

CONSULTANCY TO CONDUCT A STUDY ON THE JUSTICIABILITY OF ECONOMIC SOCIAL AND CULTURAL RIGHTS (ESCR) IN LESOTHO, FACILITATE A VALIDATION MEETING AND PREPARE AN ADVOCACY STRATEGY MAKE ESCR JUSTICIABLE IN LESOTHO

TERMS OF REFERENCE

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| Duration and location assignment: | 2 months |
| Responsible Unit: | UN Resident Coordinator's Office (RCO) |
| Time of assignment: | 1 July – 30 August |
| Type of service: | National Individual Consultant |

1. BACKGROUND:

Lesotho ratified the International Covenant on Economic, Social and Economic Rights (ICESCR) in 1992 and in 1994, its initial report was due. To date, in spite of several Universal Periodic Review (UPR) recommendations calling on Lesotho to report under the ICESCR, the report is yet to be submitted. In Lesotho, socio-economic rights are not enshrined in the Constitution but are instead expressed as directive principles of state policy (DPSPs) to guide the state in the adoption of policies and possibly the courts in the interpretation of government obligations in relation to these rights. This has led to arguments that socio-economic rights are not justiciable in Lesotho. However, in some jurisdictions, including in Southern Africa, courts have ruled that ESCR are justiciable and therefore a person whose socio-economic rights are violated can seek a judicial remedy. In spite of the above, some countries have demonstrated that it is possible to adjudicate over socio-economic rights despite their absence from the constitution as fully fledged rights or rights properly so called. The jurisprudence of the South African Constitutional Court has also shown that the courts may be in a position to adjudicate over issues pertaining to the protection and fulfilment of socioeconomic rights.

2. OBJECTIVE:

In Lesotho, many individuals and groups continue to have their socio-economic rights violated with no remedy. In the UPR processes that Lesotho has participated, recommendations have been made for the realisation of socio-economic rights as well as reporting under the ICESCR on steps taken by Lesotho to promote and protect socio-economic rights. The objective of this consultancy is therefore to document good practices in countries including those in Southern Africa where socio-economic rights have been enforced by courts, what lessons can Lesotho learn from these good practices, how applicable are these best practices what should be the role of Lesotho's courts in the judicial enforcement of socio-economic rights, considering their noticeable absence from the Constitution. The consultancy will also show practical and relevant examples of how courts in Lesotho have dealt with the issue of socio-economic rights when the opportunity presented itself. The consultancy will also recommend an Advocacy Strategy to be shared with the judiciary with a view to ensuring that victims of violations of socio-economic rights obtain judicial remedies. The findings of the consultancy will also be used in the UN Common Country Analysis (CCA) and will inform the development of the UN Sustainable Development Cooperation Framework for Lesotho.

3. SCOPE OF ASSIGNMENT:

- Develop a work plan for the assignment, including the proposed approach, the specific activities and timeline and obtain approval from the Senior Human Rights Adviser;
- Produce an inception report which presents the study approach, methodology, expected scope of deliverables and proposed report structure of the report indicating how the report links to implementation of Lesotho's human rights commitments and obligations including implementation of UPR recommendations;

- Produce a preliminary list of materials and sources to be reviewed including UPR recommendations, court rulings, jurisprudence, regional and international human rights instruments as well as a list of respondents to be consulted during the study;
- Conduct consultations and strategic meetings with relevant government departments, judiciary, civil society, Lesotho Bar Association and other stakeholders;
- Develop a catalogue of violations of socio-economic rights that are reportedly denied or violated with specific information of when, where, against who and what action taken if any, taking into account the principle of protection of victims and witnesses;
- Ensure that gender considerations, needs of special groups including women, children, persons with disabilities, the elderly and minorities are taken into account during the study;
- Document good practices in countries including those in Southern Africa where socio-economic rights have been enforced by courts;
- Enumerate lessons that Lesotho learn from the good practices, how applicable they are in Lesotho's situation;
- Suggest the role of Lesotho's courts in the judicial enforcement of socio-economic rights;
- Compile a list of examples of how courts in Lesotho have dealt with the issue of socio-economic rights when the opportunity presented itself;
- Indicate how socio-economic rights should be considered in the UN Common Country Analysis (CCA) and UN Sustainable Development Cooperation Framework for Lesotho;
- Produce a report of findings of the study;
- Convene a stakeholders' validation meeting to discuss findings of the report and seek comments and inputs.
- Produce a final report with recommendations and an Advocacy Strategy for the justiciability of socio-economic rights in Lesotho.

