

**Terms of Reference for International Short-Term Senior Legal Expert on Poland
Within the Scope of Strengthening the Civilian Oversight of Internal Security Forces Phase III
Project (CO III)**

1 Background

The Projects for the Civilian Oversight of Internal Security Sector 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 Phase II results. This new Phase will also support the Government in establishing the best model for ISFs and its effective functioning under MoI, in line with international principles and best practices in the EU. This new Phase is 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 endeavours 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 Project. The 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, including provincial administrations and ISFs, and the Grand National Assembly of Turkey. The MoI Department of Smuggling, Intelligence, Operations and Data Collection is the main beneficiary of the Project, whereas UNDP will provide technical assistance to the MoI for efficient and effective implementation of the Project. The Project 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 internalisation of citizen-focused security services.

The International Short-Term Senior Legal Expert on Poland (STE) will be mobilized in the period from January 2021 to July 2021, in order to support the project's implementation and delivery of specific project outputs in a timely and quality manner; as detailed throughout this Terms of Reference (ToR).

2 Objective(s) of the Assignment

The overall objective of the 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”**. The STE, in coordination with the International Short-Term Junior Legal Expert on Poland, will be responsible for production of a report on democratic/civilian oversight of ISFs of Poland. Democratic/civilian oversight of ISFs of Poland, the Netherlands, Belgium, Italy, Germany, Ireland and Turkey will be a part of the report titled “Democratic and Civilian Oversight of Internal Security Forces: a Legal Review” which examines, evaluates and compares civilian oversight mechanisms in selected EU countries and Turkey. The first part of this report titled “Comparative Legal Appraisal” will provide a cross-country study of regulations. Throughout this part, constitutional, parliamentary, judicial, hierarchical, different internal or external and oversight mechanisms of the selected EU member states will be compared to the situation in Turkey. Citizen and local authorities’ involvement in security policies are an integral part of the review. The last part, titled “Guidelines and Recommendations”, puts forward recommendations and guidelines derived from comparative studies as necessary steps to be taken by Turkey in the field of the civilian oversight.

3 Duties and Responsibilities

The STE, in coordination with the International Short-Term Junior Legal Expert on Poland, will support the realization of the Activity A.1 by review of the existing legislative framework, benchmarks and obstacles to exercise effective oversight functions over the law enforcement bodies and internal security bodies.

The STE will be in charge of national case study report (narrative report with ten summary tables) and will also be responsible for working jointly with the other international and national STEs in order to compare findings collated in summary tables, considering legal framework but also practices which include the following;

1. Description of ISFs in Poland.
2. Core constitutional oversight principles on ISFs in Poland; in terms of constitution, supremacy of law asserted, restriction on supremacy of law, ISFs’ role specified in constitution, protection of free exercise of liberties, subordination to civilian authority, internal/external security definition, accountability of all administrations and forces and any declaration of human rights annexed to constitution.
3. Oversight powers of the parliament in Poland with regards to discussion and approval of state budget, national yearly plan submitted to parliament, participation of civil society actors in the parliamentary oversight, parliamentary request of information from government, parliamentary inquiries/questions/interpellations, parliamentary committees and investigation committees, publicity of parliamentary investigation reports, ombudsman’s role and power for ISF oversight, ombudsman’s reports to the parliament, Court of Accounts, remit of Court of Accounts and exception on control of security policy formulation bodies.
4. Judicial oversight mechanisms in Poland; including courts’ functions and independence guaranteed in constitution, investigation procedures, nature of restrictions to courts’ investigation powers, existence of strong oversight powers over police investigators, special accreditation for investigation officers, assessment of investigation officers by public prosecutor or magistrate, restriction because of “national interests” and administrative courts’ oversight and impact of the administrative court decisions on regulatory action of administration.
5. Structure, affiliation, remits and oversight functions of Ministry of Interior in Poland; in terms of territorial organization, budgetary control of all ISFs by MoI, appointment of national police head, the profile of ISFs’ heads, appointment/dismissal of provincial/local ISFs’ heads, policy formulation / daily work orientation, inspections/sanctions, specific ISFs / civilian professors and representatives of government at local level.

