
Terms of Reference for National Short-Term Legal Expert on Constitutional Court and Ethics Within the Scope of Strengthening the Civilian Oversight of Internal Security Forces Phase III Project (CO III)

1 Background

The Project for the Civilian Oversight of Internal Security Sector Phase I, which was implemented jointly by Ministry of Interior (MoI) and UNDP in 2007-2010, aimed to raise the awareness of the MoI about the concept of civilian oversight. The 1st Phase also assessed the gaps vis-à-vis EU standards in MoI and developed the concept of “local governance of internal security forces (ISFs)”. The 2nd Phase of the Project was implemented in 2012-2014 and designed to expand and institutionalise the introduced approaches and piloted structures of 1st 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 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 General Directorate for Provincial Administrations is the main beneficiary of the Project, whereas the 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.

A National Short-Term Legal Expert on Constitutional Court and Ethics (STE) will be mobilized in the period from November 2021 to December 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 will mainly be responsible for production of a Report on Constitutional Court of Turkey. The report will include a section on “Strengths and weaknesses in the judicial oversight exercised by the Constitutional Court on policing force”, which puts forward recommendations and guidelines derived from comparative studies as necessary steps to be taken by Turkey on constitutional courts.

3 Duties and Responsibilities

The STE will support the realization of the Activity A.1 by benchmarking and review of the existing constitutional court of Turkey, to exercise effective oversight functions over the law enforcement bodies and internal security bodies.

The STE will be in charge of case study report 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 constitutional courts, along with practices which include the following;

A- Constitutional Court's organisation and functioning

1. Nature and legal foundation

- o Legal status (court, council, else) and foundation (e.g. law, constitution)
- o Nature of organization (i.e. the organization a non-majoritarian » i.e. non-election based institution?)
- o Membership: appointment of head(s)

2. Independence / Resources

- o Statutory independence relative to government (e.g. affiliation, accountability, appointment)
- o Independence of action (budgetary autonomy)
- o Resources (number of staff, lawyers and others), composition in terms of experts (number, quality) and administrative staff (number, quality)

3. Position in oversight system

- o Over-arching position in the legal system, and review of two key criteria. First, does constitutional law have clear priority over all other laws? Second, is the constitutional court the only court with the power to declare legislation and the application of law as unconstitutional?
- o “Power to enforce its powers” (i.e. to limit obstruction, verify that its decisions are enforced)

4. Referral

- o Mode of referral: can individuals complain to be affected by unconstitutional law and lower courts can directly (no mediation by another body) ask the constitutional court if in a certain case legislation is unconstitutional?)

B- Constitutional Court's Protection against abuses of their powers by police and gendarmerie

1. Competences and missions

- o Explicit competence regarding police forces, and tactics, and existence of major rulings on such aspects,
- o Overall missions regarding police forces (e.g. ethics, corruption, etc.) or some exclusions

2. Analyse of landmark decisions given by constitutional review and individual application

Constitutional Court's approach (fundamental motivation in the argumentation)

- o Decisions related to arrest-search and seizure
- o Decisions on the freedom of peaceful assembly and engagement of police forces
- o Decisions on the proper investigation and prosecution of police officers who used excessive violence

3. Decisions on the regulation of the state of emergency

- o Denial of justice (déni de justice) and its effect on the oversight of police forces

4. Actions / Efficacy

- o Decisions (during a period to be defined): what are the measures that the court has seen as unconstitutional, object of the measures (individual cases, role of the state, practices of the police, etc.)

Conclusion: Legal Gap Analysis

The STE is expected to submit the Report on Constitutional Court of Turkey in both a narrative part and a table part, following the above criteria. The criteria stated above can be extended if required or deemed necessary by UNDP.

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 STE shall work in close cooperation with the Strengthening the Civilian Oversight of Internal Security Forces Phase III (COIII) Project Team and Technical Assistance Team (TAT) members. The STE will work in consultation with the Chief Technical Advisor and will report to the COIII Project Manager.

4 Expected Outputs and Deliverables

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

No.	Activity	Deliverable	Due Date	Place of Work	Estimated Number of Person/days to be Invested by the IC (Indicative)
1	Submission of detailed Table of Contents of the Report on Constitutional Court of Turkey	Detailed Table of Contents of the Report on Constitutional Court of Turkey	30 November 2021	Home-based	1 person/day
2	Submission of the Final Report on Constitutional Court of Turkey	Final Report on Constitutional Court of Turkey	10 December 2021	Home-based	6 person/days
3	Contribution to the gap analysis through exchanges with the Project Team and International Short-Term Legal Expert on Constitutional Court and Ethics	Gap analysis table on objective criteria for establishing the strength of a constitutional court	15 December 2021	Home-based	1 person/day
ESTIMATED TOTAL NUMBER OF PERSON/DAYS (INDICATIVE)					8 person/days

The number of person/days are solely provided to give the Individual Consultant an idea on the work to be undertaken. The payment for each deliverable will be made in accordance with the lump-sum price of each deliverable, irrespective of the number of person/days to be actually invested by the Individual Consultant for the completion of each respective deliverable.

5 Timing and Duration

The Assignment will cover the period between 29 November 2021 and 21 December 2021.

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 the lump-sum price of each specific deliverable, regardless of the actual number of person/days invested.

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 time 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 assignment may require travels to other provinces within Turkey with respect to project needs and the duties and responsibilities of the consultant stated above.

Travel, accommodation and living expenses (terminal, inter-city, intra-city travels, living costs such as breakfast, lunch, dinner, etc.) in Duty Station will be borne by the consultant and these expenses should be factored by the Consultant into his/her price proposal. No further payment will be affected to the Consultant within the scope of this Assignment for whatsoever reason (terminal, inter-city, intra-city travels, living costs such as breakfast, lunch, dinner, etc.) within the Duty Station.

Assignment-related/activity-related travel and accommodation costs, which are pre-approved by UNDP outside of the Duty Station will be borne by UNDP. The costs of respective travels of the IC 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 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
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	3- Acceptance and Approval by UNDP of the invoices and F-10 Form.
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 Fluency in Turkish 	<ul style="list-style-type: none"> Advanced degree in law or any other relevant field Fluency in French
General Professional Experience	<ul style="list-style-type: none"> Minimum 10 (ten) years of professional/academic experience Experience in studies regarding Turkish Constitutional Court, democracy and freedom 	<ul style="list-style-type: none"> More than 10 (ten) years of professional/academic experience
Specific Professional Experience	<ul style="list-style-type: none"> Knowledge on international human rights law 	<ul style="list-style-type: none"> International experience in the field of human rights
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 lump-sum price 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 amount of payment to be affected to the IC within the scope of this Assignment will be based on the lump-sum prices of the deliverables.

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 time 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 amount to be paid to the IC is fixed regardless of changes in the cost components. The price proposal 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 ICs' 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.