



INDIVIDUAL CONSULTANT PROCUREMENT NOTICE

Date: **25 September 2014**

Country: Republic of Moldova

Description of the assignment: National Consultant on Ratification of Agreement on the Privileges and Immunities of the International Criminal Court (APIC)

Project name: Strengthening Rule of Law and Human Rights Protection in Moldova

Period of assignment/services: October – November 2014 (up to 30 working days)

Proposals should be submitted online by pressing the "Apply Now" button no later than 5 October 2014.

Requests for **clarification only** must be sent by standard electronic communication to the following e-mail: natalia.voronova@undp.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 International Criminal Court (ICC) is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community. The ICC was established by the Rome Statute (ICC RS) on 17 July 1998, when 120 States adopted the Rome Statute. The Rome Statute entered into force on 1 July 2002 upon ratification by 60 States.¹

Through ratification of the Rome Statute, all ICC States Parties are bound to respect the privileges and immunities for Court officials and documents. These privileges and immunities guarantee that States allow the Court to function in an independent and unconditional manner, in accordance with the procedures as defined by the Rome Statute and the Rules on Procedure and Evidence. Article 48 of the Rome Statute provides in general for these privileges and immunities, but they are further defined in the Agreement on Privileges and Immunities of the ICC (APIC).² Thus, APIC provides for privileges and immunities related to the special legal status of the ICC and provides for immunities and privileges of the personnel of the Court in more detailed and defined manner. APIC came into effect on 22 July 2004 for those countries that have ratified the Agreement.³

Republic of Moldova (RM) ratified the Rome Statute in September 2010 by adopting Law Nr. 212. In April 2013 the Parliament of RM adopted Law Nr. 64 for the implementation of the commitments under the Rome Statute. Law Nr.64 partially amended the Criminal Code of RM attempting to ensure investigation and prosecution of offenses that fall under the jurisdiction of the ICC, which in turn ensures fulfillment of

¹ www.icc-cpi.int

² [www.icc-](http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/agreement%20on%20the%20privileges%20and%20immunities%20of%20the%20icc.aspx)

www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/agreement%20on%20the%20privileges%20and%20immunities%20of%20the%20icc.aspx

³ www.iccnw.org/?mod=apic

the international commitments assumed by RM. The offences that are newly incorporated in the Criminal Code Article 135 include genocide and crimes against humanity, reflected in Articles 6 and 7 of the Rome Statute. In addition, in order to systemize the legal provisions on war crimes, the content of Article 137 was revised and four new categories of offenses were introduced: war crimes and crimes against humanity, war crimes against property and other rights, use of prohibited means of warfare, use of prohibited methods of warfare, improper use of distinctive signs of international humanitarian law.

The transcribed provisions make clear that, interpreters –as prosecutors or judges- need to resort to the legal definitions of the crimes mentioned already in the national Criminal Code. The problem, however, is that existing definitions of acts related to the criminal sexual conduct run afoul the core elements of offences under the Rome Statute. According to article 171 on rape –and considering its interpretation by doctrine and jurisprudence-, this crime only includes “heterosexual” rape⁴. Under the Rome Statute, and according to the *Annex on Elements of Crime* of the Statute⁵, rape comprises a wider diversity of deeds. International bodies have already highlighted some of these problems in current legislation and prosecutorial practices regarding sexual crimes and called for urgent measures to import the terms of the Rome Statute into national criminal law and harmonize the overall legislation.

According to the National Human Rights Action Plan 2011-2014, RM has assumed the responsibility for the ratification of the APIC. Ratification will guarantee that the officials of RM are aware of the scope and realities of privileges and immunities under the agreement and know how to apply them in proper circumstances. The ratification of the APIC should be also an opportunity to review sexual crimes regulation in detail. The most important amendment should be in the crime of rape but other provisions should be modified correspondingly, removing any form of moral language or unjustified or discriminatory distinctions. Such a comprehensive intervention will allow RM to effectively implement the Rome Statute and to further comply with its international obligations and will also further enforce officials and staff of the ICC with certain privileges and immunities necessary for them to perform their duties in an independent and unconditional manner.

The Strengthening Rule of Law and Human Rights Protection Mechanisms Project is funded by the Federal Ministry for Europe, Integration and Foreign Affairs of Austria, co-funded and implemented by the United Nations Development Programme in the Republic of Moldova (UNDP Moldova) in cooperation with the Office of the High Commissioner for Human Rights (OHCHR).

2. OBJECTIVE:

The main objective is to conduct a comprehensive feasibility study on the ratification of the APIC and to provide recommendations on the adjustment of the national legislation. Review domestic law and provide recommendations in order to ensure that it reflects as closely as possible the terms of the Rome Statute, and more specific the definition of substantive crimes related to the sexual conduct according to the *Annex on Elements of Crime* of the Statute.

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

In order to achieve the objective the Consultant shall:

⁴ According to the *Decision of the Plenary of the Supreme Court of Justice of the Republic of Moldova on the judiciary practices in matters from the category of offences related to the sexual life* (No.17 from 07.11.2005) “the sexual intercourse represents a normal sexual act (in a physiological aspect) among individuals of different gender”.

