

Terms of Reference

Job Title: National Consultant to provide a Study on Support in Exercising Legal Capacity and the Protection of Persons with Psycho-Social and Intellectual Disabilities from Human Rights Abuse

Project reference: UN Human Rights Adviser (Office of the UN High Commissioner for Human Rights)

Contract type: Individual Contract, Part Time

Duration of assignment: 20 January 2014 – 30 May 2014

Duty station: Chisinau, Moldova

Deadline for applications: 15th of January 2014

Background

The United Nations Office of the High Commissioner for Human Rights (OHCHR), within the UNPRPD project “**Paradigm Shift: UNCT Moldova Strategic Action Supporting CRPD Implementation**” jointly implemented with UNDP, WHO and UNICEF, seeks to commission a study on support in exercising legal capacity and the protection of persons with psycho-social and intellectual disabilities from human rights abuse.

Moldova is reforming the guardianship system according to the requirements of the article 12 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), providing a legal reform moving from substituted towards supported decision making. An inter-ministerial working group was set to propose draft amendment to the civil code and relevant legislation and a model of services for supported decision making. Except for the legal discussion, mainly on the interpretation of the provisions of the article 12 of CRPD, there is a need of assessment of the real situation and the threats that happen in practice, since the informal system of support in decision making as an alternative to guardianship was never evaluated for efficiency and law compliance.

In 2013 a groundbreaking study both for the Republic of Moldova as well as more generally was commissioned by OHCHR for revealing issues concerning the treatment of persons with mental and intellectual disabilities, and directions for reform of the legal capacity and guardianship system.

The study revealed a number of issues, such as:

- Guardianship is generally perceived as a tool for abuse, most commonly in order to seize the property of the person concerned. Authorities involved in guardianship and guardians themselves frequently do not realize their obligations to facilitate or enable the exercise of the

trustee's rights. Few if any people think the system is functioning effectively as a system of protection of the rights or interests of the persons concerned.

- The dramatic increase of persons placed under guardianship is conditioned by the formalistic requirement that institutionalization in social care homes should only take place after a person has had their legal capacity removed. Another major reason for filing requests for guardianship is identified to be the issue of procedurally obtaining the right to take the persons social pension from the national social insurance.

In practice, guardians turned out to have full control over the life of the incapacitated person and their activity is not efficiently or persistently monitored by any institution. The paramount human rights infringement is the fact that persons deprived of legal capacity are also deprived of procedural rights, thus, they cannot independently seek access to justice to have their rights restored and situation remedied.

Scope of work

A national consultant is sought to undertake first hand, fact-based research, using standard human rights documentation methodologies, to document the situation of those individuals experiencing a psychosocial or intellectual disability with full legal capacity and recognition to exercise the right of self-determination and who benefit from support in making decisions and acting towards their realization. For the purpose of the study, supported decision making is to be understood as any type of accommodation in decision-making processes to protect the right to exercise self-determination for those vulnerable to losing this right. The trusted others are expected to provide assistance in any aspect of protecting the personhood of an individual. Principles of Supported Decision Making are:

- All individuals of legal age are persons before the law and have a right to self-determination and respect for their autonomy, irrespective of disability;
- All adults are entitled to the presumption of full legal capacity, irrespective of disability, and to the decision-making supports necessary to exercise capacity and reveal identity;
- Decisions made interdependently with family, friends, and trusted others chosen by the individual, will be recognized and legally validated;
- All individuals have a will, and this will is capable of being interpreted and forming the basis for competent decision making;
- Diagnosis, third party interests and liability concerns do not provide a valid justification for removing a person's decision-making rights and legal capacity.

For the purpose of the study, envisioned are:

- Desk review of all relevant materials;
- Consultations with relevant parties from the human rights, medical and rights of persons with disabilities communities;
- First hand documentary field research, based on standard human rights research methodologies, to establish any and all facts related to the functioning of different informal mechanism of support in decision making for the purpose of exercising legal

capacity for persons with psychosocial and intellectual disabilities and protection from abuse;

On the basis of this research, the consultant shall produce a report in English language of not less than 16,000 words and not more than 30,000 words, with standard academic referencing, including the following:

- (a) Existing relevant international and national law provisions relevant for the given area, with particular focus on relevant human rights law;
- (b) Clear, fact-base description of human rights issues facing persons with psychosocial and intellectual disabilities, by theme and including descriptions of facts in individual cases;
- (c) Statistical data, where existing and relevant;
- (d) Recommendations for action and/or reform.

