

## **Terms of Reference**

**for**

### **National Short-Term Senior Expert on Legal Framework in Turkey**

#### **1. BACKGROUND**

The IPA II Indicative Strategy Paper for Turkey (2014-2020), which was revised in August 2018 targets the improvement of the capacities of institutions, including CSOs, in charge of protecting and guaranteeing the respect and defense of fundamental rights. Developing the capacity to conduct independent, impartial and effective investigations into allegations of misconduct by security forces is thereby defined as one of the actions to achieve this result. In addition, strengthening the cooperation between institutions and stakeholders engaged in the area of human rights is fundamental to overcome the challenges in the field. Turkey's New EU Strategy also states that the implementation of legal arrangements in the security sector is among the primary objectives for ensuring the full enjoyment of fundamental rights and freedoms. The 2014 Action Document on "Support to Fundamental Rights" also refers to the need for enhancement of the administrative capacities of the authorities concerning the implementation of legislation in order that rights are respected in full and in practice, with proper accountability and control systems which involve the civil society.

The importance of the transformation of civil–military relations with a focus on civilian/democratic oversight of the internal security sector has also been emphasised in EU Progress Reports, acknowledging the contribution of the first two phases of the Project. The 2018 EU Progress Report recognised the revision of the legal framework governing civil-military relations and the increase of the powers of the executive over the military as significant, thereby strengthening civilian oversight. However, it was also noted that improvements are needed for Parliamentary, administrative and judicial oversight and accountability of security and intelligence forces. In addition, the effectiveness of the law enforcement oversight commission needs to be increased.

A set of measures for reform in the field of expanding human rights and a zero-tolerance policy against torture and ill-treatment have been adopted by Turkey since 2002. Broad modifications of the competence areas of the Police and the Gendarmerie, and annulment of the Protocol on Cooperation for Security and Public Order that was conflicting with the law on public administration are among the important steps taken by the Government.

The Project for the Civilian Oversight of Internal Security Sector Phase I, which was implemented jointly by Ministry of Interior and UNDP in 2007-2010, aimed to raise the awareness of the MoI about the concept of civilian oversight. The 1<sup>st</sup> Phase also assessed the gaps vis-à-vis EU standards in MoI and developed the concept of "local governance of ISFs". The 2<sup>nd</sup> Phase of the Project was implemented in 2012-2014 and designed to expand and institutionalize the introduced approaches and piloted structures of 1<sup>st</sup> Phase. Second Phase was implemented from the perspective of improving (1) the capacity of MoI staff and provincial-sub provincial administrators to exercise oversight of policing and the homogeneity of the laws regulating the internal security forces; (2) the coherence of oversight arrangements that govern interactions between, on the one hand, the civilian administrators at provincial levels, sub provincial levels and, on the other hand, the Police and the Gendarmerie and Coast Guards; and, (3) the temporary coordination and consultation mechanisms by the Governors

and District Governors so that the current oversight systems can expand rights and freedoms enjoyed by citizens.

The two phases of the Project have identified the main requirements for an effective and human centred civilian oversight mechanism over the internal security sector. Building on the recommendations and results of the former phases, the 3rd Phase of the Project at hand is designed to deepen Phase I and II results in terms of organisational changes and put pilot local boards into practice in most provinces of Turkey. This new Phase will also support the Government in establishing the best model for ISF and its effective functioning under MoI in line with international principles and best practices in the EU. This new Phase is also in conformity with the priorities of the Accession Partnership and EU/Commission policies by supporting the ongoing work of Turkey. Assessment of various progress reports of the European Commission along with the policy endeavors of Turkey to address gaps in the civilian oversight and the outputs of the partnership of Turkey jointly achieved with UNDP and the Delegation of the European Union to Turkey (EUD) are the basis of the 3<sup>rd</sup> Phase.

The Phase III Project (CO III) is accepted under the 2014 Action Document for Fundamental Rights Sub-Field prepared by the Directorate for EU Affairs (DEUA) Department of Political Affairs under the Ministry of Foreign Affairs as the Lead Institution. The target groups are the Ministry of Interior GDPA, including provincial administrations and internal security forces and the Grand National Assembly of Turkey (GNAT). The MoI General Directorate for Provincial Administrations is the main beneficiary of the Project, whereas the UNDP provides technical assistance to the MoI for efficient and effective implementation of the Project.

