



## REQUEST FOR PROPOSAL (RFP) (For Low-Valued Services)

NAME & ADDRESS OF FIRM	DATE: April 18, 2017
	REFERENCE: EU-UN Joint Project "Enhancing Access to Justice and Development of a Child-friendly Justice System in Georgia" (00098202)

Dear Sir / Madam:

We kindly request you to submit your Proposal for Study: Legal and practical patterns of development of arbitration in Georgia.

Please be guided by the form attached hereto as **Annex 2**, in preparing your Proposal.

Proposals may be submitted on or before **Wednesday, May 10, 2017 6:00 PM** and courier mail o to the address below:

**9, Eristavi street, Tbilisi, Georgia - UN House 1<sup>st</sup> floor  
United Nations Development Programme**

Quotations must be submitted **signed, stamped in sealed envelopes**.

Your Proposal must be expressed in **English**, and valid for a minimum period of **60 days**

In the course of preparing your Proposal, it shall remain your responsibility to ensure that it reaches the address above on or before the deadline. Proposals that are received by UNDP after the deadline indicated above, for whatever reason, shall not be considered for evaluation.

Services proposed shall be reviewed and evaluated based on completeness and compliance of the Proposal and responsiveness with the requirements of the RFP and all other annexes providing details of UNDP requirements.

The Proposal that complies with all of the requirements, meets all the evaluation criteria and offers the best value for money shall be selected and awarded the contract. Any offer that does not meet the requirements shall be rejected.

Any discrepancy between the unit price and the total price shall be re-computed by UNDP, and the unit price shall prevail and the total price shall be corrected. If the Service Provider does not accept the final price based on UNDP's re-computation and correction of errors, its Proposal will be rejected.

No price variation due to escalation, inflation, fluctuation in exchange rates, or any other market factors shall be accepted by UNDP after it has received the Proposal. At the time of Award of Contract

or Purchase Order, UNDP reserves the right to vary (increase or decrease) the quantity of services and/or goods, by up to a maximum twenty five per cent (25%) of the total offer, without any change in the unit price or other terms and conditions.

Any Contract or Purchase Order that will be issued as a result of this RFP shall be subject to the General Terms and Conditions attached hereto. The mere act of submission of a Proposal implies that the Service Provider accepts without question the General Terms and Conditions of UNDP, herein attached as Annex 3.

Please be advised that UNDP is not bound to accept any Proposal, nor award a contract or Purchase Order, nor be responsible for any costs associated with a Service Providers preparation and submission of a Proposal, regardless of the outcome or the manner of conducting the selection process.

UNDP's vendor protest procedure is intended to afford an opportunity to appeal for persons or firms not awarded a Purchase Order or Contract in a competitive procurement process. In the event that you believe you have not been fairly treated, you can find detailed information about vendor protest procedures in the following link: <http://www.undp.org/procurement/protest.shtml>.

UNDP encourages every prospective Service Provider to prevent and avoid conflicts of interest, by disclosing to UNDP if you, or any of your affiliates or personnel, were involved in the preparation of the requirements, design, cost estimates, and other information used in this RFP.

UNDP implements a zero tolerance on fraud and other proscribed practices, and is committed to preventing, identifying and addressing all such acts and practices against UNDP, as well as third parties involved in UNDP activities. UNDP expects its Service Providers to adhere to the UN Supplier Code of Conduct found in this link : [http://www.un.org/depts/ptd/pdf/conduct\\_english.pdf](http://www.un.org/depts/ptd/pdf/conduct_english.pdf)

Thank you and we look forward to receiving your Proposal.

Sincerely yours,



Nino Chichinadze  
Admin-Finance Associate EU-UN  
Joint Project "Enhancing Access to Justice  
and Development of a Child-friendly Justice  
System in Georgia"  
4/18/2017

