



30th August 2023

Terms of Reference

Development of a Report to Highlight the Gag Complaints by Whistle-blowers, Journalists, Activists and Public- Spirited Individuals.

Contextual Background

The bedrock for media freedom in Kenya lies in Article 34 of the Constitution of Kenya which guarantees the freedom and independence of electronic, print and all other types of media, subject to the limitations of freedom of expression under Article 33. Despite these guarantees, there have been well-known forms of media restriction such as media outlet shutdowns and threats, which have had the effect of shrinking part of the civic space. In addition to these, there has emerged the rampant use of legal suits to intimidate media actors to proffer attacks on media outlets and individual journalists.

Strategic Litigation Against Public Participation (SLAPP suit) refers to lawsuits brought by individuals and corporate entities aimed at dissuading their critics from continuing to produce negative publicity. SLAPP suits do not have any true legal claims against the critics. People bring SLAPP suits because they can either temporarily prevent their critics from making public statements against them or more commonly to make critics spend all of their time and resources defending the SLAPP suits and, in most instances, exploiting archaic laws which are punitive and likely to award punitive damages in the name of defamation and libel.

In spite of robust constitutional and legal frameworks, media actors alongside public-spirited citizens and civil society organisations have faced challenges from various orders issued by courts and punitive costs when exercising their freedom of expression through the various defamation or libel suits filed by individuals and corporates seeking to stop the public from receiving information. This has been exacerbated by the draconian defamation laws and wide discretionary powers judges have in arbitrating this kind of disputes.

Cognizant of this status quo, Mzalendo Trust undertook a [study](#) in 2022 that outlined how SLAPP suits had emerged across the Kenyan landscape and showcased the impact these suits had on the civic space and public participation. In addition, the study provided recommendations towards the independence and protection of journalists and their right to media freedom.

Consequently, in a bid to clearly highlight incidences of SLAPP suits and provide a human element of the same, Mzalendo seeks to engage a consultant to undertake the development of a report that will document these incidences and raise awareness for strengthened advocacy.

About the Project

With support from the Commonwealth Foundation, Mzalendo is implementing a project titled *Combating Gag Complaints to Enhance Freedom of Expression* which seeks to secure a conducive legal, policy and institutional environment on the freedom of expression and citizen participation in public dialogues in Kenya. Secondly, it aims to enhance awareness among policy makers and other duty bearers on the effects gag complaints on the freedom of expression and the right of citizens to participate in public discourses. In that regard, the project will aim to provide dialogue spaces for media practitioners, policy makers, journalists and relevant duty bearers with a view of influencing them to explore other complaints mechanisms with application of litigation as a last resort in the purported cases of slander and libel.

Objectives and Scope of Work

The report is intended to identify and document instances of SLAPP suits against journalists, human rights defenders and/or public-spirited individuals with a view of exposing the chilling effects such suits have on the lives of the victims.

The main duties and responsibilities of the Consultant will be to:

- Research and documentation of SLAPP suits incidents;
- Undertake interviews with journalists, media houses, media regulators, human rights defenders and/or public spirited individuals, and the relevant policy and lawmakers;
- Document the gender impact of gag complaints in the country.
- Highlight recommendations as provided by the key informants;
- Support the development of policy briefs and
- Make presentations during the validation and launch of the report and policy briefs.

Proposed Methodology

The proposed methodology will build on an in-depth desk review of relevant literature, media reports, court decisions and collation of key informant interviews and resource persons input on the subject.

The Consultant, in collaboration with the project team, will:

- Agree on methodology of the assignment, prepare adequate tools putting into consideration the objectives and timelines of the project;
- Develop and agree on an inception report with the clear timelines;
- Prepare a detailed Reportreport documenting specific SLAPP incidents in Kenya as outlined in these terms of reference; and
- Present findings and recommendations of the study to various stakeholders.

Key deliverables

- Inception report including tools to be applied for the report;
- Draft Report;
- Final Report and;
- Facilitation of validation meeting and report launch.

Profile of the Consultant

The consultant will be required to demonstrate –

1. Masters' Degree in Journalism/Communication, Law, Political Science or any other related field;
2. Relevant experience of at least 10 years on human rights and specifically the freedom of expression;
3. Experience in research methodology, selecting and evaluating information as well as conducting and evaluating interviews e.g. FGDs and KII methodologies
4. Strong interviewing and storytelling skills;
5. Relevant professional/educational qualifications;
6. Ability to work independently within strict timeframes;
7. Availability during engagement period;
8. High level of professional integrity and;
9. Good communication skills.

Contract Period

The Consultant will be engaged for a period of 20 days spread over September and October and effective from the signing of the contract. The final report should be made available to Mzalendo on or before **15th October 2023**.

How to Apply

1. The Consultant is required to submit a technical and financial proposal as part of their application.
2. The technical proposal should include a summary of the applicant's qualifications, experience and a detailed methodology, outlining how they will approach and complete the quantitative and qualitative aspects of the assignment within the timeframe outlined. The technical proposal should also contain CVs of key team members and professional references.
3. The financial proposal should indicate the all-inclusive fixed total contract price and be supported by a breakdown of costs by activities.
4. The proposal should be sent to community@mzalendo.com by **13th September 2023** End of Day.
5. The application subject line should clearly indicate '*Development of Report – Highlighting SLAPP Incidents in Kenya.*'
6. Any clarification should be emailed to community@mzalendo.com before **8th September 2023**.

About Mzalendo Trust

[Mzalendo](#) Trust is a Kenyan non-partisan Parliamentary Monitoring Organization started in 2005 and whose mission is to 'promote open, inclusive, and accountable Parliaments in Kenya and Africa.' We do so by creating and managing civic tech tools, producing evidence-based research, and leading and facilitating advocacy and partnerships with Parliaments, citizens, and other relevant stakeholders. Mzalendo believes that success in its work will build more effective and responsive legislation and political processes that ultimately support Kenya's national development goals. In line with its [Strategic Plan 2021-2025](#), our work is anchored on three main pillars: Openness, Inclusion, and Accountability.