Phase III is composed of 4 components:

**Component A - Legislative and Institutional Framework:** This component aims to improve, the training curriculum, strategies and the basic legislative and regulatory framework governing the Police, Gendarmerie and Coast Guard as well as the Local Security System in the light of civilian/democratic oversight and accountability principles. It is also planned that the performance evaluation system of MoI over ISFs will be strengthened through the Project.

**Component B - Parliamentary Oversight:** This component aims to develop a strategy to systematically oversee the work of ISFs through the work of relevant Commissions of the Grand National Assembly of Turkey.

**Component C - Scaling Up of the Pilot Security Governance Structures:** This component aims to scale up the pilot security governance structures nationwide and support their effective functioning through capacity development and technical assistance.

**Component D - Individual and Institutional Capacity Building:** This component aims to build institutional and individual capacities of the Governors, District Governors and citizens to enhance the understanding and internalization of citizen-focused security services.

Under component A, a National Short-Term Senior Expert on Legal Framework (National STE) will be mobilized for reviewing of the police and gendarmerie basic laws in the light of civilian oversight and accountability principles.

## 2. SCOPE OF WORK

The overall objective of this assignment is to support the realization of Activity A.1 “**Review of the police and gendarmerie basic laws, in the light of civilian oversight and accountability principles provided by EU and international standards and best practices**”.

Phase II of the Project reviewed the legislation on the ISFs and identified the gaps concerning an effective civilian oversight. Recommendations for a draft legal framework on Internal Security Sector

was developed by a Commission that was composed of representatives from the Turkish National Police, Command of Gendarmerie, Command of Coast Guard, Ministry of Customs and Trade, and Ministry of Interior. These recommendations will be taken as the basis for Activity A.1. and will be updated in light of the changes brought about after the coup attempt in July 2016 and transition to the presidential system which entered into force after April 2017 referendum. The legal review will essentially give an update on the findings of this previous report and identify the amendments and additions to the existing laws and regulations.

There had been several changes in the legislative framework regulating the internal security sector in Turkey after the coup attempt in July 2016. Turkey's new homeland security act passed in the Parliament in March 2015 transferred the administration of Gendarmerie forces and Coast Guards to the MoI in order to have consistent roles and duties between National Police and Gendarmerie forces. This was also in line with the recommendations of the Phase II of this project. Although the title of the Activity A1 does not explicitly list the review of coast guard legislation, the scope of the review will include the legislation governing the Coast Guards in order to have a comprehensive review of all ISF legal framework.

The following State of Emergency decrees and regulations have recently been enforced concerning the functioning of the internal security and armed forces in Turkey; amendments brought by the following will be reviewed by the Consultant:

- State of Emergency Decree Law No: 668, Published in the Official Gazette no. 29783, dated 27 June 2016, enacted as a law by Law numbered 6755 published in the Official Gazette no. 2989, amended the Law No 2803 on the Organizations, Duties and Authorities of the Gendarmerie and the Law No 2692 on Coast Guard Command
- State of Emergency Decree Law No: 669 Concerning subordination of the Turkish Armed Forces to civil authority, the Army, Navy and Air Force Commands to the Minister of National Defense and establishment of the University of National Defense, enacted as a law by Law numbered 6756 published in the Official Gazette on 24/11/2016
- State of Emergency Decree-Law No: 671 on Measures to be Taken under the State of Emergency, published in the Official Gazette on 17/08/2016, enacted as a law by Law numbered 6757 and published in the Official Gazette on 21/11/2019
- State of Emergency Decree Law No: 674 on Measures to be Taken under the State of Emergency, published in the Official Gazette on 01/09/2016, enacted as a law by Law numbered 6758 and published in the Official Gazette on 21/11/2016
- State of Emergency Decree Law No: 676 on Measures to be Taken under the State of Emergency published in the Official Gazette on 29/10/2016, enacted as a law by Law numbered 7070 and published in the Official Gazette on 08/03/2018
- State of Emergency Decree Law No: 680 on Measures to be Taken under the State of Emergency published in the Official Gazette on 06/01/2017, enacted as a law by Law numbered 7072 and published in the Official Gazette on 08/03/2018
- Decree-Law No: 682 Concerning Disciplinary Provisions of Law Enforcement Officials, enacted as a law by Law numbered 7068 published in the Official Gazette on 08/03/2018
- State of Emergency Decree Law No: 690 on Measures to be Taken under the State of Emergency published in the Official Gazette on 29/04/2017, enacted as a law by Law numbered 7077 and published in the Official Gazette on 08/03/2018
- Regulation on Organisation, Duties and Competences of the Gendarmerie (2016/9741)
- Regulation on Organisation, Duties and Competences of the Coast Guard (2016/9743)
- Regulation on Personnel Issues of Gendarmerie and Coast Guard (2016/9742)