### Description of Requirements

Context of the Requirement	Enhancing Access to Justice and Development of a Child-friendly Justice System in Georgia is a Joint Programme of two UN agencies in Georgia: United Nations Children Fund (UNICEF) and United Nations Development Programme (UNDP), with UNICEF serving as an Administrative Agent. This project is funded by the European Union based on the Financing Agreement on "Support to the Justice Sector Reform in Georgia" signed between Georgia and the European Union in May 2015. This project responds to the objectives set out therein, and namely to consolidate the independence, professionalism and efficiency of the judiciary and strengthen access to justice through the creation of a more effective system of justice for children based on a dedicated regulatory framework and implementation mechanism, improved institutional capacities of the Ministry of Justice and other major justice stakeholders and the greater independence and effectiveness of the legal profession and legal aid system with greater use of alternative dispute resolution mechanisms. Detailed information on the project is given in TOR – Annex 4											
Implementing Partner of UNDP	N/A											
Brief Description of the Required Services <sup>1</sup>	Study: Legal and practical patterns of development of arbitration in Georgia – detailed description in TOR – <b>Annex 4</b>											
List and Description of Expected Outputs to be Delivered	<ul style="list-style-type: none"><li>– Questionnaires of relevant types of interviews;</li><li>– Outline of the report;</li><li>– Final report in Georgian and English languages;</li><li>– Presentation of the final report to the stakeholders.</li></ul>											
Person to Supervise the Work/Performance of the Service Provider	Access to Justice and Human Rights Protection Programme Coordinator											
Frequency of Reporting	Upon Deliverables. Final Activity Report shall be submitted to UNDP within one month upon completion of all activities under the contract.											
Progress Reporting Requirements	Each Deliverable shall be approved by UNDP.											
Location of work	<input checked="" type="checkbox"/> At Contractor’s Location											
Expected duration of work	18 weeks											
Target start date	15 May 2017											
Latest completion date	30 September 2017											
Travels Expected	<table><tr><th>Destination/s</th><th>Estimated Duration</th><th>Brief Description of Purpose of the Travel</th><th>Target Date/s</th></tr><tr><td>N/A</td><td>N/A</td><td>N/A</td><td>N/A</td></tr></table>				Destination/s	Estimated Duration	Brief Description of Purpose of the Travel	Target Date/s	N/A	N/A	N/A	N/A
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N/A	N/A	N/A	N/A									
Special Security Requirements	N/A											
	N/A											

<sup>1</sup> A detailed TOR may be attached if the information listed in this Annex is not sufficient to fully describe the nature of the work and other details of the requirements.

Facilities to be Provided by UNDP (i.e., must be excluded from Price Proposal)												
Implementation Schedule indicating breakdown and timing of activities/sub-activities	<input checked="" type="checkbox"/> Required (in line with proposed timing in TOR annex 4)											
Names and curriculum vitae of individuals who will be involved in completing the services	<input checked="" type="checkbox"/> Required											
Currency of Proposal	<input checked="" type="checkbox"/> Local Currency											
Value Added Tax on Price Proposal	<input checked="" type="checkbox"/> must be exclusive of VAT and other applicable indirect taxes											
Validity Period of Proposals (Counting for the last day of submission of quotes)	<input checked="" type="checkbox"/> 60 days  In exceptional circumstances, UNDP may request the Proposer to extend the validity of the Proposal beyond what has been initially indicated in this RFP. The Proposal shall then confirm the extension in writing, without any modification whatsoever on the Proposal.											
Partial Quotes	<input checked="" type="checkbox"/> Not permitted											
Payment Terms	<table border="1"> <thead> <tr> <th>Outputs</th> <th>Percentage</th> <th>Timing</th> <th>Condition for Payment Release</th> </tr> </thead> <tbody> <tr> <td>Submission of the outline of the report and questionnaires for interviews and focus group meetings</td> <td>30 % of contract price</td> <td>within 3 weeks of the commencement of the contract</td> <td rowspan="2"> Within fourteen (14) days from the date of meeting the following conditions:  a) UNDP's written acceptance (i.e., not mere receipt) of the quality of the outputs; and  b) Receipt of invoice from the Service Provider. </td> </tr> <tr> <td>Submission of the final report in Georgian and English languages</td> <td>70 % of the contract price</td> <td>within 17 weeks of the commencement of the contract</td> </tr> </tbody> </table>	Outputs	Percentage	Timing	Condition for Payment Release	Submission of the outline of the report and questionnaires for interviews and focus group meetings	30 % of contract price	within 3 weeks of the commencement of the contract	Within fourteen (14) days from the date of meeting the following conditions: a) UNDP's written acceptance (i.e., not mere receipt) of the quality of the outputs; and b) Receipt of invoice from the Service Provider.	Submission of the final report in Georgian and English languages	70 % of the contract price	within 17 weeks of the commencement of the contract
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Person(s) to review/inspect/approve outputs/completed services and authorize the disbursement of payment	Access to Justice and Human Rights Protection Programme Coordinator											
Type of Contract to be Signed	<input checked="" type="checkbox"/> Contract for Professional Services											
Criteria for Contract Award	<input checked="" type="checkbox"/> Highest Combined Score (based on the 70% technical offer and 30% price weight distribution) <input checked="" type="checkbox"/> Full acceptance of the UNDP Contract General Terms and Conditions (GTC). This is a mandatory criteria and cannot be deleted regardless of the nature of services required. Non acceptance of the GTC may be grounds for the rejection of the Proposal.											

