



CENTER FOR DOMESTIC VIOLENCE PREVENTION

TERMS OF REFERENCE FOR CONSULTANT TO UNDERTAKE ASSESSMENT OF PLEA BARGAIN IN THE JUSTICE LAW AND ORDER SECTOR

1. Background:

The Center of Domestic Violence Prevention (CEDOVIP) is a registered local NGO founded in 2003. CEDOVIP works in partnership with communities, institutions, government and civil society to promote women's rights by influencing change of attitudes, behaviors and practices that perpetuate violence against women in Uganda.

CEDOVIP coordinates the Domestic Violence Act Coalition which is a group of 22 women's rights organizations- that are committed to spearheading efforts to enable implementation of the Domestic Violence Act (DVA), and monitor implementation of the Act in the Judicial System to assess its effectiveness in providing protection to survivors of domestic violence.

2. Justification:

The **United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** defines Gender Based Violence (GBV) as *Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life.* GBV is a human rights violation with gross consequences for men, women, children, communities and the nation at large.

Elimination of violence against women and girls continues to be at the top of the agenda of world leaders committed to protect women and girls in order to create a better and safer world for all through the Convention on the elimination of violence against women (CEDAW), Protocol to the African Charter on Human and People's Rights on the rights of women in Africa (The Maputo Protocol), and more recently the Great Lakes Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (Kampala declaration 2009) among others.

The U.N.'s Sustainable Development Goals, which came into effect, recognize that gender equality and women's empowerment are prerequisites for development. The main targets for the fifth SDG—gender equality—are to end all forms of discrimination against women and girls everywhere as well as to eliminate all forms of violence against, and exploitation of, women and girls in the public and private spheres.

In Uganda, Violence Against Women and Girls (VAWG) manifests in a number of ways, these include: physical abuse such as battery, abandonment, controlling behaviours, rape, defilement, early and forced marriages, sexual harassment and outright physical abuse, trafficking of women and girls for sexual exploitation and female genital mutilation. In Uganda like other countries, domestic violence mainly affects women; indeed, women are six times more likely to be victims of domestic violence than men.ⁱ

Specific laws such as the Domestic Violence Act, Prohibition of Female Genital Mutilation Act, Anti Trafficking in Persons Act, are relatively new yet Domestic Violence and many of the VAWG specific crimes are so rampant and peculiar crimes that are widely tolerated. Often the victims are re-victimized and not protected socially and legally leading to impunity and repeated offences.

Although laws are in place, enforcement remains a pervasive challenge including; lack of clear procedures for law enforcement, negative attitudes of law enforcement officers towards victims of VAWG, high disregard of cases of GBV by Police Officers, Judicial Officers and Prosecutors, low prosecution rates, low conviction rates, failure of courts to protect victims and witnesses, high costs of legal representation in court, prolonged and intimidating court processes among others.

One such mechanism or procedure is Plea Bargaining, an initiative by the Judiciary to address the challenge of case backlogs and speed legal proceedings and criminal trials. Plea Bargaining is currently being scaled up in the Justice System in Uganda courts of law which is encouraging suspects to voluntarily plead guilty to their offences. A Plea Bargain is an agreement in a criminal case between the Prosecutor and the accused person whereby the latter agrees to plead guilty to a particular charge in return for a lighter sentence or lessening of the charges. Prosecutors encourage pleas of guilt under this program to save time and resources for other cases, reduce the number of trials that Judges need to oversee and also decongest prisons. The intention is good but when it comes to violence against women and girls specific crimes there are issues of concern:

- What assumptions do the framers of plea bargain have?
- To what extent does plea bargain prioritize victim safety and perpetrator accountability?
- Are there minimum sentencing guidelines to ensure that justice is done?
- Where are the voices of the survivors whose cases have been handled through plea bargain?
- To what extent does plea bargain prioritize the needs of children?
- What does it take to do this right? (Budget analysis).
- Isn't plea bargain likely to encourage violations of women and girls with the hope that perpetrators can plead guilty and get away with a lighter sentence?

3. Scope of work:

Therefore CEDOVIP intends to hire consultant(s) for a two-fold assignment to;

1. Review available literature on where the Plea Bargain has enabled women and survivors of VAWG to access justice so that findings are promoted as good practices to strengthen it. ie cover the advantages of the mechanism in regards to VAW/G cases.
2. Review and assess the violence against women and girls cases handled by courts of law using Plea Bargaining in 13 courts (Nakawa, Mukono, Mbarara, Masaka, Kampala, Jinja, Gulu, Lira, Soroti, Mbale, Fort Portal) where it is fully operational and effective or not.