- Regulation on Organization and working principles of Gendarmerie and Coast Guard Academy (2016)

In addition to the new decrees and regulations, the review will include the Law on the Establishment of the Law Enforcement Monitoring Commission, as this Commission will have an important role for improving the accountable and transparent functioning of ISFs. Furthermore, the team of the Twinning Project “An Independent Police Complaint Commission and Complaints System for the Turkish National Police, Gendarmerie and Coast Guard” is currently providing IT support for establishment of central registry system for the Commission. So, as to have a holistic approach regarding the legislation on the ISFs, analysis and findings of the Twinning Project will be taken as a basis for reviewing the Law of the Commission and the draft secondary regulation.

To this end, National and International STEs will identify and analyze the legal gaps and discrepancies in the civilian/democratic oversight of the ISF under the new structure introduced by the homeland security act (2015); and state-of-emergency decree laws and the new regulations governing Gendarmerie and Coast Guard after the failed coup attempt of 15 July 2016, as well as the Presidential Government system which entered into force in July 2018. The law of the ISFs will be reviewed in the light of civilian/democratic oversight and accountability and transparency principles. National STE will be in close cooperation with the international STE(s) towards contributing to the comparison of Turkey’s legal framework on ISFs with EU countries which will be selected by UNDP. The European and international standards and best practices to ensure civilian and democratic oversight will be taken as main sources in the analysis. The analysis will be made on a consultative basis with the Project Team (PT) and considering the findings and recommendations of the legal review and gap analysis that was carried out in Phase II.

### **3. DUTIES AND RESPONSIBILITIES**

National STE is expected to perform the following tasks for realization of the Activity A.1:

#### **Under Component A:**

- Identify and compile all related basic legal documentation (primary and supporting secondary legislation) and additional materials (legal codes, theses, organizational charts, etc.) which regulate the roles, responsibilities and functioning of the ISFs in the light of civilian/democratic oversight and accountability and transparency principles. In so doing; (a) identify and update the amendments and additions to the national legal/legislative review that was carried out in the 2<sup>nd</sup> phase of the Project and covered the period until March 2015; (b) integrate the new legislation and regulations since March 2015 into the legislative review year by year; and (c) analyse the findings of the desk review in the light of civilian/democratic oversight and accountability and transparency principles with an aim to contribute to the legal gap/compliance analysis conducted by the PT and International Legal Framework Expert.
- Participate in and providing support for the preparation of at least 4 out of 7 two-day workshops in Ankara and pilot provinces and contribute to the program, content and discussion points of these workshop programs; moderate them if needed by UNDP.
- Contribute to developing legal gap/compliance analysis report including comparative analysis and recommendations for improvements in line with the results of the workshops in cooperation with the Project Team along with other National and International STEs. Accordingly, review analysis and develop policy recommendations as a result of these workshops towards the compilation of gap/discrepancy analysis.
- Support the TAT for the day to day business conduct of Project Activities such as:
  - Providing input for the Project Evaluation that will be conducted by independent Team of Experts.
  - Providing input for Progress and Final Reports.

All documents and data provided to the consultant are confidential and cannot be used for any other purpose or shared with a third party without any written approval from UNDP.