6. Internal oversight mechanisms in Poland: audit services / status vis-à-vis ISFs, appointment of heads of inspections, reporting line of non-ISF inspection and audit services, guidelines or standards for conducting inspections / publicity, inspection and audit services internal to ISFs, reporting line of inspection services of ISFs, disciplinary sanction regime, disciplinary investigations, ordinary versus special mechanism to register complaints against ISFs, disciplinary sentencing, performance management on reaching objectives, remuneration according to the objectives, individual performance management, the main indicators that are used to assess organizational performance and the external performance indicators that are used by ISFs.
7. Oversight by governors in Poland (if relevant); such as governors' role and mission, assessing provincial heads of ISFs' performance and quality of work, powers' inspection and discipline, power to curtail individual liberties without prior decision of a judge, role vis-à-vis private sector and mechanism for inter states coordinating about ISF.
8. Independent external oversight mechanisms of ISFs in Poland such as ombudsman (defender of rights), powers of ombudsman: investigation / sanction of ISFs' agents, publicity of ombudsman's work, existence of specialized body against torture, national body for inspections of all places of detention managed by ISFs, national consultative body for HR protection with competence on ISFs; complaint management against the ISFs.
9. The mechanisms for citizens' and local authorities' engagement into security policies in Poland; in terms of existence of municipal police, local accountability to the mayor, national councils for prevention, local councils, partnerships for local security plans, legal status of consultation with population, integration of consultation into policing plans, national and local tools for examining citizens' expectations and NGOs involved as think tanks in local security.
10. Data protection and other legal arrangements, existence of data protection authority, powers of investigation/sanction and audit, publicity of audit and investigation reports, video surveillance laws/mechanisms, rights of ISFs' officers and adoption of code of ethics.
11. Other relevant legal arrangements and considerations in relation to civilian oversight in Poland.

The criteria stated above can be extended if required or deemed necessary by UNDP.

The STE will be responsible for the production of a country report composed of a narrative part and a table part for each of the above sections of the report on police systems in Poland. Tables and a template report will be provided by UNDP to ensure consistency.

The above listed activities are subject to further revision as needed by UNDP, in consultation with the MoI, in line with the emerging requirements of the Project. All the reports shall be in English. If required by UNDP, the IC may provide additional consultancy services related to his/her competencies and expertise, in line with the Duties and Responsibilities stipulated in this Terms of Reference.

S/he shall be responsible for providing technical inputs to the Project and reporting and documentation upon the request of the Project Team. His/her functions do not include managerial, supervisory and/or representative functions vis-a-vis UNDP Staff/Personnel. The International STE shall work in close cooperation with the Civilian Oversight of Internal Security Forces Phase III (COIII) Project Team (PT) and Technical Assistance Team (TAT) members. The STE will work in consultation with the Chief Technical Advisor (CTA) and in coordination with the Long-Term Senior Legal Consultant of the Project. He/she will work under the overall guidance of the UNDP Legal and Human Rights Specialist and will report to the COIII Project Manager.

4 Expected Outputs and Deliverables

The IC shall deliver below listed outputs/deliverables to the satisfaction of UNDP:

No.	Activity	Deliverable	Due Date	Place of Work	Estimated Number of Person/days to be Invested by the IC*
1	Preparation of draft for the narrative part of the report on the police system in Poland	Narrative part of the report which describes and explains the police system in Poland	20 February 2021	Home-based	5 Person/days
2	Submission of the draft tables as detailed within Article 3 of this Terms of Reference (Templates of the tables will be provided by UNDP)	Tables on all the comparable criteria about the police system in Poland	20 February 2021	Home-based	4 Person/days
3	Preparation and submission of the revised final report on the police system in Poland (narrative and tables)	Final report on the police system in Poland	10 May 2021	Home-based	2 Person/days
4	Preparation and virtual conduct of a presentation on the final report on the police system in Poland	Virtual presentation on the final report on the police system in Poland	10 June 2021	Home-based	1 Person/day
5	Contingency (if needed by UNDP)**		21 July 2021	Home-based	1 Person/day
ESTIMATED MAXIMUM TOTAL NUMBER OF PERSON/DAYS					13 Person/days

*The “Estimated Number of Person/Days” indicated herein represent the maximum person/days that will be the basis of the payment to the Individual Consultant (IC) throughout the contract validity. The payments to the IC will be based on the actual number of person/days invested for the development of each specific deliverable. The total person/days of the IC (consecutive or non-consecutive person/days) dedicated to the assignment shall be at a maximum of 13 person/days between 29 January 2021 and 21 July 2021. Payments to the IC within the scope of this Assignment cannot exceed equivalent of 13 person/days.

**Investment of the person/days allotted as “Contingency” may be requested at the sole discretion of UNDP.

5 Timing and Duration

The Assignment will cover the period between 29 January 2021 and 21 July 2021 and the IC is expected to invest an estimated maximum of 13 person/days for this period. The number of person/days invested to carry out the assignment, as detailed in this Terms of Reference, shall not exceed 13 person/days throughout the contractual period.