On the basis of the identified facts, concrete recommendations for addressing identified threats, defined in human rights terms, to persons with mental or intellectual disabilities that benefit from support in exercising legal capacity or otherwise threatened with incapacitation, need to be developed. The recommendations should be based on the core premise that:

- (a) Supported decision-making must be available to all.
- (b) All forms of support to exercise legal capacity must be based on the will and preference of the individual, not on the perceived/objective best interests of the person.
- (c) An individual's mode of communication must not be a barrier to obtaining support in decision-making.
- (d) Legal recognition of the supporter(s) chosen by the individual and mechanisms for third parties to verify the identity of a support person as well as a mechanism for third parties to challenge a decision of a supporter if s/he believes the supporter is not acting based on the will and preference of the individual must be available.
- (e) Support measures are not imposing any additional expenditures or costs on persons with disabilities.
- (f) Support in decision-making must not condition the access to other fundamental rights of persons with disabilities.
- (g) The person must have the right to refuse support and end or change the support relationship at any time they choose.
- (h) Safeguards for all processes connected to legal capacity and supports to exercise legal capacity must ensure that the person's will and preferences are being respected.

The recommendations should be clear, detailed, and reform-oriented, and make particular reference to the domestic laws, regulations, rules or practices in need of amendment.

The report shall include a clear Executive Summary. The structure of the report can be modified in consultation with the UN Human Rights Adviser. Further guidance will be provided by the Human Rights Adviser.

The consultant may be asked to produce other documents, including documents in State Language, in the framework of the current consultancy.

The consultant shall be entitled to reimbursement of reasonable transport costs related to field research activities, in consultation with the Human Rights Adviser.

The study will be carried out under the direct supervision of the UN Human Rights Adviser (Office of the United Nations Resident Coordinator in Moldova and United Nations Office of the High Commissioner for Human Rights (OHCHR)) and in close collaboration with the OHCHR National Human Rights Officer. The Secretary of the Inter-ministerial Working Group on Legal Capacity Reform and UNDP Health and Human Rights Consultant is to be closely consulted when carrying out the work.

Relevant UN staff – including WHO and UNICEF staff – will be consulted in the course of the research. The study is slated for presentation to the key ministries of justice and social protection and to the larger inter-ministerial working group.

Deliverables and terms:

Deliverable	Terms
Consultation meeting with UN and national civil law experts.	February, 1
Elaboration of the methodology, design and surveys for the study.	February, 10
Conducting the first phase of the research	March, 10
Consultation meeting UN and national civil law experts. Alternative measures discussed. Further analytics.	March, 15
Conducting the second phase of the research	April, 15
Consultation meeting UN and national civil law experts. Alternative measures discussed. Further analytics.	April, 20
First draft of report presented to the group/preparing the WG meeting.	May, 5
Second draft of report delivered, incorporating comments and input.	May, 15
Final report, of publication quality, delivered.	May, 30

Qualification Criteria

- University degree in law, social sciences, human rights or other relevant field;
- At least 3 years of practical experience in human rights domain, monitoring activities, conducting research. Practical work in the area of the rights of persons with disabilities will be considered an advantage;

- In-depth knowledge of international law and policy as concerns persons with disabilities;
- In-depth knowledge of the political and institutional arrangements in Moldova concerning the treatment of persons with mental and intellectual disabilities, as well as others threatened with institutionalization and/or loss of legal capacity;
- Understanding of anti-discrimination law and/or rights of persons with disabilities law as set out under international, European and domestic law of the Republic of Moldova;
- Excellent drafting skills in English and State Language;
- Excellent communication and teamwork skills;
- Demonstrated competence in conducting individual interviews with affected groups according to standard human rights documentation methodologies preferred;
- Fluency in Romanian and English. Working knowledge of one or more additional languages relevant for Moldova, including Russian, Bulgarian, Gagauzian, Romani, Ukrainian or sign language is an asset;
- Adhere to the core values of the United Nations; in particular, is respectful of differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status.

Documents to be included in the proposal:

Interested persons should submit the following documents:

1. A detailed curriculum vitae of relevant experience or P11;
2. A written statement of not more than 1000 words:
 - (i) Explaining why you are the most suitable for the work;
 - (ii) Providing a brief methodology on how you would approach and conduct the work;
3. A financial proposal.