#### 4. EXPECTED OUTPUTS AND DELIVERABLES

The Consultant is expected to develop and submit to UNDP below listed deliverables;

Activity	Deliverable	Estimated Maximum Number of Person/days to be Invested by IC*	Target Date for Submission to UNDP
Reviewing and updating the relevant basic laws/regulations/institutions and Drafting findings.	Draft Desk-Review Finding Report	15 days (Home-based)	December 10 <sup>th</sup> , 2019
Participation in 4 Workshops	Meeting Report of 4 Workshop	2 days (Home-based preparation and reporting) 6 days (Ankara and/or other pilot provinces)	January 15 <sup>th</sup> , 2020
Contributing to developing legal gap/compliance Analysis Report and drafting an analysis of the national legal review towards this end	Legal Gap/Compliance Analysis Report	8 days (Home-based)	March 15 <sup>th</sup> , 2020
Participation in the project events/workshops/consultation meetings (if needed by UNDP)**	Speech/Presentation /Input to the programme/agenda (if needed by UNDP)**	2 days (Ankara and/or other pilot provinces)	March 15 <sup>th</sup> , 2020
<b>Estimated Maximum Total</b>		<b>33 Person/days</b>	

\*The “Estimated Maximum Number of Person/Days” indicated herein represent the maximum person/days that will be the basis of the payment to the Consultant throughout the contract validity. The payments to the Consultant will be based on the actual number of person/days invested for the development of each specific deliverable. The total person/days of the consultant (consecutive or non-consecutive person/days) dedicated to the assignment shall be at a **maximum of 33 person/days between October 2019 and April 2020. The Consultant is estimated to work at most 33 person/days.**

\*\*These activities/deliverables may be requested at the sole discretion of UNDP.

Without submission and approval (by UNDP) of all the above listed deliverables in due time and quality, the consultant shall not be entitled to receive any payment from UNDP even if he/she invests time in this assignment. In cases where the expert may need to invest additional person/days to perform the tasks and produce the deliverables listed and defined in this Terms of Reference, the expert shall do so without receiving any additional payment.

## 5. TIMING AND DURATION

The Assignment will cover the period in between 25 October 2019 and 14 April 2020 and the IC is expected to invest an estimated maximum of 33 person/days throughout this period. The number of person/days invested to carry out the assignment and to fulfill the required tasks detailed in this Terms of Reference shall not exceed 33 person/days throughout the Contract duration.

## 6. INSTITUTIONAL ARRANGEMENTS

UNDP Turkey CO will;

- Provide the Consultant with relevant documents,
- Provide the Consultant with full support in any further analysis of the data where necessary,
- Facilitate communication with other stakeholders,
- Give feedback to the draft, final reports and all other deliverables prepared by the Consultant.

Neither UNDP nor any of the project partners are required to provide any physical facility for the work of the Consultant. However, depending on the availability of physical facilities (e.g. working space, computer, printer, land telephone lines, internet connection, etc.) and at the discretion of UNDP and/or the relevant project partners, such facilities may be provided at the disposal of the Consultant. UNDP and/or the relevant project partners will facilitate meetings between the Consultant and other stakeholders, when needed.

**All documents and data provided to the consultant are confidential and cannot be used for any other purposes or shared with a third party without any written approval of UNDP.**

The consultant will be under the direct supervision of and will report to the Project Manager of Civilian Oversight of Internal Security Forces Phase III Project.

## 7. PLACE OF WORK

The duty stations for this assignment are Home-based and Ankara, Turkey. The IC might be asked to travel to pilot provinces of the Project in Turkey for conduct of project activities. **Up to 8 person/days of this assignment are expected to be in Ankara or other provinces within Turkey and 25 person/days are expected to be home-based.**

Travel, accommodation and living expenses (terminal expenses, inter-city, intra-city travels, living costs such as breakfast, lunch, dinner, etc.) in duty stations will be borne by the consultant and these expenses should be taken into consideration by the Consultant whilst determining his/her price proposal. No further payment will be affected to the Consultant within the scope of this Assignment for whatsoever reason (travel, accommodation, terminal, lunch, breakfast, dinner, etc.). **Throughout the whole assignment period, a maximum of 2 economy class round-trip flight tickets from the residential city of the Consultant to Ankara, Turkey will be borne by UNDP.**

Assignment-related travel and accommodation costs, which are pre-approved by UNDP outside of the duty stations will be borne by UNDP in line with UNDP's corporate rules and regulations. The costs of these missions may either be;

- Arranged and covered by UNDP CO from the respective project budget without making any reimbursements to the Consultant, through UNDP's official Travel Agency or,
- Reimbursed to the Consultant upon the submission of the receipts/invoices of the expenses by the consultant and approval of the UNDP. The reimbursement of each cost item is subject to the following constraints/conditions provided in below table or,
- Covered by the combination of both options.