Criteria for the Assessment of Proposal	<p><b><u>Technical Proposal (70%)</u></b></p> <p><input checked="" type="checkbox"/> Expertise of the Firm <b>20%</b></p> <p><input checked="" type="checkbox"/> Methodology, Its Appropriateness to the Condition and Timeliness of the Implementation Plan <b>30%</b></p> <p><input checked="" type="checkbox"/> Management Structure and Qualification of Key Personnel <b>20%</b></p> <p><b><u>Financial Proposal (30%)</u></b></p> <p>To be computed as a ratio of the Proposal's offer to the lowest price among the proposals received by UNDP.</p>
UNDP will award the contract to:	<input checked="" type="checkbox"/> One and only one Service Provider
Annexes to this RFP	<p><input checked="" type="checkbox"/> Form for Submission of Proposal (Annex 2)</p> <p><input checked="" type="checkbox"/> General Terms and Conditions / Special Conditions (Annex 3)</p> <p><input checked="" type="checkbox"/> Detailed TOR</p> <p><input checked="" type="checkbox"/> Technical Proposal Evaluation Form (Annex 5)</p>
Contact Person for Inquiries (Written inquiries only)	<p>Nino Chichinadze Programme Admin/Finance Associate nino.chichinadze@undp.org</p> <p>Any delay in UNDP's response shall be not used as a reason for extending the deadline for submission, unless UNDP determines that such an extension is necessary and communicates a new deadline to the Proposers.</p>
Other Information [pls. specify]	

**FORM FOR SUBMITTING SERVICE PROVIDER'S PROPOSAL<sup>2</sup>****(This Form must be submitted only using the Service Provider's Official Letterhead/Stationery<sup>3</sup>)**Tbilisi  
[insert: Date]

To: *Rusudan Tushuri – Access to Justice and Human Rights Protection Programme Coordinator*  
 9 Eristavi Street (UN House)  
 Tbilisi 0179

Dear Sir/Madam:

We, the undersigned, hereby offer to render the following services to UNDP in conformity with the requirements defined in the RFP dated *[specify date]*, and all of its attachments, as well as the provisions of the UNDP General Contract Terms and Conditions:

**A. Qualifications of the Service Provider****The Service Provider must have:**

1. At least 5-year experience in the area of carrying out situation analysis/research and analysis of specific fields (**minimum requirement**);
2. At least 5-year experience in developing the recommendations based on the situation analysis/research of a specific field (**minimum requirement**);
3. Experience in conducting at least 5 similar projects (**minimum requirement**).
4. Experience in carrying out at least 2 similar projects financed by donor and/or international organizations will be an advantage.
5. at least 2 letters of recommendation from previous contract providers (**minimum requirement**). A letter of recommendation from an international/donor organization will be an asset.

**The Service Provider must describe and explain how and why they are the best entity that can deliver the requirements of UNDP by indicating the following:**

1. Profile – describing the nature of business, field of expertise;
2. Business Licenses – Tax Payment Certification, etc.
3. An extract from the Entrepreneurial Register;
4. A letter from Bank on financial turnover during the last 1 years;
5. Detailed Bank Requisites;
6. Company Qualification record (Track Record) – list of clients for similar services as those required by UNDP, indicating description of contract scope, contract duration, contract value, contact references (Proven knowledge of the target area will be an asset);

**B. Proposed Methodology for the Completion of Services**

<sup>2</sup> This serves as a guide to the Service Provider in preparing the Proposal.

<sup>3</sup> Official Letterhead/Stationery must indicate contact details – addresses, email, phone and fax numbers – for verification purposes

*The Service Provider must describe how it will address/deliver the demands of the RFP; providing a detailed description of the essential performance characteristics, reporting conditions and quality assurance mechanisms that will be put in place, while demonstrating that the proposed methodology will be appropriate to the local conditions and context of the work.*

*Technical approach, methodology and work plan are key components of the Technical Proposal. You are suggested to present this section of the technical proposal based on the following:*

*a) Technical Approach and Methodology: the Proposer should explain their understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of details of such output. Proposer should highlight the problems being addressed and their importance, and explain the technical approach you would adopt to address them.*

*Proposer should also explain the methodologies proposed to adopt and highlight the compatibility of those methodologies with the proposed approach. – Company shall fully answer to the ToR requirement (as per Annex 4)*

*b) Work Plan: In this chapter the Proposer should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the ToR and ability to translate them into a feasible working plan. A list of the final technical documents, including reports, drawings, and tables to be delivered as final output, should be included here.*

### C. Qualifications of Key Personnel

*Company shall propose at least one team leader, one legal expert, one project specialist. Structure with clearly defined roles must be provided.*

**At a minimum:**

- (1) **Team Leader** with minimum of 5 years' experience in working on a similar project, conducting situation analysis/research (**minimum requirement**);
- (2) **Legal Expert** with a Master's degree in Law/International Law/Dispute Resolution, minimum of 3 years' practical experience in the field of arbitration/ADR and conducting legal research (**minimum requirement**);
- (3) **Project Specialist** with at least 3 years of experience in situation analysis/research projects (**minimum requirement**);
- (4) The other professional team if deemed appropriate by the contractor to fulfil the requirements as spelled out in this RFP. (Note: It is possible to combine several expert functions within one individual, provided that the candidate fully meets all needed qualifications).

