A. General background and justification

Kazakhstan ratified the Convention on the Rights of Persons with Disabilities (hereinafter referred to as the CRPD) in 2015. In accordance with Article 12 of the CRPD, persons with disabilities (PWDs) have legal capacity on an equal basis with others in all aspects of life. States should take appropriate measures to provide PWDs with access to the support they may need in exercising their legal capacity.

According to data published in the media, about 190,000 adults and almost 35,000 children with neuropsychiatric diseases are registered within medical organizations in Kazakhstan. Over 126 thousand people have a disability due to mental disorders (of which 108 thousand are adults, 18 thousand are children).

According to the legislation of the Republic of Kazakhstan, a citizen who, due to mental illness or dementia, cannot understand the meaning of his actions or manage them, may be recognized by the court as incompetent. Over them guardianship is established. On behalf of a citizen recognized as incompetent, transactions are made by his guardian. In cases of recovery or a significant improvement in the health of an incapacitated person, the court recognizes him as capable and remove the guardianship.

As of January 1, 2022, 41.1 thousand people in the country were recognized as legally incompetent by a court decision\(^1\). In 2018-2020, only 18 persons with disabilities\(^2\) were restored to legal capacity by a court decision.

According to the current legislation, local executive bodies carry out the functions of the state for guardianship and patronage in respect of minors through the authorized bodies of education and health care, in respect of adults - through the authorized bodies of social protection of the population. At the same time, the administrations of these organizations are the guardians or trustees of persons in need of guardianship or patronage and who are in organizations of social protection of the population.

Experts say that many rights lose their meaning if a person cannot exercise them on his own. Often, the establishment of incapacity leads to the deprivation of the opportunity to exercise many rights - such as the right to freedom, access to justice, the right to marry, to express an opinion. Incapacitated persons cannot themselves appeal against the deprivation of their legal capacity, nor initiate legal proceedings to restore their legal capacity. This can only be done at the request of a guardian or prosecutor. Often, the legal capacity of people with disabilities is completely transferred to legal representatives, who subsequently abuse their rights.

There are problems and shortcomings in the organizational and managerial activities of guardianship and patronage in relation to adult incapacitated citizens, gaps and insufficiency of legal regulation of guardianship over incapacitated citizens over 18 years of age.

During her official visit to the Republic of Kazakhstan, the UN Special Rapporteur on the Rights of Persons with Disabilities Catalina Devandes Aguilar noted that the full recognition of the legal capacity of persons with disabilities was the basis for the implementation of the Convention on the Rights of Persons with Disabilities. She recommended that the Government of Kazakhstan initiate a comprehensive legislative reform to eliminate the outdated guardianship system and develop a support system for persons with disabilities to exercise their legal capacity\(^3\).

Scope and objectives of this assignment

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1 According to the Committee on Statistics and Special Accounts of the General Prosecutor’s Office of the Republic of Kazakhstan
2 According to Local executive bodies
The ultimate goal of this Terms of Reference is to develop specific recommendations for improving the national institution of guardianship of adults based on the study and analysis of national and international experience.

**Approach and methodology**

A potential contractor (hereinafter referred to as the Supplier) will have to submit an analytical work on the topic “Analysis of the national institution of adults guardianship and the development of recommendations for improvement”, including, among other things:

- analysis of international experience in the field of the rights of persons with mental illness and the establishment of guardianship over them;
- analysis of the national system of establishing guardianship over adults and the exercise of rights by incapacitated persons;
- recommendations taking into account the analysis of international and national practice, including draft regulatory legal acts (RLA);
- comparative tables on amendments and additions to the current legislation, calculations for proposed initiatives that require improving the national institution of guardianship of adults. Recommendations for improvement, including a description, analysis of national, international legislation and practice, conclusions and recommendations, proposed methods and tools, draft legal acts, a comparative table on amendments and additions to the current regulatory legal acts.

The Provider is expected to begin by reviewing international experience in the area of rights and guardianship of persons with mental illness, and then reviewing national legislation, judicial decisions, adult guardianship practices and their implications.

To obtain comprehensive information, the Supplier, at the stage of studying and analyzing national legislation and practice, must organize questionnaires, in-depth interviews and focus group discussions (hereinafter referred to as surveys).

