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## TERMS OF REFERENCE

- A. Job Title:** National Consultant on ratification of Agreement on the Privileges and Immunities of the International Criminal Court (APIC)
- B. Duty Station:** Chisinau, Republic of Moldova
- C. Project reference:** Strengthening Rule of Law and Human Rights Protection Mechanisms
- D. Contract type:** Individual Contract (IC)
- E. Duration of assignment:** October – November 2014 (up to 30 working days)

### F. 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.<sup>1</sup>

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).<sup>2</sup> 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.<sup>3</sup>

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 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,

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<sup>1</sup> [www.icc-cpi.int](http://www.icc-cpi.int)

<sup>2</sup> [www.icc-cpi.int/en\\_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/agreement%20on%20the%20privileges%20and%20immunities%20of%20the%20icc.aspx](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)

<sup>3</sup> [www.iccnw.org/?mod=apic](http://www.iccnw.org/?mod=apic)

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” rape<sup>4</sup>. Under the Rome Statute, and according to the *Annex on Elements of Crime* of the Statute<sup>5</sup>, 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).

#### **G. 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.

#### **H. Scope of work and expected outputs:**

In order to achieve the objective the Consultant shall:

- 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

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<sup>4</sup> 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.

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

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.

#### **I. Deliverables:**

#	Deliverable	Deadline
1.	Draft feasibility study. The study should include: 1) examination of the national legal framework, 2) compliance with APIC and gaps for its implementation, 3) practice of implementing APIC by State Parties to the treaty, 4) recommendations for actions to be taken to ratify and implement the APIC, 5) necessary amendments to the Criminal and Procedural Codes	3 November 2014
2.	Draft law on the necessary amendments to the Criminal and Procedural Codes elaborated	13 November 2014
3.	Final feasibility study and draft law submitted to MoJ and UNDP	28 November 2014

Deliverables can be amended or specified for the purpose of the assignment.

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

#### **J. Organizational Setting:**

This is a part-time consultancy. The National Consultant will be based in the office of the Ministry of Justice of the Republic of Moldova (MoJ) and will work closely with the management and staff persons of the MoJ. The National Consultant will work under direct supervision of the UNDP Moldova Justice and Human Rights Programme Analyst, as well as in close consultation with the OHCHR Human Rights Adviser to the UN Resident Coordinator in Moldova.

#### **K. Inputs:**

The Ministry of Justice of the Republic of Moldova and the UNDP Moldova Justice and Human Rights Programme Analyst will provide the National Consultant with the necessary information and materials for the fulfilment of tasks and will provide support in facilitation of the meetings where necessary.

#### **L. Qualifications and skills required:**

##### **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:**

- Adheres 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.