3. Establish how gender sensitive, and how survivor safety, needs and rights were protected and if there is highlight the gaps in using this law to dispense justice to women and girls.
4. Establish whether there are specific sentencing guidelines that are observed and how fair the sentences are in regards to violence against women/girls. The assessment should particularly consider cases of sexual violence and evaluate whether plea deals had led to downgrade or drop rape charges for guilty pleas on other non-sexual crimes such as assault or burglary.
5. Develop a policy brief highlighting the gaps and specific recommendations to strengthen the mechanism of Plea Bargain in regards to violence against women and girls cases.
6. Understand from female survivors of VAWG and their relatives how they felt when this law was applied to them and how it can be improved to benefit others; The assessment should analyze whether or not survivors of VAWG feel justice has been served, or in other words their level of satisfaction with the plea negotiations.

The information will be used to lobby the Judiciary for procedural changes to strengthen Plea Bargain and improve access to justice for survivors of violence against women.

4. Objectives:

The terms of reference for the assessment of violence against women and girls cases handled through Plea Bargain in the Justice System consultancy are as follows;

1. Identify and document lessons/ case studies from other countries on how Plea Bargaining is undertaken in regard to protection of VAW/G survivors (existence of criteria for evaluating which charges may legitimately be subject to bargaining, the possibility for the victims to comment on the proposed plea during the plea negotiations between the prosecutor and defendant, etc.)
2. Establish whether Judicial Officers and Prosecutors understand or have been trained on Plea Bargaining and how to protect the safety of victims and hold perpetrators accountable.
3. Establish whether there are standard operating procedures for Plea Bargain on how to handle VAWG cases keeping in mind the sensitivity and peculiar nature of gender and VAWG crimes. i.e safety, respect for survivor wishes and confidentiality.
4. Assess the number of VAWG cases that have gone through Plea Bargain and type of remedies issued specifically about how fair and gender sensitive the remedies are.
5. Identify key successes and lessons from other case studies in application of plea bargaining for VAW/G cases and make recommendations to improve on concept.
6. To understand the extent to which plea bargaining has helped to reduce case backlog in the 13 courts where it was used.

5. Methodology

The consultant(s) will undertake the assessment process and closely work with CEDOVIP staff. The consultant(s) are required to propose a methodology for the assessment to be approved by CEDOVIP before the commencement of the assessment. Key things include:

- A broad consultative process to be followed with the different stakeholders

- The prepared Terms of Reference (TOR) will be shared with other partners if appropriate/necessary.
- The TOR will be sent to the various consultants who will have expressed interest in the review process and CEDOVIP will assess the consultants' interests and skills against the draft TOR.
- The successful consultant should undertake 20 working days including background research and desk work.
- The methodology should include case studies to assess VAWG cases that were successfully/failed handled through the Plea Bargaining.
- The consultant will determine the methodology for the field work including the questionnaire, the field visit format and checklist with approval from CEDOVIP.
- The field work will utilize as many evaluation tools and techniques as possible in order to maximize the sources of information used to inform the review and to verify results.
- The consultant will be responsible for writing reports and compilation into a case brief at the end of the assignment.
- The main body of the assessment is to be a maximum of 30 pages in length plus annexes.

TIMEFRAME

The assessment will commence on 16th January, 2017 and should be completed by 10th February, **2017** with a draft report submitted to CEDOVIP for review and feedback. A consultancy agreement with the terms will be signed between the consultant and CEDOVIP.

Outcome

- High quality assessment Report (not exceeding 30 pages) which includes annexes and recommendations for improvement of the plea bargaining.
- Short power point presentation of the key findings and recommendations.

Application process for the Consultant (s)

CEDOVIP is inviting suitably qualified consultant (s) or individual (s) with the following skills:

- Master degree in Law with a Diploma in Practicing Law and over 10 years experience in the field of women's rights and legal procedures.
- Experience of carrying out gender analysis on judicial rulings.
- Proven knowledge and analysis in relation to rights-based approach and women's rights, needs and perspectives
- Proven knowledge and understanding of the dynamics of violence against women and girls.
- Experience and knowledge of Uganda's Legal and Judicial System and Procedures.
- Experience and knowledge in working in partnership with Civil society organizations
- Ability to easily communicate with stakeholders from all social economic backgrounds.

Submit your application and proposal in sealed envelopes clearly marked '**Provision of consultancy services for CEDOVIP**' and should include the following information:

A CV of the applicant(s) including and a not more than 10 page proposal including the following:

- The proposed methodology
- The proposed work plan
- The budget break down
- Proven experience and contactable references of past judicial reviews or assessments.

The application should be delivered to the address below not later than **13th January,2017; 5:00pm.**

**Executive Director
Center for Domestic Violence Prevention
Plot 16 Tufnell Drive, Kamwokya
P.O BOX 6770, Kampala.**

NOTE: Only successful consultancy application and proposal will be contacted.

ⁱ 2011 Uganda Demographic and Health survey. UBOS