

Terms of Reference

Job Title: National Consultant to provide support for revising the national guidelines on the investigation and prosecution of sexual violence, according to the international standards

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

Contract type: Individual Contract, Part Time (up to 30 working days indicative)

Duration of assignment: 1 May – 30 November 2014

Duty station: Chisinau, Moldova

Deadline for applications: 28th of April 2014

Background

In October 2013, the combined fourth and fifth periodic reports of the Republic of Moldova on its implementation of the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) were considered by the Committee on the Elimination of Discrimination against Women (CEDAW Committee). During this session, as well as the previous review in 2006, violence against women was one of the principal areas of concern which drew the attention of the Committee.

The Committee received reports of the institutionalization of women with disabilities in psychiatric facilities who had suffered sexual abuse and were forced to undergo abortions, sometimes following rape by professionals working in those institutions and who were discriminated by the police and prosecutor by refusing to initiate criminal investigations on grounds of psycho-social and intellectual disabilities. Allegations of sexual assault of women in neuro-psychiatric residential institutions have been repeatedly reported in recent years, including by the Council of Europe's Committee for the Prevention of Torture.

In its October 2013 Concluding Observations on Moldova, the CEDAW Committee expressed concern about the low rate of reporting of sexual violence cases, including rape, and the ineffective investigation and prosecution in such cases.

The Committee recommended to ensure that all investigations of acts of sexual violence are carried out in line with international standards of investigation, including by amending the existing guidelines on investigation of rape and other sexual assaults.

Moldova has also been held in violation of the European Convention by the European Court for Human Rights on cases of domestic and sexual violence. The Court has held that the Republic of Moldova had inadequate prosecution of rape cases, especially because of:

- failure to conduct a proper investigation into her allegation of rape;
- limited access for victims to effective remedies;
- understanding of consent from the perspective of corroborative evidence of physical resistance.

Moldova's 2008 Prosecutorial Guidelines for investigating rape and other sexual assault – still evidently in force -- include the following:

- (1) The Prosecutors definitions and understanding of coercion is at odds with international definitions;
- (2) Only vaginal penetration is deemed rape;
- (3) Only a man can be a perpetrator of rape;
- (4) In extensive description, the Prosecutors explain that in the normal course of events, young women offer some resistance (being "shy") while losing their virginity, and so the force deployed to overcome this resistance is not rape.

Civil society has raised the questions of ineffective investigation and prosecution of sexual violence and lack of access to justice and remedy, including:

- administrative practices of stigmatization and stereotypes in rape cases and other instances of sexual violence;
- inefficient procedures of investigation and prosecution rooted in discriminatory and insensitive attitudes of the policemen, prosecutors, when cases of sexual violence are put forward;
- lack of confidence in the law enforcement and underreporting the crimes to the police and prosecution;
- criminalization of sex work as a driver of vulnerability to sexual violence;
- problematic budgeting of forensic evidence, as well as of lack of accessibility of free legal aid for victims of sexual violence.

Women from certain groups, including LBT women, non-citizens, women with disabilities, women in institutions, Roma women and others, are evidently at particular risk of exclusion from key services crucial for the effective realization of fundamental human rights in these areas.

Scope of work

In Moldova the decision whether there are sufficient evidence to initiate prosecution and judicial findings of the alleged perpetrator's guilt of sexual violence is the prosecutor's responsibility. A national consultant is sought to work together with the international consultant on developing assistance guidance to improve the prosecution of sexual violence crimes in national courts. These guidelines are

prepared with a view to replacing the guidelines issued in 2008, and to direct prosecutors to ensure effective investigation, prosecution and redress for victims of sexual violence.

The guidelines will be developed in conformity with the international standards on sexual violence and the evolving body of jurisprudence on cases review by the Committee on Elimination of Discrimination against Women, international war crimes tribunals, and others. The consultant is expected to support the work of the international consultant and liaise closely with all relevant national stakeholders, and in particular with the Office of the General Prosecutor.

The guidelines particularly designed to be followed by all prosecutors and applied to prosecutions conducted in Moldova. Although they may be also of interest to those who support victims of rape, whether professionally or personally, witnesses and the general public. The aim of the guidelines is to set out detailed guidance, in accordance with international law, for law enforcement and in particular the prosecution, to prosecute rape and related sexual violence cases effectively. If possible and relevant, the guidelines should also extend to other forms of sexual violence. It is expected that the guidelines will not be circa 20,000-25,000 words, and shall not be less than 15,000 words, and will be written in legally competent language readily comprehensible by a lay person.

The consultant may be asked to produce other short documents in the framework of the current consultancy, as needs arise. If in the process of elaborating the guideline the consultant will encounter legal provisions running afoul the international definition of rape or other forms of sexual violence and hindering the effectiveness of investigation and prosecution, he/she is expected to bring justified recommendations or proposals for modification of laws.

The guidelines will be elaborated 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 with the support of a national consultant on prosecution and human rights. The consultant is expected to consult the broadest possible of relevant stakeholders, including civil society.

The current TOR involves support for organizing the travels to the Republic of Moldova of the international consultant, of circa one week each (indicative). The consultant may be asked to assist in organizing training sessions for law enforcement, prosecution and/or other stakeholders on matters at issue in this TOR, within the framework of this TOR, during planned missions to Moldova.

Deliverables and terms:

Deliverable	Terms
Initial research and consultation between the national expert, international consultant, UN agencies, prosecutor's office and the police to ensure that all possible challenges to investigating and prosecuting rape are considered.	May 19-23
Support for the consultation mission to Moldova,	May 26-30 or June 2-6

including Round table with national criminal law experts, prosecution and civil society. Alternative measures discussed. Further analytics.	
Delivery of outline of the Guidelines	June 16-25
Guidelines, draft 1	July 14-30
Guidelines, draft 2	Aug 25-Sept 10
Guidelines, draft 3	Sept 29-Oct 3
Mission 2 to the Republic of Moldova, including Guidelines and recommendations to modify the criminal code international norms against sexual violence presented to the General Prosecution Office	Nov 10-14
Memorandum to HRA and OHCHR RRDD	Nov 10-14
Training activities on access to justice and effective prosecution of sexual violence	As needed

Qualification Criteria

- University or graduate degree in law;
- At least 5 years of practical human rights experience in the particular field;
- In-depth knowledge of international criminal law and human rights law as concerns sexual violence;
- Awareness in detail of international best practice in the area of prosecution of sexual violence;
- Fluency in spoken and written Romanian and Russian, intermediate level of English. Working knowledge of one or more additional languages relevant for Moldova, including Bulgarian, Gagauzian, Romani, Ukrainian or sign language is an asset.
- Excellent drafting skills; excellent communication 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.

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 letter of interest explaining why you are the most suitable for the work;
3. A relevant short writing sample in a similar field or covering similar thematic material;
4. A financial proposal.