



INDIVIDUAL CONSULTANT PROCUREMENT NOTICE

Date: 27 December 2013

Country: Republic of Moldova

Description of the assignment: National consultant to provide legal services to potential victims of incapacitation, to promote alternatives to guardianship and defend their interests before courts

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

Period of assignment/services: 20 January 2014 – 30 May 2014

Proposals should be submitted online only, by following the “Apply online” link, no later than [15 January 2014](#).

Requests for **clarification only** must be sent by standard electronic communication to the following e-mail: violeta.fetescu@one.un.org. UNDP will respond by standard electronic mail and will send written copies of the response, including an explanation of the query without identifying the source of inquiry, to all applicants.

1. BACKGROUND

The Republic of Moldova ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2010. A Law on the Social Inclusion of Persons with Disabilities entered into force on 1 January 2013. In 2012, Moldovan Parliament adopted Law 121/2012 on Ensuring Equality, aiming to transpose a number of international requirements in this area into the domestic legal order. All of the above mentioned international and national legislative acts explicitly recognize the right of persons with psychosocial and intellectual disabilities to enjoy legal capacity on an equal basis with others and access support in decision making when individuals concerned consider it necessary.

Guardianship (“tutelă” or “opekunstvo”), as provided and applied under the Moldovan Civil Code, similar to many countries of the region, removes a person’s legal capacity and places it with another person or institution, named as the “guardian”. Persons placed under guardianship or otherwise declared “incapable” are deprived, pursuant to a court order to

that effect, of the ability to engage in both basic socio-legal relationships or complicated legal relationships which might require specialized knowledge, such as to marry, to divorce, to conclude a work contract, to own property, to claim social benefits, consent to medical treatment, to conclude financial transactions, to sell property or even – the ultimate paradox – to have the standing before a court to appeal a guardianship order.

The logic of these arrangements was stood on its head by the entry-into-force in 2007 of the Convention on the Rights of Persons with Disabilities. This sets out, at Article 12 paragraph 2 and 3, the following: *“States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.”*

The European Court of Human Rights has followed these developments, increasingly reading equal legal capacity requirements into the provisions of the European Convention on Human Rights, and in a row of recent cases, finding Council of Europe Member States in violation of the Convention. At least one case in this regard is pending before the Strasbourg Court against the Republic of Moldova.

2. SCOPE OF WORK, RESPONSIBILITIES AND DESCRIPTION OF THE PROPOSED ANALYTICAL WORK

The incumbent will provide support to the UN Human Rights Adviser by:

- Establishing official relations and liaison with local authorities, guardianship bodies and courts in connection with the incapacitation and guardianship cases;
- Locating and providing legal assistance and representation to individuals under the threat of incapacitation for prevention of guardianship and facilitate the discussion around alternatives of support;
- Providing legal expertise and support to the social assistants and guardianship bodies in the field on cases related to legal capacity for persons with psychosocial and intellectual disabilities;
- Building the capacities and providing mentorship to other lawyers, especially activating in the free legal aid network, working on similar cases;
- Fostering knowledge exchange between organizations, lawyers and civic activists, who are working on strategic litigation;
- Increasing awareness of the legal capacity standards and supported decision making concept before the national courts in Moldova and of the proposed social and legal transformations to enhance rule of law;

In the implementation of his assignments the incumbent is expected to travel within the country depending on the location of the particular case which needs examination. In general, travel expenses should be covered by the consultant's own resources. In the case of unforeseeable travel, reimbursement of reasonable transport costs related to the filed missions should be agreed with the Human Rights Adviser.

He/she will implement measures to maintain strict security and confidentiality of all information received and follow-up inquiries.

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 consultant may be asked to undertake other tasks, related to the incapacitation, guardianship and legal capacity procedures, in the framework of the current consultancy.

The incumbent will carry out his/her work 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 within the duration of the assignment.

At the end of the assignment a number of individuals are expected to be taken out of the risk of incapacitation and benefit from supported decision making arrangements. Also, the data and information acquired during the work will serve as foundations for detailing advancements of the legal and practical frameworks.

3. REQUIREMENTS FOR EXPERIENCE AND QUALIFICATIONS

I. Academic Qualifications:

- University degree in law, social sciences, human rights or other relevant field;

II. Experience and skills:

- 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;
- Legal and technical expertise and knowledge;
- 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;
- Proven ability to exercise judgment, initiative and discretion in working with local court authorities, NGOs, government representatives, etc.;
- Capable to develop clear goals that are consistent with agreed strategies; identifies priority activities and assignments; adjusts priorities as required; allocates appropriate amount of time and resources for completing work; foresees risks and allows for contingencies when planning; monitors and adjusts plans and actions as necessary; uses time efficiently;
- Excellent communication, persuasion and negotiation, and teamwork skills;
- 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.