**Target group:** guardians; adults who have been declared legally incompetent; specialists of local executive bodies responsible for guardianship and patronage issues; employees of stationary medical and social institutions (organizations) of the system of social protection of the population (hereinafter referred to as MSI); representatives of public, human rights organizations and other interested parties. A total of at least 2,500 respondents must be interviewed.

The potential supplier should develop and agree with UNDP a methodology and suitable tools for conducting surveys that will provide the best possible analysis and the maximum coverage of respondents, increase the interest of respondents in participating in surveys, and identify outputs and problems.

The results of surveys and conclusions are presented by the Supplier to the Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan (hereinafter referred to as the Ministry).

Based on the analysis of international and national experience, the Supplier will develop a set of recommendations for improving the national institution of guardianship of adults. Recommendations should be specific, include draft legal acts, comparative tables on amendments and additions to the current legislation, calculations for proposed initiatives that require additional funding.

In general, the Supplier will gradually submit for comments individual sections of the analytical work, which will be consolidated into the final work.

The text of the analytical work should be presented in compliance with the norms of the literary language, be concise, consistent, logical and structured, have outputs and conclusions. Diagrams, tables, figures and other images can be used to illustrate the text.

It is expected that the Supplier during the period of implementation of this Terms of Reference will organize public discussions on the topic of custody of adults (round tables, interviews, publications in the media).

The Supplier needs to engage at least one international expert (consultant) who will provide technical assistance at all stages of the work under this Terms of Reference. The cost of the work of an international expert (consultant) must be included in the price offer. An international expert (consultant) must be agreed with UNDP.

By participating in this competition, the Supplier agrees that after completing the work and signing the certificate of completion, he will provide advice and explanations on issues related to this work, and also take part in discussions on the topic of social and professional rehabilitation.

**B. Expected results/ deliverables and payment terms**

1) analytical work "Analysis of the national institution of adults guardianship and the development of recommendations for improvement", including a description, analysis of national, international legislation and practice, conclusions and recommendations, proposed methods and tools, draft legal acts, a comparative table on amendments and additions in the current regulatory legal acts.

2) Mainstreaming of observance and protection of the rights of persons with disabilities due to mental illness, recognized as incompetent;
3) presentation of analytical work in the Ministry.

All results and final documents will be presented in Russian and the state languages for the beneficiary (MLSP) and implementing partner (UNDP).

C. Duration

This assignment must be completed from the moment of signing the contract until July 31, 2023.
The expected start date is September 2022.
The graph below shows the expected duration of the project and the implementation timeline.

Implementation timeline

This is a preliminary implementation and the Contractor may adjust the work schedule in accordance with certain objectives.

<table>
<thead>
<tr>
<th>Task</th>
<th>2022</th>
<th>2023</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Q3</td>
<td>Q4</td>
</tr>
<tr>
<td></td>
<td>Q1</td>
<td>Q2</td>
</tr>
<tr>
<td></td>
<td>Q3</td>
<td></td>
</tr>
</tbody>
</table>

- Develop, present and agree with the Customer
  - a detailed plan of organizational measures for the implementation of the TOR
  - survey methodology
    *Expected result 1: detailed plan, survey methodology*

- Presentation and analysis of international, national experience and practice, conducting a survey
  *Expected result 2: Interim progress report 1, Presentation of results*

- Development of recommendations (including draft RLAs, comparative table)
  *Expected result 3: Interim report 2 on the work carried out with the developed products*

- Organization of public discussions on the topic of guardianship of adults (round tables, interviews, publications in the media)
  *Expected results 4: at least 3 round tables, at least 4 publications in print media per month*

- Presentation and presentation of the analytical work "Analysis of the national institution of guardianship of adults and the development of recommendations for its improvement." Improvement based on comments
  *Expected Result 5: Final text of the analytical paper*

- Signing of the certificate of completion

D. Duty station

Work to be carried out at the location of Contractor. However, the Contractor should schedule the visits to pilot regions, including to Nur-Sultan to discuss and present the results of the work.

Travel schedule*

To fulfill the scope of work under this contract, visits to 6 pilot regions are envisaged. A detailed work schedule and departure dates will be agreed with the Project Manager at the contract signing stage. Travel expenses must be included in the financial proposal.