### D. Cost Breakdown per Deliverable\*

	Deliverables	Percentage of Total Price (Weight for payment)	Price (Lump Sum, All Inclusive)
1	Questionnaires for interviews and focus group meetings	30%	
2	Outline of report		
3	Final report in Georgian and English languages and its presentation	70%	
	Total	100%	

*\*This shall be the basis of the payment tranches*

### E. Cost Breakdown by Cost Component [This is only an Example]:

Description of Activity	Remuneration per week	Total Period of Engagement	No. of Personnel	Total Rate
<b>I. Personnel Services</b>				
1. Team Leader				

2. Legal Expert				
3. Project Specialist				
4. Other Team Members				
subtotal				
<b>II. Other Related Costs</b>				
1.				
2.				
<b>III. Costs Related to Presentation</b>				
1.				
2.				
subtotal				
Total				

*[Name and Signature of the Service Provider's Authorized Person]*  
*[Designation]*  
*[Date]*



***General Terms and Conditions for Services*****1.0 LEGAL STATUS:**

The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis the United Nations Development Programme (UNDP). The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of UNDP or the United Nations.

**2.0 SOURCE OF INSTRUCTIONS:**

The Contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its services under this Contract. The Contractor shall refrain from any action that may adversely affect UNDP or the United Nations and shall fulfill its commitments with the fullest regard to the interests of UNDP.

**3.0 CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES:**

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

**4.0 ASSIGNMENT:**

The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of UNDP.

**5.0 SUB-CONTRACTING:**

In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of UNDP for all sub-contractors. The approval of UNDP of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform to the provisions of this Contract.

**6.0 OFFICIALS NOT TO BENEFIT:**

The Contractor warrants that no official of UNDP or the United Nations has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

**7.0 INDEMNIFICATION:**

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, UNDP, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

**8.0 INSURANCE AND LIABILITIES TO THIRD PARTIES:**

- 8.1** The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- 8.2** The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or the equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- 8.3** The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.
- 8.4** Except for the workmen's compensation insurance, the insurance policies under this Article shall:
- 8.4.1** Name UNDP as additional insured;
  - 8.4.2** Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the UNDP;
  - 8.4.3** Provide that the UNDP shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.
- 8.5** The Contractor shall, upon request, provide the UNDP with satisfactory evidence of the insurance required under this Article.

**9.0 ENCUMBRANCES/LIENS:**

The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the UNDP against any monies due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.

**10.0 TITLE TO EQUIPMENT:**

Title to any equipment and supplies that may be furnished by UNDP shall rest with UNDP and any such equipment shall be returned to UNDP at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to UNDP, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate UNDP for equipment determined to be damaged or degraded beyond normal wear and tear.

**11.0 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**

- 11.1** Except as is otherwise expressly provided in writing in the Contract, the UNDP shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for the UNDP under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract, and the Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the UNDP.
- 11.2** To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to the UNDP a perpetual license to use such

intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.

- 11.3** At the request of the UNDP; the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to the UNDP in compliance with the requirements of the applicable law and of the Contract.
- 11.4** Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of the UNDP, shall be made available for use or inspection by the UNDP at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNDP authorized officials on completion of work under the Contract.

## **12.0 USE OF NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS:**

The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with UNDP, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of UNDP or THE United Nations, or any abbreviation of the name of UNDP or United Nations in connection with its business or otherwise.

## **13.0 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:**

Information and data that is considered proprietary by either Party and that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Contract, and that is designated as confidential ("Information"), shall be held in confidence by that Party and shall be handled as follows:

- 13.1** The recipient ("Recipient") of such information shall:
  - 13.1.1** use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and,
  - 13.1.2** use the Discloser's Information solely for the purpose for which it was disclosed.
- 13.2** Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 13, the Recipient may disclose Information to:
  - 13.2.1** any other party with the Discloser's prior written consent; and,
  - 13.2.2** the Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, provided that, for these purposes a controlled legal entity means:
    - 13.2.2.1** a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,
    - 13.2.2.2** any entity over which the Party exercises effective managerial control; or,
    - 13.2.2.3** for the UNDP, an affiliated Fund such as UNCDF, UNIFEM and UNV.
- 13.3** The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the United Nations, the Contractor will give the UNDP sufficient prior notice of a request for the disclosure of Information in order

to allow the UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

- 13.4** The UNDP may disclose Information to the extent as required pursuant to the Charter of the UN, resolutions or regulations of the General Assembly, or rules promulgated by the Secretary-General.
- 13.5** The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.
- 13.6** These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

#### **14.0 FORCE MAJEURE; OTHER CHANGES IN CONDITIONS**

- 14.1** In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the UNDP, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the UNDP of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, the UNDP shall take such action as, in its sole discretion; it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.
- 14.2** If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the UNDP shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.
- 14.3** Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.
- 14.4** The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in or for any areas in which the UNDP is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute force majeure under the Contract.