III. Language requirements:

- 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.

4. DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE PROPOSALS

Interested individual consultants must submit the following documents/information to demonstrate their qualifications:

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.

5. FINANCIAL PROPOSAL

The financial proposal shall specify a total lump sum amount, and payment terms around specific and measurable (qualitative and quantitative) deliverables. Payments are paid in installments and are based upon output, i.e. upon delivery of the services specified in the TOR. In order to assist the requesting unit in the comparison of financial proposals, the financial proposal will include a breakdown of this lump sum amount (including fees, taxes, mobile phone calls, etc.). The travel expenditures are to be approved in advance by the Project Manager and shall be covered from the Project budget.

Travel

All envisaged travel costs must be included in the financial proposal. This includes all travel to join duty station/repatriation travel. In general, UNDP should not accept travel costs exceeding those of an economy class ticket. Should the IC wish to travel on a higher class he/she should do so using their own resources.

In the case of unforeseeable travel, payment of travel costs including tickets, lodging and terminal expenses should be agreed upon, between the respective business unit and Individual Consultant, prior to travel and will be reimbursed.

6. EVALUATION

Initially, individual consultants will be short-listed based on the following minimum 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;
- Fluency in Romanian and English.

The short-listed individual consultants will be further evaluated based on the following methodology:

Cumulative analysis

The award of the contract shall be made to the individual consultant whose offer has been evaluated and determined as:

- a) responsive/compliant/acceptable, and
- b) having received the highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation.

* Technical Criteria weight – 60% (300 pts.);

* Financial Criteria weight – 40% (200 pts.).

Only candidates obtaining a minimum of 210 points would be considered for the Financial Evaluation.

Criteria	Scoring	Maximum Points Obtainable
<u>Technical</u>		
<ul style="list-style-type: none">• University Degree in law, social sciences, human rights or other relevant field;	University degree – 40 pts.; MA degree – 50 pts.;	50
<ul style="list-style-type: none">• At least 3 years of practical experience in human rights domain, monitoring activities, conducting research. Practical work in the area of the rights of	3 years - 40 pts.; >3 years – up to 50 pts.;	50

persons with disabilities will be considered an advantage;		
<ul style="list-style-type: none"> • Legal and technical expertise and knowledge; In-depth knowledge of international law and policy as concerns persons with disabilities; 	Large - 40 pts.; to some extent - 20 pts.; No – 0 pts.	40
<ul style="list-style-type: none"> • 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; 	Large - 40 pts.; to some extent - 20 pts.; No – 0 pts.	40
<ul style="list-style-type: none"> • 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; 	Large - 40 pts.; to some extent - 20 pts.; No – 0 pts.	40
<ul style="list-style-type: none"> • Proven ability to exercise judgment, initiative and discretion in working with local court authorities, NGOs, government representatives, etc.; 	Max – 30 points;	30
<ul style="list-style-type: none"> • Capable to develop clear goals that are consistent with agreed strategies; identifies priority activities and assignments; adjusts priorities as required; allocates appropriate amount of time and resources for completing work; foresees risks and allows for contingencies when planning; monitors and adjusts plans and actions as necessary; uses time efficiently; 	Max – 25 points;	25
<ul style="list-style-type: none"> • Excellent communication and persuasion, negotiation and teamwork skills; 	Max – 15 points;	15
<ul style="list-style-type: none"> • Working knowledge of one or more additional languages 	Max - 10 pts.	10

relevant for Moldova, including Bulgarian, Gagauzian, Romani, Ukrainian or sign language is an asset.		
Maximum Total Technical Scoring		300
<u>Financial</u>		
Evaluation of submitted financial offers will be done based on the following formula: <u>$S = F_{min} / F * 200$</u> S – score received on financial evaluation; Fmin – the lowest financial offer out of all the submitted offers qualified over the technical evaluation round; F – financial offer under consideration.		200

Winning candidate

The winning candidate will be the candidate, who has accumulated the highest aggregated score (technical scoring + financial scoring).

ANNEXES:

ANNEX 1 – TERMS OF REFERENCES (TOR)

ANNEX 2 – INDIVIDUAL CONSULTANT GENERAL TERMS AND CONDITIONS