The following guidance on travel compensation is provided per UNDP practice:

Cost item	Constraints	Conditions of Reimbursement
Travel (intercity transportation)	Full-fare economy class tickets	<ol style="list-style-type: none"> <li>1. Approval by UNDP of the cost items before the initiation of travel</li> <li>2. Submission of the invoices/receipt, etc. by the consultant with the UNDP's F-10 Form</li> <li>3. Acceptance and approval by UNDP of the invoices and F-10 Form.</li> </ol>
Accommodation	Up to 50% of the effective DSA rate of UNDP for the respective location	
Breakfast	Up to 6% of the effective DSA rate of UNDP for the respective location	
Lunch	Up to 12% of the effective DSA rate of UNDP for the respective location	
Dinner	Up to 12% of the effective DSA rate of UNDP for the respective location	
Other Expenses (intra city transportations, transfer cost from /to terminals, etc.)	Up to 20% of effective DSA rate of UNDP for the respective location	

## 8. REQUIRED QUALIFICATIONS

	Minimum Qualification Requirements	Assets
<b>Qualifications and Skills</b>	<ul style="list-style-type: none"> <li>• University degree in law or social sciences focusing on law.</li> <li>• Excellent command of spoken and written English.</li> </ul>	<ul style="list-style-type: none"> <li>• Master's or Ph.D. Degree in public law, security studies, human rights law or any other relevant field within social sciences.</li> <li>• Excellent spoken and written command of an EU language.</li> </ul>
<b>General Professional Experience</b>	<ul style="list-style-type: none"> <li>• Minimum 10 (ten) years of professional experience.</li> </ul>	<ul style="list-style-type: none"> <li>• More than 10 (ten) years of professional experience.</li> <li>• Former experience in EU funded projects.</li> <li>• Former experience in legal review.</li> <li>• Former experience in human rights or Turkish penal law-related projects and/or activities.</li> <li>• Experience in working with government institutions/ security sector organizations of Turkey.</li> <li>• Former experience in national and local level research projects.</li> </ul>
<b>Specific Professional Experience</b>	<ul style="list-style-type: none"> <li>• Minimum 5 years of professional experience in the field of public administration system and/or legislation on the internal security sector and/or human rights, European principles and standards in public administration reform and particularly in civilian oversight of internal security and/or law enforcement.</li> </ul>	<ul style="list-style-type: none"> <li>• Having publications on legal review.</li> <li>• Knowledge of functioning of internal security sector in Turkey and law enforcement.</li> <li>• Substantive knowledge on criminal law.</li> </ul>

### Notes:

- Internships (paid/unpaid) are not considered professional experience.
- Obligatory military service is not considered professional experience.
- Professional experience gained in an international setting is considered international experience.
- Experience gained prior to completion of undergraduate studies is not considered professional experience.



## 9. PAYMENTS

Payments will be made within 30 days upon approval of deliverables and UNDP Certificate of Payment Form (COP) on the basis of actual number of person/days invested by the Individual Consultant for development of that respective deliverable and the pertaining Certification of Payment document signed by the Consultant and approved by the responsible Project Manager. While the Consultant may invest less or more than estimated number of person/days for each deliverable different than the estimated person/days stipulated in the table in Article 4, the total amount of payment to be affected to the Consultant within the scope of this Assignment cannot exceed equivalent of 33 person/days throughout the contract validity.

If the deliverables listed in Article 4 of this Terms of Reference are not produced and delivered by the expert in due time and to the satisfaction of UNDP, no payment will be made even if the expert has invested person/days to produce and deliver such deliverables.

The consultant shall be paid in US\$ if he/she resides in a country different than Turkey. If he/she resides in Turkey, the payment shall be realized in TRY through conversion of the US\$ amount by the official UN exchange rate valid on the date of money transfer.

The daily fee to be paid to the Consultant is fixed regardless of changes in the cost components. The daily fee amount should be indicated in gross terms and hence should be inclusive of costs related to tax, social security premium, pension, visa (if needed), etc.

Tax Obligations: The IC is solely responsible for all taxation or other assessments on any income derived from UNDP. UNDP will not make any withholding from payments for the purposes of income tax. UNDP is exempt from any liabilities regarding taxation and will not reimburse any such taxation to the IC.