## TERM OF REFERENCE (ToR)

**Draft a new law titled proposed as “*Human Rights Defenders Protection Act, 2019”***

1. **Background and Context**

Ain o Salish Kendra (ASK) as a leading human rights and legal aid organization of the country has been working to promote and achieve sustainable human rights based society since its inception. ASK conducts monitoring of human rights situation and provides legal aid services to the person or persons in need especially to the marginalized women of the society.

Along with ASK’s regular activities to respond to human rights issues it focuses upon promotion of human rights situation. Having that intention the organization considers legal and policy advocacy as the focal strategy to reinforce and develop pro-human rights approach in the state. ASK envisions to contribute in reforming the existing legal tools and policies to ensure supportive environment for more responsive state institutions. ASK considers Public Interest Litigations (PILs) is such a tool that can be used to protect the human rights of the larger group of people through addressing the shortcomings of the existing system. It is also one of ASK’s strategies to held the state institutions accountable at the cases of gross human rights violation. ASK’s advocacy for policy and legal reforms also focus on reinforcing human rights perspectives to the existing state structure and system. At times ASK also coordinate drafting new laws depending on the urgency of many comprehensive Acts as safeguard to the rights of the people.

ASK’s social movement and advocacy regarding Uniform Family Code has been reflected in various amendments and enactments of family laws. Alongside ASK has vibrant presence in various arenas of collaborative efforts of Civil Society, human rights organizations to protect human rights of the people of the country. Protection and promotion of right to life, liberty, right to education, rights to health, freedom of exercising civil and political rights of the people have been core areas of ASK’s intervention for long. Following various past achievement of ASK, in recent days, ASK’s intervention in legal advocacy has become further visible in High Court Division’s judgment of banning ‘two-finger test’ of rape victims. It is one of the most recent outcome of long struggle of the human rights organization including ASK and civil society organizations of the country. ASK has always been at the frontline to bring every stakeholder’s concentration to any such emerging issue that requires a comprehensive act to mitigate the subjugation of people’s rights in any particular arena.

ASK identifies such issues with well articulated analysis and research over the period of time. This year ASK has decided to work on the issue of protecting the rights of the human rights defenders (HRDs) which deserves the attention of all stakeholders and policy makers because of the worrisome situation of the defenders in Bangladesh. Accordingly, ASK plans to advocate for drafting a new law under its advocacy program to ensure presence of a comprehensive tool to safeguard and to strengthen the security of HRDs against acts of violence, discrimination, harsh reprisals and intimidation. ASK intends to achieve this within the planned activity of advocacy program under Annual Operational Plan (AOP) 2019. In addition to drafting ASK has planned to lobby with Government of Bangladesh (GoB) and it’s other stakeholders so that a comprehensive act comes into force.

1. **Why do we need a Human Rights Defenders Protection Act in the first place?**

There is a huge obstacle preventing HRDs from carrying out their peaceful and legitimate activities in a safe and enabling environment without fear of being subjected to acts of intimidation or violence of any sort.

The government’s failure to come out strongly and consistently against the attacks on HRDs has had severe and wide-reaching impacts on at least ten different human rights struggles in Bangladesh. HRDs working on labour rights, indigenous peoples’ rights, women’s rights, sexual and reproductive health, LGBT rights, and for the rights of garment factory workers all reported that the climate of fear and impunity created by the lack of protection, killings, victim blaming, and legal restrictions of freedom of expression caused them to stop or significantly reduce their work. Dozens of HRDs have fled into exile. Many HRDs reported an increase in self-censorship since 2013, citing fears of both physical attacks and legal abuse. For instance:

* **Land and environmental rights defenders** working for the rights of people in the Chittagong Hill Tracks region reported ceasing to post about the rights of indigenous communities who are not Muslim.
* **LGBT rights defenders** have completely stopped the writing and publication of their groundbreaking magazine, Roopbaan, following the assassination of Xulhaz Mannan.
* HRDs working in the **academic field** and as professors reported censoring their classroom lectures and organising fewer human rights discussions for their students and peers.
* **Labour rights defenders** have decreased their writings on multiple outlets, including on a shared feminist blog which previously highlighted the intersections between women’s rights and labour rights in Bangladesh, citing fear that they might endanger other writers on the platform.
* **Women’s rights** defenders report a growing number of topics they “suddenly cannot write about” for fear of attack, including gender violence. WHRDs working on women’s rights in particular feared that because the killings have thus far targeted males, their sons might be attacked by proxy.
* A HRD who wrote the country’s first ever column on **indigenous peoples’ rights** in a mainstream newspaper reported decreasing his writings to a few times a year, citing both fear of attack and a marked increase in censorship and edits to his pieces prior to publication.
* Bloggers who remain in the country have reported stopping their writings on democracy, human rights, secularism, and attacks on HRDs, limiting themselves to writing “non-sensitive poetry”.
* **Migrant rights** activists report reducing their activity on Facebook in confronting defamation of migrant workers, because they fear their defense of migrants in the Gulf States will be seen as “anti-Islamic” and put them in danger of attacks and killings.
* **Sex workers rights** activistssay they are the most marginalised community and are not even afforded basic human rights and that there is no dedicated person or government official who is responsible for monitoring whether sex workers are accorded their minimum rights because of the stigma attached to them by society.

The new law will ensure that HRDs are not subjected to any harm, and in the event it happens, that perpetrators are held accountable in accordance with the law.

1. **Inadequate measures to protect the HRDs at present:**

According to a report published by the Front Line Defenders between February 2013 and June 2017 at least 15 human rights defenders and activists were murdered in Bangladesh. Local extremist groups pledging allegiance to Al-Qaeda often claimed responsibility for the attacks, which have targeted HRDs who write about women’s rights, indigenous peoples’ rights, freedom of religion, and other human rights issues. The government has so far failed to properly investigate a majority of the murders. This, and lack of protection for HRDs who report threats, subsequent victim-blaming following attacks, and increased restrictions of freedom of expression implemented after the killings has caused the HRDs to limit, stop, or alter their work.

Most report a marked increase in the direct threats they received since 2013. HRDs receive threatening telephone calls, text messages, notes left on their vehicles, private messages on Facebook, and public comments on their blogs and Facebook posts, particularly those addressing human rights violations in Bangladesh. In addition to receiving threats from what appear to be non-state actors, HRDs also report receiving threats and harassment from government officials.

HRDs reported that police routinely refuse or ignore requests for protection. Family members of murdered HRDs reported that in the months prior to the killings, HRDs had requested police protection or action following a series of death threats and acts of intimidation. At least two were told by police to “just leave the country.” HRDs still working in the country report routine mistreatment at police stations – including insults and sexist remarks – when they attempt to file official complaints of threats, intimidation, and stalking. HRDs working on a variety of rights reported that police at their respective local stations have refused to allow them to file reports and refused to receive their statements regarding physical and verbal attacks.

1. **Proposed Arena**

On August 01, 2019 the committee members reached to a decision that this year ASK is going to draft a new law focusing on the issue of *protecting the rights of human rights defenders*. The reason behind the selection of this issue and drafting a new law is to ensure that protections are in place for the rights and freedom of human rights defenders especially in the context of the rising number of attacks against them.

1. **Title and Language**

The name of the draft law may be *Human Rights Defenders Protection Act*. And the language of the draft will be in *Bangla* and in *English*.

1. **Objectives**

The draft *Human Rights Defenders Protection Act* will be aiming to:

1. Respect, promote, protect and fulfill the rights of human rights defenders;
2. Facilitate the activities and work of human rights defenders;
3. Provide free access to materials relating to human rights and fundamental freedom;
4. Prevent and penalize intimidation and reprisal;
5. Ensure protection from arbitrary or unlawful intrusion and interference;
6. Adopt human rights based governance;
7. Strengthen protection program;
8. Conduct investigations;
9. Promote and facilitate human rights education;
10. Creation of Human Rights Defenders Protection Committee which will respond effectively to the protection needs including addressing gender threats to women human rights defenders (WHRD) and LGBTI, identifying defenders and their families;
11. Establishment of a “HRD Desk” which would have the mandate to receive and respond to threats against HRDs.

In other words the government needs to make sure that mechanisms are in place to guarantee the safety of human rights defenders. However, the objectives may be changed or modified in compliance with attaining the goal or to achieve better output.

1. **Strategy of Drafting**

A Consultant or a team of consultants will be appointed following due process to prepare the draft. The consultant or his/her representative will sit with the committee time to time. Communications can be made over email, texts and phone calls or by any other means.

1. **General condition and obligations**

The consultant (s) will conduct the review and analysis in accordance with the proposal submitted by the team. ASK will provide necessary assistance to design and implement the review program and will ensure active participation in the process.