#### **15.0 TERMINATION**

- 15.1** Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16.2 ("Arbitration"), below, shall not be deemed a termination of this Contract.
- 15.2** UNDP reserves the right to terminate without cause this Contract at any time upon 15 days prior written notice to the Contractor, in which case UNDP shall reimburse the Contractor for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

- 15.3** In the event of any termination by UNDP under this Article, no payment shall be due from UNDP to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract.
- 15.4** Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, the UNDP may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform the UNDP of the occurrence of any of the above events.

## **16.0 SETTLEMENT OF DISPUTES**

- 16.1 Amicable Settlement:** The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.
- 16.2 Arbitration:** Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 16.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim Measures of Protection") and Article 32 ("Form and Effect of the Award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

## **17.0 PRIVILEGES AND IMMUNITIES:**

Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

## **18.0 TAX EXEMPTION**

- 18.1** Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, inter-alia that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the United Nations exemption from such taxes, duties or charges, the Contractor shall immediately consult with the UNDP to determine a mutually acceptable procedure.

- 18.2** Accordingly, the Contractor authorizes UNDP to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with the UNDP before the payment thereof and the UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide the UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

## **19.0 CHILD LABOUR**

- 19.1** The Contractor represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.
- 19.2** Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, at no cost to UNDP.

## **20.0 MINES:**

- 20.1** The Contractor represents and warrants that neither it nor any of its suppliers is actively and directly engaged in patent activities, development, assembly, production, trade or manufacture of mines or in such activities in respect of components primarily utilized in the manufacture of Mines. The term "Mines" means those devices defined in Article 2, Paragraphs 1, 4 and 5 of Protocol II annexed to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980.
- 20.2** Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of UNDP.

## **21.0 OBSERVANCE OF THE LAW:**

The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

## **22.0 SEXUAL EXPLOITATION:**

- 22.1** The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by it or by any of its employees or any other persons who may be engaged by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all appropriate measures to prohibit its employees or other persons engaged by it from, exchanging any money, goods, services, offers of employment or other things of value, for sexual favors or activities, or from engaging in any sexual activities that are exploitive or degrading to any person. The Contractor acknowledges and agrees that the provisions hereof constitute an essential term of the Contract and that any breach of this representation and warranty shall entitle UNDP to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

**22.2** The UNDP shall not apply the foregoing standard relating to age in any case in which the Contractor's personnel or any other person who may be engaged by the Contractor to perform any services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel or such other person who may be engaged by the Contractor to perform any services under the Contract.

**23.0 AUTHORITY TO MODIFY:**

Pursuant to the Financial Regulations and Rules of UNDP, only the UNDP Authorized Official possesses the authority to agree on behalf of UNDP to any modification of or change in this Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against UNDP unless provided by an amendment to this Contract signed by the Contractor and jointly by the UNDP Authorized Official.

## TERMS OF REFERENCE

### Study: Legal and practical patterns of development of arbitration in Georgia

#### Project: EU-UN Joint Project “Enhancing Access to Justice and Development of a Child-friendly Justice System in Georgia”

#### Proposal Title: Study: Legal and practical patterns of development of arbitration in Georgia

**Expected Starting Date:** 15 May 2017

**Duration of Contract:** 18 weeks

### 1. BACKGROUND

Enhancing Access to Justice and Development of a Child-friendly Justice System in Georgia is a Joint Programme of two UN agencies in Georgia: United Nations Children Fund (UNICEF) and United Nations Development Programme (UNDP), with UNICEF serving as an Administrative Agent.

This project is funded by the European Union based on the Financing Agreement on "Support to the Justice Sector Reform in Georgia" signed between Georgia and the European Union in May 2015.

This project responds to the objectives set out therein, and namely to consolidate the independence, professionalism and efficiency of the judiciary and strengthen access to justice through the creation of a more effective system of justice for children based on a dedicated regulatory framework and implementation mechanism, improved institutional capacities of the Ministry of Justice and other major justice stakeholders and the greater independence and effectiveness of the legal profession and legal aid system with greater use of alternative dispute resolution mechanisms.

The main policy documents against which the progress will be measured include: the Criminal Justice Reform Strategy (CJRS) and its Action Plan (AP) (adopted in 2005 and updated systematically on annual basis), Strategy on Reforming the Justice System for Children (revised in March 2014), Strategy on Prevention of Juvenile Crime (adopted in 2012, revised in 2015), the National Human Rights Strategy 2014-2020 (NHRS) and its Action Plan (AP).

The **overall objective** of this project is to enhance capacities of judiciary and government institutions and representatives of legal profession to promote access to justice for all and to establish a coherent and child-friendly justice system for children in Georgia.

Specific objectives of this project are to:

1. Support access to justice through promoting more independent and effective legal profession, legal aid system and greater application of alternative dispute resolution mechanisms (ADRs);
2. Promote and support the establishment of an effective system of justice for children by dedicated regulatory framework and implementation mechanisms.