⁵<http://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf>

- Examine the national legal framework in the area of criminal law, criminal procedure, communications, social security, immunities, property;
- Identify compliance of the national legislation with all privileges and immunities required by the APIC;
- Identify the gaps in the national legal framework related to the implementation of the APIC;
- Examine the practice of APIC implementation by the States Parties to the ICC RS;
- Draft a clear, accessible and usable report on the findings of the study, including proposals for needed adjustments, including necessary adjustments to the Criminal and Procedural Codes;
- Undertake an analysis of the criminal legislation related to sexual conduct and provide recommendations for amending the Criminal Code and other relevant laws in line with the Rome Statute;
- Draft a law on the necessary amendments to the Criminal and Procedural Codes of the Republic of Moldova;
- Hold consultations with the Ministry of Justice of RM and other relevant State bodies on the draft study and draft law and integrate the feedback into the final report;
Cooperate with the communications department of the Ministry of Justice of RM regarding dissemination of information related to the assignment.

For detailed information, please refer to Annex 1 – Terms of Reference.

4. REQUIREMENTS FOR EXPERIENCE AND QUALIFICATIONS

I. Academic Qualifications:

- Master's Degree or equivalent (5-year university education) in Law, Human Rights, International Public Law, International Relations or other relevant field;

II. Years and sphere of experience:

- At least 3 years of proven professional experience in a legal area, legal analysis or other relevant field;

III. Competencies:

- Demonstrated commitment 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;
- Demonstrable extensive knowledge of international law, international criminal law, criminal law and criminal procedure of the Republic of Moldova;
- Knowledge of civil law of Republic of Moldova would be an asset;
- Knowledge of the activity of the International Criminal Court would be an asset;
- Extensive demonstrable experience in drafting studies and reports;
- Effective communication and strong analytical skills;
- Knowledge of Romanian, Russian languages for the purposes of the assignment;
- Knowledge of English would be a strong advantage;
- Knowledge of one or more additional languages relevant for Moldova, including Bulgarian, Gagauzian, Romani, Ukrainian or sign language is an asset;

IV. Personal qualities: responsibility, creativity, flexibility and punctuality.

The United Nations Country Team in the Republic of Moldova is committed to workforce diversity. Women, persons with disabilities, Roma and other ethnic or religious minorities, persons living with HIV, as well as refugees and other non-citizens legally entitled to work in the Republic of Moldova, are particularly encouraged to apply.

5. DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE PROPOSALS

Interested individual consultants must submit the following documents/information in Romanian or English to demonstrate their qualifications:

1. Personal information (as a detailed CV or as a Personal History Form /P11) including records on past experience in similar projects/assignments and concrete outputs obtained, including 3 reference persons and their contacts;
2. Cover letter, which should include:
 - (i) A list of reports, legal analysis documents, draft laws or other task related documents the candidate has elaborated or contributed to;
 - (ii) Financial proposal (in USD, specifying a total lump sum amount taking into account anticipated number of working days).

6. FINANCIAL PROPOSAL

The financial proposal shall specify a total lump sum amount, and payment terms around specific and measurable (qualitative and quantitative) deliverables (i.e. whether payments fall in installments or upon completion of the entire contract). Payments 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 travel, per diems, and number of anticipated working days).

Payment will be made upon acceptance of deliverables by the UNDP Moldova Justice and Human Rights Programme Analyst.

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.

No travel costs are envisaged under this assignment.

7. EVALUATION

Initially, individual consultants will be short-listed based on the following minimum qualification criteria:

- Master's Degree or equivalent (5-year university education) in Law, Human Rights, International Public Law, International Relations or other relevant field;
- At least 3 years of proven professional experience in a legal area, legal analysis or other relevant field;

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

A two-stage procedure will be used in evaluating the candidates:

1. Technical evaluation (max 300 points) – 60%;
2. Financial evaluation (max 200 points) – 40%.

Technical evaluation will be based on a thorough desk review of applications.

Only candidates obtaining a minimum of 70% score of the technical evaluation (at least 210 points) would be considered for the Financial Evaluation.

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.

Criteria	Scoring	Maximum Points Obtainable
<u>Technical</u>		
Master's Degree or equivalent (5-year university education) in Law, Human Rights, International Public Law, International Relations or other relevant field	(Master – 30 pts., PhD – 40 pts.)	40
At least 3 years of proven professional experience in a legal area, legal analysis or other relevant field	(3 years – 35 pts., more than 3 years – 5 pts. for each additional year of experience up to a maximum of 35 additional pts.)	70
Demonstrable extensive knowledge of international law, international criminal law, criminal law and criminal procedure of the Republic of Moldova	(no – 0 pts., to some extent – up to 40 pts., yes/extensive – up to 70 pts., knowledge of civil law of RM – additional 10 pts., knowledge of the activity of the International Criminal Court – additional 10 pts.)	90
Extensive demonstrable experience in drafting studies and reports	(no – 0 pts., to some extent – up to 30 pts., yes/ extensive – up to 70 pts.)	70
Knowledge of Romanian and Russian, English and other languages relevant for Moldova	(Romanian and Russian – 10 pts., English or other language – 5 pts. each up to 20 additional pts.)	30
Maximum Total Technical Scoring		300
<u>Financial</u>		
Evaluation of submitted financial offers will be done based on the following formula: $S = F_{min} / F * 200$ 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 REFERENCE (TOR)

ANNEX 2 – INDIVIDUAL CONSULTANT GENERAL TERMS AND CONDITIONS