4. EXPECTED OUTPUTS AND DELIVERABLES

The consultant is expected to produce the following outputs:

- (a) A non-academic report not exceeding 30 pages incorporating an executive summary presenting key findings and recommendations;
- (b) A methodology section detailing how the information contained in the report was collected and analysed and any limitations to the validity of the findings;
- (c) An Advocacy Strategy drawn from recommendations for ensuring that victims of violations of socio-economic rights obtain judicial remedies;
- (d) A validation workshop to review and comment on the report and recommendations.

5. REQUIRED SKILLS AND EXPERIENCE:

Education

- Master's degree in Law, Political Sciences, Governance, Social Sciences, Gender Studies, Public Administration, International Relations, International Law, Public Policy, or related fields. Former training and service as a police or military officer is an added advantage.
- A first-level university degree in combination with two additional years of qualifying experience may be accepted in lieu of the advanced university degree.

Experience and skills

- At least 5 years of relevant professional experience at national level in the formulation, designing and conducting of legal research;
- Familiarity with the legal system of Lesotho including the judiciary, the United Nations human rights system and the African human rights system;
- Proven record of producing high quality research outputs for a variety of clientele including multi-national organisations;
- Institutional knowledge of the UN would be an asset.

Language and other skills

- Fluency in English and Sesotho is required.

6. INSTITUTIONAL ARRANGEMENTS

- The consultant will work a maximum of three months and will report to the Senior Human Rights Adviser during the implementation of this assignment.
- The Senior Human Rights Adviser will provide day to day supervision on the assignment, working in collaboration with relevant UN agencies, relevant Government Institutions and Departments as well as civil society to ensure delivery of quality results and objectives as set out in these terms of reference.
- The consultant should have their own computer and facilitate own access to internet, transport and organize own logistical arrangements as necessary.

6.1 Timeline and Products

The expected duration of the consultancy is 2 months (60 working days) upon signing of the contract. The tentative schedule of deliverables are as follows:

| Deliverables/ Outputs | Estimated Duration (days) | Deadline | Review and approvals |
|--|---------------------------|----------------|----------------------------|
| Development of workplan and methodology | 5 | 5 July 2022 | Approval by technical team |
| Submission of inception report | 10 | 15 July 2022 | Approval by technical team |
| Desk review and interviews with relevant interlocutors | 15 | 20 July 2022 | Approval by technical team |
| Submission of draft report | 15 | 10 August 2022 | Approval by technical team |
| Preparation for and facilitation of validation meeting | 5 | 20 August 2022 | Approval by technical team |
| Incorporation of comments from validation meeting and production of final report | 10 | 30 August 2022 | Approval by technical team |

6.2 Payment milestones against deliverables

| Deliverables/ Outputs | Estimated Duration | Target due dates | Review and approvals |
|---|--------------------|------------------|----------------------------|
| Product 1: Payment upon submission of inception report | 20% | 15 July 2022 | Approval by technical team |
| Product 2: Payment upon submission and acceptance of Draft Report | 30% | 10 August 2022 | Approval by technical team |
| Product 4: Payment upon submission and acceptance of Final | 50% | 30 August 2022 | Approval by technical team |

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| Report and Advocacy Strategy annexed to the report | | | |
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7. RECOMMENDED PRESENTATION OF OFFER

Interested consultants are requested to submit the following:

- a) Duly accomplished Letter of Confirmation of Interest and Availability using the template provided by UNDP;
- b) Personal CV or P11, indicating all experience from similar projects, as well as the contact details (email and telephone number) of the Candidate and at least three (3) professional references;
- c) Brief description of why the individual considers him/herself as the most suitable for the assignment and a methodology;
- d) Financial Proposal that indicates the all-inclusive fixed total contract price, supported by a breakdown of costs, as per template provided.

8. CRITERIA FOR SELECTION OF THE BEST OFFER

A successful consultant will be selected based on the Combined Scoring method – where the qualifications and methodology will be weighted a max. of 70% and combined with the price offer which will be weighted a max of 30%. The criteria for scoring the qualifications and methodology will be guided by the following:

| Criteria for technical evaluation ranking | Weighting |
|--|-------------|
| Academic Qualifications | 20% |
| Professional experience as outlined in Section 5 above | 60% |
| English writing and oral skills | 20% |
| Total | 100% |

APPROVAL

Name: Michael Ngaribano

Signature: 

Senior Human Rights Advisor

Date: 23 May 2022