The programme aims at enhancing the capacities of the following State and private institutions: Ministry of Justice of Georgia (MoJ), Ministry of Corrections (MoC), Ministry of Education and Science of Georgia (MoES), Ministry of Internal Affairs (MoIA), High Council of Justice (HCoJ), Chief Prosecutor's Office, Ministry of Labour, Health and Social Assistance/Social Service agency (MoLHSA/SSA), Training Centre of Justice (TCJ), High School of Justice (HSoJ), Police Academy; Penitentiary and Probation Training Centre (PPTC); Probation Agency; Criminal Justice System Reform Inter-agency Council and notably its Juvenile Justice Working Group, Legal Aid Service (LAS), Georgian Bar Association (GBA), National Statistics Office of Georgia (Geostat) and the judiciary, Ministry of Sports and Youth Affairs. The project will work closely with professional associations and unions, Georgian International Arbitration Centre (GIAC), Associations of Arbitrators and Mediators, high education institutions and other relevant professional organisations.



Public information and engagement with civil society will receive due attention throughout all components of the programme. Special attention shall be paid to awareness raising activities for right-holders.

## 2. OBJECTIVES

### ***Result 1.3. Alternative dispute resolution (ADR) mechanisms are more broadly used in Georgia***

Though ADR cannot be a substitute for the formal court system, it can serve as an alternative that complements formal systems. Access to justice, especially for the poor and disadvantaged, is facilitated through ADR mechanisms as it addresses key obstacles facing these groups and is more accessible than formal courts. Some characteristics of ADR that promote access to justice include: faster than court settlements, lower costs in comparison to litigation in court (no lawyer and court fees, etc.), not as formal as court systems and people may feel less intimidated to approach them, local communities often already have their own ADR, reducing linguistic and cultural barriers, as many mediators are from the community and are well known, disputing parties may more willingly trust them and their suggestions than judges in the formal system and helps in reducing court backlog.

ADR mechanisms are often perceived as more accessible by disadvantaged people, and their sensitisation on human rights and gender. It is the best mechanism for reaching poor, marginalized, and illiterate populations, consistent with local customs, norms, and practices.

The legislation of Georgia recognizes ADR – arbitration and mediation however the number of cases solved through these mechanisms are relatively small.

Activities under Result 1.3 of Specific Objective 1 will aim at promoting greater use of mediation and arbitration in dispute resolution as alternative mechanism to judicial review, with a special focus on regions. The activities will support:

- (i) Increasing public awareness and confidence in ADRs;
- (ii) Obtaining political support from government, including elaboration of regulatory framework;
- (iii) Improving referral mechanisms to ADR boards;
- (iv) Strengthening the Associations of Mediators and Arbitrators and their cooperation with main stakeholders.

One of the objectives of the project is to support greater use of Alternative dispute resolution (ADR) mechanisms in Georgia. Under this activity the project will assist Associations of Mediation and Association of Arbitrators, as well as conduct awareness raising campaign for law professionals as well as general public.

Georgia adopted new Law on Arbitration, based on UNCITRAL Model Law, in 2009. The Law was adopted in times when public perception of arbitration in Georgia was very negative. After the first reform, the Law had a number of deficiencies, which were undermining the promotion of this mechanism of dispute resolution. In order to mend this defects the revision was initiated by the Ministry of Justice of the Law aiming to make arbitration financially more attractive, legally more certain and in general closer to international best practices. The amendments were passed in 2015.

Despite these amendments, practice of the national courts has not changed. Most recently, Batumi City Court found the ICC Model Clause invalid (it did not contain sufficiently clear reference to a specific institution). Tbilisi Court of Appeals continues to refuse recognition & enforcement of awards on public policy ground without due substantiation. The Supreme Court of Georgia continues to request additional documents contrary to the requirements of the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (NY Convention). Such practice puts the country into the list of arbitration-hostile countries and creates an obstacle for promotion of Georgia as a centre/seat of regional and international commercial dispute resolution. In order to study in depth, the existing situation related to arbitration in Georgia, as well as identify the patterns hindering the development of arbitration in the country and provide the recommendations, the Project will conduct the study.

## 3. AIM OF THE ASSIGNMENT

The aim of the assignment is to:

- analyse the existing situation in country related to arbitration, arbitral institutions and their functioning; identify best practices and shortcomings in their practice hindering the development of arbitration in the country;
- study the preferences of all target groups, including potential arbitration users regarding the dispute resolution mechanisms. In case of private persons identify what is their attitude to arbitration and in case of business and governmental entities, as well as law and consultancy firms identify the main

considerations for choosing or rejecting arbitration (and ADR) as method of dispute resolution; study the trends of development of arbitration in court practice vis-à-vis international best practice as well as existing national legislative framework; identify the areas in which the court's capacity can be enhanced;

- identify general factors contributing to the development of arbitration as well as those that hinder its development, provide the recommendations for elimination of the development-hindering circumstances.