<table>
<thead>
<tr>
<th>Region</th>
<th>Trips</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>East-Kazakhstan oblast</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Karagandy oblast</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Turkestan oblast</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Almaty oblast</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Kostanay oblast</td>
<td>1</td>
<td>7</td>
</tr>
</tbody>
</table>
Responsibility and accountability

The Contractor is fully coordinating its actions with the UNDP and the Ministry on a regular basis and/or at the request of the project manager.

In other words, the Contractor interacts with the Project Manager to resolve the day-to-day issues that arise during the assignment. The potential contractor also interacts with representatives of the Ministry and authorities, also holds working meetings with them when they are considered necessary.

The Contractor is fully responsible for the quality and volume of work performed, has the appropriate competence and ensures the timely implementation of the activities specified in this Terms of Reference. The Contractor must submit all materials related to the assignment to the project manager and the Ministry for comments and approval.

The Contractor undertakes to comply with the information security policies and procedures of the beneficiary and UNDP.

In case of poor quality of work of the Contractor, UNDP reserves the right to terminate the contract unilaterally.

In connection with the COVID 19 pandemic, the Contractor undertakes to provide all the necessary protective equipment for its employees and comply with all the norms and recommendations of the WHO, as well as local authorized bodies of the Republic of Kazakhstan for performing work during the period of the introduction of quarantine measures and emergency situations. The service provider is responsible for the proper and timely provision of its employees involved in this Terms of Reference with all necessary personal protective equipment in accordance with the current WHO recommendations (masks, gloves, sanitizers, passing the COVID-19 test (if necessary) for the period of Contract.

E. Qualification requirements for suppliers of services

A service supplier can be an organization that meets the following requirements:

1. Must have legal capacity to enter into agreements (certificate of registration/re-registration, Charter to be submitted);
2. Be solvent, not subject to liquidation, their property is not seized, and their business activities are not suspended constrainedly by laws (certificate of absence of debts in tax authorities), audited financial statements for 2020-2021. If the company is exempted from the audit - a confirmation certificate from the contractor. Profit and loss statement, balance sheets for 2020-2021. VAT certificate (if applicable). If company is not a VAT payer, written confirmation should be submitted.
3. Company’s profile with detailed activity information confirming the following: 5 years of work experience in the field in conducting research (with sociological surveys) and developing documents (methodologies, guidelines, recommendations, regulations) in the social sphere, preferably in the field of observance and protection of human rights.;
4. Provide a list of services rendered for the last 3 (three) years in the required area to confirm experience (name of the Customer, subject of services/works, year of service and client contact details (e-mail, phone number and full name of the contact person);
5. Provide at least 2 positive reviews and recommendations from previous clients in the last 3 years for similar / similar services (on official letterhead signed and dated);
6. Availability of material and technical base (Internet connection, computers, office equipment), provide written confirmation;
7. Availability of a methodology for implementation and a work schedule (must include a description of the methods and procedures for performing work, the composition of the team and the distribution of responsibilities);
8. Availability of employees with the necessary work experience and qualifications to perform work under this Terms of Reference, with the provision of a detailed resume, documents confirming the expert's qualifications (diplomas, advanced training certificates in the subject area, other certificates), as well as written confirmation from each employee, that they will be available for the duration of the contract; At least one employee must have the upper-intermediate level of English (submit a certificate or resume as confirmation).
Any changes in the composition of the service provider's team during the period of work must be agreed with UNDP.

Requirements for the main staff and qualifications of a group of experts involved in the implementation of work on this technical assignment:

<table>
<thead>
<tr>
<th>#</th>
<th>Team composition</th>
<th>Number of people</th>
<th>Min. acceptable educational level and field of study</th>
<th>Special skills / experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Project manager</td>
<td>1</td>
<td>Higher education in (sociology, economics, legal, public administration)</td>
<td>- at least 5 years of experience in managing project groups/teams;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- knowledge of Russian and Kazakh languages is mandatory, English is preferred</td>
</tr>
<tr>
<td>2</td>
<td>Senior experts</td>
<td>Min 1</td>
<td>Higher education (legal, medical (specialization &quot;Psychiatry&quot;, &quot;Psychotherapy&quot;), social work, or related social sciences)</td>
<td>- at least 5 years of experience in conducting (participating in) research and consultations in the social sphere;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- knowledge of Russian and Kazakh languages;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- knowledge of English is preferred</td>
</tr>
<tr>
<td>3</td>
<td>Junior experts</td>
<td>Min 1</td>
<td>Higher (psychological, sociological, social work, or related social sciences)</td>
<td>- at least 3 years of experience in conducting sociological research;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- at least 1 year of experience in the development of programs, mechanisms, strategies and recommendations;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- skills in using computer methods for collecting, storing and processing information used in professional activities;</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td>- knowledge of the Russian language is required;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- knowledge of English is preferred</td>
</tr>
<tr>
<td>4</td>
<td>Social work expert</td>
<td>1</td>
<td>Higher education (social work, public administration or related social sciences)</td>
<td>- at least 3 years of experience in the social protection of the population;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- at least 1 year of experience in the development of programs, mechanisms, strategies and recommendations;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- knowledge of Russian and Kazakh languages is mandatory;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>computer skills (Microsoft Office, Internet) at the user level</td>
</tr>
<tr>
<td>5</td>
<td>Lawyer</td>
<td>1</td>
<td>Higher education (legal, public administration)</td>
<td>- At least 3 years of experience in legal work;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- experience in the development and maintenance of the processes of approval and submission for consideration, approval of regulatory legal acts of the Republic of Kazakhstan for at least 1 year;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- knowledge of the Russian language is mandatory, the Kazakh language is preferred.</td>
</tr>
<tr>
<td>6</td>
<td>Data processing technical staff</td>
<td>No more than 3</td>
<td>Higher education (humanitarian, economic, legal)</td>
<td>- at least 1 year work experience in the specialty;</td>
</tr>
</tbody>
</table>
- knowledge of Russian and Kazakh languages is mandatory.

*The requirement for the number of specialists reflects the vision of UNDP and the Ministry, but is not exhaustive and can be changed by a potential supplier, with a reasoned justification.*

Any adjustments among the personnel during the period of work must be agreed with the UNDP and the Ministry.

**F. Payment Schedule**

The price offer shall include all company's costs with a detailed breakdown by items stipulated under the "Terms of implementation and Expected Results" section, as well as the Contractor’s agreement with the conditions and requirements of the Terms of Reference. The price offer shall include all indirect and direct costs (VAT, if applicable, and other mandatory payments). Travel expenses must be included in the financial proposal. The Contractor must specify if it pays the VAT or not.

Potential suppliers should reflect in the quotation the number of respondents covered by questionnaires, in-depth interviews and focus group discussions, which, in their opinion, will be representative of achieving the objectives of this Terms of Reference. In the price offer, along with the total cost, the cost per unit of measurement (1 respondent, 1 questionnaire, 1 in-depth interview, 1 focus group discussion) should be indicated.

This contract sets a fixed price based on the achieved result, regardless of the extension of its specified period.

Payments shall be made in 4 tranches upon satisfactory completion of each item under the "Expected results/ deliverables and payment terms" section of the Terms of Reference and authorization of deliverables by the upon submission of an certificate of completion and an invoice. The Contractor’s proposal must be submitted indicating the lump sum payment according to the tranches indicated below:

<table>
<thead>
<tr>
<th>Results</th>
<th>Payment %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deliverable 1</td>
<td>A detailed plan, methodology for conducting a survey is presented</td>
</tr>
<tr>
<td>Deliverables 2</td>
<td>Interim progress report 1, Presentation of results</td>
</tr>
<tr>
<td>Deliverables 3</td>
<td>Interim progress report 1, Presentation of results</td>
</tr>
<tr>
<td>Deliverable 4,5</td>
<td>Public discussion events were held, the final text of the analytical work was submitted. Certificate of completion is signed.</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

**G. Confidentiality**

Information related to this work must not be transferred to third parties, with the exception of authorized recipients (UNDP, the Ministry), including after end of the contract. Transfer of any information related to work to subcontractors or other parties must be strictly coordinated with UNDP and the Ministry.

All employees of a potential contractor who have access to data and internal documents of state bodies will have to sign a non-disclosure statement of information related to this work.

All information related to this work must be kept confidential and used only for the above work purposes. UNDP and the Ministry must be immediately notified of any unauthorized copying, use or disclosure of information related to this project.

**H. Selection Criteria**

Contractors will be assessed by a cumulative approach/Highest Combined Score based on technical qualifications and a financial proposal:

- weight of a technical proposal (70%),
- weight of a financial proposal (30%);

UNDP General Terms and Conditions of Contract (GTCs) shall be fully accepted.