIAL INDEPENDENCE THROUGH CONSTITUTIONAL REFORM IN LESOTHO

The Southern African Lawyers' Association (SADC-LA) is seeking to establish a regional working group on independence of the judiciary and legal profession (IJLP). Constitutional law experts are invited to assist with research and analysis on the issues pertaining to judicial independence and constitutional reform in Lesotho. It is hoped that the research and advocacy work will go beyond Lesotho to extend to the full SADC Region in time. This will be done through investigation and exploration of the current legal and policy framework supporting Judicial Independence and Constitutional Reform. The committee members will be required to help SADC-LA draft Constitutional Guidelines to entrench independence of the judiciary in the constitution of Lesotho and other SADC Countries. The resultant provisions will be deployed in SADC-LA Regional Advocacy work to support an independent judiciary through ongoing law reforms process in Lesotho.

1. BACKGROUND

The SADC Lawyers' Association (SADC-LA) is an independent and voluntary association made up of law societies, bar associations and individual lawyers from the 15 member-states making up the Southern African Development Community (SADC). Its mandate is to advance and promote human rights, respect for the rule of law and the promotion of democracy and good governance in SADC. In pursuit of this mandate, the SADC-LA wishes to promote access to justice in the region and ensure equal enjoyment of human rights by all citizens of the SADC region. Thus, the promotion of Judicial Independence and Constitutional Reform is of utmost importance in achieving the mandate that SADC LA was established for. In an era of Transformative Constitutionalism and protection of the Rule of Law being the target, it is essential that clear guidelines and procedures by the state and its judiciary are adhered to in order to have clear, just and fair application of the law. The Judiciary is supposed to be independent as a branch of government this is important for the proper functioning of a State based on democratic values.

Thus, with the challenges faced in Lesotho due to the lack of Constitutional entrenchment of a fully Independent Judiciary, SADC LA in June 2019, was

invited to conduct a fact –finding mission over challenges in the Judiciary in Lesotho by the Law Society of Lesotho. The mission met with the then Prime Minister, the Attorney General, The Minister of Law, Senior Clergy and the leadership of the Lesotho Council of NGOs and the senior members of the Judiciary. It was clear that there is room to enhance independence of the judiciary in the Constitution, which, among other things, allows the Prime Minister to hire and fire senior Judges, there is no institutionalised judicial service commission and in general, unclear rules of referral between the High Court and Court of Appeal. These gaps have led to high levels of compromise within the high ranks of the judiciary, which in turn has resulted in corrosion of confidence in the judiciary. During its visit to Lesotho, SADC-LA received an open invitation from the PM, AG and Ministry of Law to work with the government in the drafting of constitutional reforms in relation to entrenching the independence of the Judiciary and Legal Profession. SADC-LA accordingly wishes to conduct comprehensive comparative research analysis to inform best practice and global benchmarking of the reforms process in Lesotho working with legal experts and partners in the SADC Region.

2. PURPOSE OF THE IJLP WORKING GROUP

Without reviewing the current position that Lesotho sits at, the Judicial System and the Constitutional Framework that Lesotho relies on will continue to negate the responsibilities that the STATE has owed to the people of Lesotho. The application of the law is one that will not be looked at as unbiased and fair in trying to promote the Rule of Law and protect the democracy that Lesotho declares to have. To this end SADC LA aims to;

- 1.1. Create a structure of a Regional working group on constitutional and electoral democracy. This will be constituted of senior legal experts with a demonstrable work record in constitutional and electoral law. They will input to critical sections of the proposed law reform for the Lesotho Judiciary and provisions speaking to electoral and parliamentary democracy.
- 1.2. Determine the regional and international standards for constitutional, electoral and parliamentary democracy for recommendation to the Lesotho law reform process. This will ensure capture of regional and international standards for purposes of benchmarking. The end product will be some model constitutional provisions based on international standards for use by the Ministry of Law and AG in Lesotho as a guidance and reference.
- 1.3. SADC-LA will also consult legal experts and key stakeholders in Lesotho for input and buy in over proposed reform provisions. These will be done virtually or telephonically after first sharing the draft. Key stakeholders will include the Church, Civic Society, the Legal Profession, Judiciary, Academia, HRIs, etc