#### **4. OBJECTIVES OF THE ASSIGNMENT**

The overall objective of the assignment is to carry out comprehensive study of the arbitration development in Georgia for identification of main trends and factors hindering the development of the field in order to provide recommendations for elimination of such challenges and promote greater use of arbitration in Georgia.

#### **5. SCOPE OF WORK AND EXPECTED OUTPUT**

The selected organization is expected to conduct analysis as follows:

1. Study and analyse at least 10 active Arbitral Institutions in Georgia identified jointly with the project team:
  - their structure;
  - applicable arbitration rules/procedures and relevant internal regulations for arbitration proceedings;
  - statistics of case load and the category/type of disputes;
  - user satisfaction provided the personal data protection and confidentiality rules give possibility to identify users;
2. Case Law for identification of the gaps in interpretation and application of the Law:
  - landmark case law dated from the adoption of the Law on Arbitration (2009 – 2015) and landmark case law from 2015 until now (with focus on the shift in decision-making after the 2015 amendments, if applicable) and comparative analysis of practice before and after 2015 amendments;
  - the case law analysis shall identify trends in arbitration related matters, including change of practice (if any) since 2015 legislative amendments and provide statistics of enforceability of the arbitration awards (local and foreign), the basics of setting aside or non-recognition of the awards.
3. Conduct interviews and/or focus groups meetings with:
  - Users and potential users of commercial arbitration concerning their attitude towards arbitration and decision-making priorities while selecting dispute resolution methods, as well as what are the main factors for using or rejection of ADR mechanisms (factors: trust, quality, qualification, enforceability, etc.); more specifically the selected target groups should be:
    - private persons who have experience with arbitration;
    - business entities and investment companies;
    - government entities;
    - law and/or consultancy firms;
    - relevant international organizations implementing projects in this field.
  - Selected arbitration institutions concerning the category of their arbitration cases, statistics and general trends of the referrals, challenges in arbitration proceedings.
  - The judiciary concerning their general standing regarding arbitration matters (what do they see as a hindering factor(s) of development of arbitration.
4. Identify the factors deterring development of arbitration in Georgia against the general factors contributing to its development and provide recommendations how to address the existing shortcomings.

Organization is expected to conduct a presentation of the Study to the stakeholders. The list of stakeholders, as well as the venue, the setting and the date of the presentation shall be agreed with UNDP.

A contractor shall design the appropriate methodology of the analysis, questionnaires, collect and analyse data. The methodology shall include conducting interviews as identified in the scope of the assignment, as well as the desk review of the practice of third countries, case law and internal regulations of identified arbitral institutions. The research instrument shall be developed by a contractor in close cooperation with project team.

The methodology for data processing shall be described by applicant in the methodology part of this Proposal.

The contractor shall provide **detailed Report** containing analyses as specified above in Section 5 paragraphs 1-4. The report shall be submitted in English and Georgian languages. The Draft report shall be presented to UNDP before finalization for feedback and comments. Contractor shall ensure the quality of Georgian and English texts of the report.

## 6. TIMING

According to the appropriate methodology of the external analysis, questionnaires shall be developed by an organization in close cooperation with UNDP within 2 weeks of the commencement of the contract.

The outline of the report shall be submitted to UNDP for approval within 3 weeks of the commencement of the contract.

The final report with analyses as specified above in Section 5 paragraphs 1-4 shall be submitted to UNDP within 18 weeks of the commencement of the contract;

	Service	week																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1	Preparation of the questioners and preparatory works																		
2	Preparation of the outline of the report																		
3	Conducting interviews/focus groups and analysing the data																		
5	Drafting report																		
6	Agreement of report with Project team																		
7	Submission of final report in Georgian and English languages																		
8	Presentation of the Study to the stakeholders																		

## 7. DELIVERABLES AND SUBMISSION TIMELINE

The organization is expected to produce the following deliverables:

DELIVERABLES	SUBMISSION
- Questionnaires for interviews and focus group meetings;	within 2 weeks of the commencement of the contract;
- Outline of report;	within 3 weeks of the commencement of the contract;
- Final report in Georgian and English languages	within 17 weeks of the commencement of the contract;
- Presentation of the report to the stakeholders	within one month after approval of the final report by UNDP.

## 8. ELIGIBILITY CRITERIA

- Experience of conducting situation analysis/research/study as demonstrated by:
  - At least 5-year experience in the area of carrying out situation analysis/research of specific fields (**minimum requirement**);
  - At least 5-year experience in developing the recommendations based on the situation analysis/research of a specific field (**minimum requirement**);
  - Experience in conducting at least 5 similar projects (**minimum requirement**).
  - Experience in carrying out at least 2 similar projects financed by donor and/or international organizations will be an advantage;

- Having at least 2 letters of recommendation from previous contract providers (**minimum requirement**). A letter of recommendation from an international/donor organization will be an asset.