The IC may invest less/more than expected number of person/days for each deliverable. The payments shall be affected to the IC on the basis of actual number of person/days invested for each specific deliverable. Payments to be affected to the IC within the scope of this Assignment cannot exceed equivalent of 13 person/days.

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

6 Institutional Arrangement

UNDP Turkey CO will;

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

Neither UNDP nor any of the project partners are required to provide any physical facility for the work of the IC. 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 IC. UNDP and/or the relevant project partners will facilitate meetings between the IC and other stakeholders, when needed.

All reports should be submitted in English.

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

7 Place of Work

Place of work for the Assignment is Home-based. The IC may be requested to travel to Turkey. The travel, accommodation costs (bed and breakfast) and living costs (terminal expenses, intra-city travel costs, lunch, dinner, etc.) of the missions to Ankara and other provinces of Turkey will be borne by UNDP. UNDP will arrange economy class roundtrip flight tickets through its contracted Travel Agency.

In case of need of additional travels that are unforeseen in the ToR, the costs of the respective travels of the IC may either be;

- Arranged and covered by UNDP from the respective budget without making any reimbursements to the IC, through UNDP's official Travel Agency or,
- Reimbursed to the IC upon the submission of the receipts/invoices of the expenses by the IC 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 as per UNDP practice:

Cost item	Constraints	Conditions of Reimbursement
Travel (intercity transportation)	Full-fare economy class tickets	1- Approval by UNDP of the cost items before the initiation of travel 2- Submission of the invoices/receipts, etc. by the IC with the UNDP's F-10 Form 3- Acceptance and Approval by UNDP of the invoices and F-10 Form.
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
Qualifications and Skills	<ul style="list-style-type: none"> University degree in law or any other relevant field Fluency in English Computer literacy and good report writing skills 	<ul style="list-style-type: none"> Ph.D. degree in law, public administration, political sciences, security studies or any other field of social sciences
General Professional Experience	<ul style="list-style-type: none"> Minimum 15 (fifteen) years of professional/academic experience 	<ul style="list-style-type: none"> More than 15 (fifteen) years of professional/academic experience Experience in governance and/or internal security forces Experience in judicial oversight and/or training of ISFs
Specific Professional Experience	<ul style="list-style-type: none"> Knowledge on governance / civilian oversight of ISFs in Poland 	<ul style="list-style-type: none"> Having publications on policing, internal security and/or criminal justice
Notes: <ul style="list-style-type: none"> <i>Internships (paid/unpaid) are not considered professional experience.</i> <i>Obligatory military service is not considered professional experience.</i> <i>Professional experience gained in an international setting is considered international experience.</i> <i>Experience gained prior to completion of undergraduate studies is not considered professional experience.</i> 		

9 Competencies

Individual Consultant needs to have below competencies:

- Ability to design and develop time plans and resource schedules for complex tasks and task groups.
- Ability to work in multi-disciplinary and multi-cultural teams.
- Ability to work under pressure against strict deadlines.
- Ability to think out-of-the-box.
- Ability to present complex issues persuasively and simply.
- Ability to contextualize global trends in accordance with the dynamics of the operating (working) environment.
- Ability to collaborate with UNDP Turkey CO Inclusive and Democratic Governance Portfolio and the Project Team and work closely and in collaboration with the other experts of the Project.
- Ensuring gender disaggregated data and gender analysis which will be conducted in gender responsive research methods and technics.
- Ensuring gender responsive questions, use of gender responsive language in written and oral presentations, reports, handouts, etc.
- Ensuring human rights standards are applied, and gender equality is prioritized as an ethical principle within all actions.

10 Payments

Payments will be made within 30 days upon approval of deliverables by UNDP, along with the Certification of Payment Form (COP) on the basis of the actual number of person/days invested by the IC for development of that respective deliverable and pertaining payment documents signed by the IC and approved by the responsible Project Manager. While the IC 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 IC within the scope of this Assignment cannot exceed equivalent of 13 person/days throughout the contract validity.

If any of the deliverables stipulated in Articles 3 and 4 of this Terms of Reference are not produced and delivered by the IC in due time and to the satisfaction of UNDP, no payment will be made even if the IC has invested person/days to produce and deliver such deliverables.

The IC shall be paid in USD 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 USD amount by the official UN Operational Rate of Exchange applicable on the date of money transfer.

The daily fee to be paid to the IC 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. UNDP will not make any further clarification on costs related to tax, social security premium, pension, visa etc. It is the applicants' responsibility to make necessary inquiries on these matters.

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.