1. **Indicators for review and analysis**
* The consultant(s) will identify and propose a set of indicators considering the above objectives of the process.
* Formulation of indicators should include both quantitative and qualitative change.
* The consultant (s) will also propose a clear methodology and guideline to ASK.
* ASK will provide background information and necessary support to the consultant (s) as per demand through sharing meeting to finalized laws indicators and review assessment.
1. **Methodological guidelines:**

The consultant(s) should follow the guidelines as set out in the United Nations Declaration on the Rights of Human Rights Defenders and draft a new law. The methodology and relevant tools will be finalized in consultation with ASK and also to explore if any existing review and analysis already exist in the internal resources.

1. **Timeframe:**

To complete the task the draft *Human Rights Defenders Protection Act* will be submitted by December, 2019. The first draft is expected by November, 2019 after relevant discussions and sharing with the committee.

1. **Deliverables:**
* Prepare the outline/ structure of a new law title as *Human Rights Defenders Protection Act*
* Analyze existing documents and information and current cases on the issue
* Design an appropriate analysis and finalize it in consultation with ASK
* Collect, compile information and analyze the information through reviewing the laws.
* A draft law prepared and presented to ASK
* Five hard copies with a soft copy of the final draft law and all primary information and resources based on which has been produced before ASK concern person.
1. **Required team composition:**
* The consultant must have a law degree from a recognized university.
* At least 10 years relevant experience on research /assessment/study and policy analysis work
* Extra value will be added if he/she has experience to conduct study/ assessment in the topic medical negligence.
* Excellent proven experience and understanding of medical negligence and relevant laws regarding this topic.
* They are also expected to have an adequate understanding of institutional governance, and capacity building of civil society organisations, and past experiences of involvement in similar areas of work.
1. **Plan for disseminations:**

The consultant will be responsible to disseminate the findings to the key stakeholders including ASK staffs, human rights activists and organizations, other professionals, experts, and govt. officials. ASK will organize the dissemination workshop/seminar.

**15**. **Ethical Considerations:**

The review and analysis will make clear to all participating stakeholders that they are under no obligation to participate in the analysis. All participants will be assured there will be no negative consequences if they choose not to participate. Review and analysis will obtain informed consent from the participants.

**14. Budget & Mode of Payment:**

The consultant to provide the detail budget breakdown. The payment of consultant fee will be done according to the following time frame:

1st installment: 20% of the total amount after signing the agreement

2nd installment: 30% of the total amount after receiving the draft review and analysis from the consultant

3rd installment: 30% of the total amount after receiving the draft analysis of which included the different stakeholder’s opinion and accepted by ASK

4th installment: 20% of the total amount after receiving the final review and analysis of the laws and accepted by ASK

The payment will be made in account pay cheques in the name of the consultant/ consultancy firm. ASK will deduct IT and vat at source as per GoB rules. It will be deposited to treasury of GoB. All cost related to travel, food and accommodation. Logistics will be borne by consultant/ consultancy firm.

1. **Submission of proposal:**

ASK invites proposal from management consulting firm/agency/organization/individual consultant. The individual/firm must submit the following documents along with technical and financial proposal (including vat and Tax) the financial proposal should include 15% vat only. ASK will deduct 10% income tax at source from the agreed consultancy amount. The proposal can be either in the language English or Bengali. The technical and financial proposal should be submitted in two separate envelopes. These two envelopes are then to be put in one larger envelope which must be sealed with a cover letter addressing to The Executive Director, Ain o Salish Kendra (ASK), 2/16, Block-B, Lalmatia, Dhaka-1207, Bangladesh. The proposal to be submitted at ASK office no later than October 12, 2019.

**15. Ownership:**

ASK would have the ownership on the whole document and will use the information for purpose of research publication and any others.

**16. Reference and intellectual Property:**

All written work must be authorized to the current sources copyright Act of all information in findings and others final report will remain with ASK.

**17. Disclaimers:**

* ASK reserves the right to accept or regret any or all proposal without any reason what so ever.
* **Terrorism and money laundering issues:** If there any proof of engagement in any terrorism and money laundering issues, ASK reject the proposal without assigning any reason
* The firm/organization/individual shall comply with the Child Protection Policy of ASK. Any violation/deviation is in complying with ASK's child protection policy will result in termination of the agreement.

**13. Contact Person: Nina Goswami, Senior Deputy Director (in charge), Outcome-4**