**Names and qualifications of the key personnel:**

At a minimum:

- (1) **Team Leader:**
  - with minimum of 5 years' experience in working on a similar project, conducting situation analysis/research (**minimum requirement**);
  - experience of research on law-related issues will be an asset;
- (2) **Legal Expert:**
  - with a Master's degree in Law/International Law/Dispute Resolution, minimum of 3 years' practical experience in the field of arbitration/ADR and conducting legal research (**minimum requirement**);
  - more than 3 years' practical experience in the field of arbitration/ADR and conducting legal research will be an asset.
- (3) **Project Specialist:**
  - with at least 3 years of experience in situation analysis/research projects (**minimum requirement**);
  - experience in working on legal issues (research, market research, recommendation, legal projects) will be an asset;
- (4) The other professional team if deemed appropriate by the contractor to fulfil the requirements as spelled out in this RFP. (Note: It is possible to combine several expert functions within one individual, provided that the candidate fully meets all needed qualifications).

## 9. PAYMENT MODALITY

Successful company will be paid in two instalments upon satisfactory accomplishment of each of the above-mentioned phase and according to the following scheme:

Deliverable	Amount to be paid	Due date of the payment
Outline of report and questionnaires for interviews and focus group meetings	30% of the contract price	within 2 weeks from the approval of the Outline
Final report in English and Georgian Languages	70 % of the contract price	within 2 weeks of the approval of the final version of the final report

## Technical Proposal Evaluation Form

Technical Proposal		Max Points Obtainable
<b>Expertise of the Firm - 160</b>		
At least 5-year experience in the area of carrying out situation analysis/research of specific fields <b>(minimum requirement);</b>	5%	50
At least 5-year experience in developing the recommendations based on the situation analysis/research of a specific field <b>(minimum requirement);</b>	5%	50
Experience in carrying out at least 2 similar projects financed by donor and/or international organizations will be an asset;	3%	30
Experience in conducting at least 5 similar projects <b>(minimum requirement);</b>	3%	30
<b>Recommendations – 40</b>		
– Having at least 2 letters of recommendation from previous contract providers <b>(minimum requirement)</b>	3%	30
– Having reference from an international organization will be an asset	1%	10
<b>Total:</b>	<b>20%</b>	<b>200</b>
<b>Methodology, Its Appropriateness to the Condition and Timeliness of the Implementation Plan</b>		
Does the Proposer demonstrate full understanding of the assignment? / Is the scope of task well defined and does it correspond to the TOR? - <b>50</b>	5%	50
– Full Understanding – <b>50</b>		
– Fair Understanding <b>(minimum requirement) - 30</b>		
Are the different components of the project adequately weighted relative to one another? - <b>50</b>	5%	50
– Adequate distribution – <b>50</b>		
– Fair distribution <b>(minimum requirement) - 30</b>		
Is the proposed technical approach and methodology responding to the needs of assignment? <b>100</b>	10%	100
– Comprehensive and systematic methodology - <b>100</b>		
– Fairly appropriate methodology <b>(minimum requirement) - 70</b>		
Timeliness of the implementation plan - <b>100</b>	10%	100
– Completely appropriate - <b>100</b>		
– Fairly appropriate <b>(minimum requirement) - 70</b>		
<b>Total:</b>	<b>30%</b>	<b>300</b>
<b>Management Structure and Qualification of Key Personnel</b>		
Team Leader – <b>80</b>	8%	80
– with minimum of 5 years' experience in working on a similar project, conducting situation analysis/research <b>(minimum requirement); - 55</b>		
– experience of research on law-related issues will be an asset; - <b>25</b>		
<b>Legal Expert - 70</b>	7%	70
– with a Master's degree in Law/International Law/Dispute Resolution, minimum of 3 years' practical experience in the field of arbitration/ADR and conducting legal research <b>(minimum requirement) - 45</b>		
– with more than 3 years' practical experience in the field of arbitration/ADR and conducting legal research - <b>25</b>		
<b>Project Specialist - 50</b>	5%	50
– with at least 3 years of experience in situation analysis/research projects – <b>(minimum requirement); - 30</b>		
– experience in working on legal issues (research, market research, recommendation, legal projects) will be an asset; - <b>20</b>		
<b>Total:</b>	<b>20%</b>	<b>200</b>
<b>Maximum Total Technical</b>	<b>70 %</b>	<b>700</b>
<b>Minimum Technical points needed</b>		<b>490</b>
<b>Financial Proposal</b>	<b>30%</b>	<b>300</b>
Budget Proposals		
<b>To be computed as a ration of the Proposal's Offer to the lowest price among the proposals received by UNDP</b>	<b>30%</b>	<b>300</b>
<b>Total:</b>	<b>100%</b>	<b>1000</b>