3. EXPECTED DELIVERABLES

The final deliverable is a draft Research Brief presented to the government of Lesotho and identified key stakeholders. The research report will be constituted of Model Constitutional Reform provisions and Constitutional guidelines that can be implemented in Lesotho. This must include;

- i. Detailed legal research that documents the effects of the politics surrounding Judicial Independence and Constitutional Reform in Lesotho on the actual justice system of the citizens and encourage dialogue between the three branches of government in order to promote and protect the Rule of Law and the importance of an independent Judiciary in a democratic country.
- ii. Acute analysis of existing threats and challenges to judicial independence in Lesotho as regards the separation of powers.
- iii. Overview of past, present and planned efforts in regard to national, regional and global support of Judicial Independence and Constitutional Reform in the SADC Region and Internationally.
- iv. The Regional Working Group has been established to ensure continued availability of technical backstopping to SADC-LA's advocacy in regard to law reform in Lesotho. The working group will also help as a referral resource to the officials in Lesotho as required. It will necessarily monitor the progress of reforms in Lesotho determined by the implications of new Constitutional Guidelines formed for Lesotho and other progressive sources working with the government of Lesotho.
- v. Identification of and or constitution of the correct platforms and processes of advocacy in the SADC region through which regression in protection of the independence of the Judiciary may be accountable to.

4. SPECIFIC TASKS FOR THE ASSIGNMENT

The consultant will be expected to undertake the following tasks:

- i) Assist with resources for research and analysis
- ii) Attend advisory meetings in SADC Countries as requested in matters of constitutionalism and constitutional development.
- iii) Assist with review of existing key policies, research publications and advocacy for Constitutional Guidelines and Independence of the Judiciary in Lesotho and the SADC region.
- iv) Make presentations as required to and receive input from the legal fraternity and concerned stakeholders on Independence of the Judiciary and Legal Profession in SADC. The working group among other things will look into;
 - Constitutional and Electoral Democracy
 - Assist with editing and reviewing research and analysis of regional and international standards for constitutional development.

5. WORKING SPECIFICATIONS

- i. Except as advised, meetings will be held virtually and consultations and input are home based due to COVID-19.
- ii. Committee members agree to engage voluntarily for no remuneration. SADC-LA will from time to time and based on availability of funds provide stipends to cover data and other administrative costs incurred by committee members in doing their work.
- iii. The committee is permanent and will assist to conduct regional advocacy on constitutionalism and constitutional development across the SADC Region.
- iv. The committee will work under the overall guidance of SADC-LA whose Secretariat will provide administrative support and coordination on behalf of the SADCLA Executive Committee.

- v. All resolutions of the committee are subject to ratification by Exco and Council of the SADCLA.
- vi. Members appointment and tenure on the committee is confirmed and determined by the SADC-LA Executive Committee.

6. SUBMISSION OF EOI

Those interested are requested to submit a CV and a brief proposal (of no more than two pages) by email to info@sadcla.org "cc" maxinen95@yahoo.co.uk by close of business on or by the 25th of January 2021, clearly stating "Consultant: Judicial Independence and Constitutional Reform in Lesotho ref: SN/mn/IJLP-21" and your /company name in the subject line.

The proposal must outline the following:

- i) The steps you will take to successfully complete the assignment.
- ii) Any proposed revisions to the proposed timeline.
- iii) Estimated fee for the consultancy.
- iv) Availability to undertake the aforementioned consultancy role.

A writing sample (3-5 pages max), preferably from previous experience with a similar assignment, is required as an annex to the proposal.

We regret that due to the large number of applications anticipated, only shortlisted candidates will be contacted.