

TERMS OF REFERENCE

Organisation: United Nations High Commissioner for Refugees (UNHCR)

Project Title: Provision of Independent Legal Research and Services in Trinidad and Tobago

Duty Station: Port of Spain

Duration: 6 months

Type of Contract: Contract for Services

1. Background - Overview of the Protection Environment

The United Nations High Commissioner for Refugees (UNHCR) is an intergovernmental organization with a mandate to protect refugees worldwide. UNHCR works with States, Civil Society Organizations, with the refugee and asylum seeker community and other actors to address issues of concern which fall under its mandate.

UNHCR has been in Trinidad and Tobago since 2016, working with the local stakeholders and other actors to improve access for refugees to their fundamental rights and freedoms. Trinidad and Tobago acceded¹ in November 2000 to the Convention Relating to the Status of Refugees and its 1967 Protocol (hereinafter jointly referred to as the '1951 Refugee Convention') and other international human rights instruments and has broad constitutional human rights protections available to all persons regardless of origin. However, as Trinidad and Tobago conforms to a dualist system, the absence of an act of Parliament to pass the 1951 Refugee Convention to be incorporated into its national laws has generated a gap in the lack of implementation.

¹ **Accession:** "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question. [Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]

In the absence of a law to address asylum and refugee matters, under its core mandate UNHCR undertakes registration and refugee status determination procedures for persons wishing to apply for refugee status. Furthermore, because of the lack of legislation to guarantee access to basic rights for asylum - seekers and refugees (hereinafter jointly referred to as ‘persons of concern’), UNHCR also funds different programmes to provide services to persons concern in areas such as education, legal, community-based protection, psychosocial counselling services and cash-based assistance.

Continuing restrictive developments in the practice of Trinidad and Tobago, many of them at variance with the 1951 Convention Relating to the Status of Refugees and other international human rights instrument, are of particular concern to UNHCR. They affect a number of fundamental rights of persons in need of international protection including, notably, access to territory, access to government run fair and efficient asylum procedures, reception conditions, the protection from unlawful and arbitrary detention, family reunification and local integration. In this context, judicial engagement can be a key avenue for asylum seekers and refugee to find protection and durable solutions.

Identifying, representing and building strategic cases in order to ensure the judiciary address these negative trends through progressive case law is a commonly use strategy to prompt legal changes.

UNHCR is recruiting the services of an experienced practicing lawyer or team of lawyers working under one contract to facilitate the timely identification and strategic litigation of precedent setting cases before at a national level.

Since 2017 onwards, persons of concern have increasingly been reaching out to attorneys, independently or with the support of UNHCR and its partners for legal representation, this includes both the criminal and civil court systems. Noting the growing interest in refugee law by UNHCR, in 2018, UNHCR commenced refugee law and domestic human rights trainings for attorneys and judges in coordination with the JEITT.

Freedom of movement and non-refoulement are two of UNHCR’s core principles of protection. These issues have been regularly challenged within the court system of Trinidad and Tobago,

especially from 2018 when persons of concern started being brought before the courts on a regular basis for entering the country illegally. In early 2020, UNHCR conducted a survey on detention, deportations and the circumstances surrounding these events and it was recommended that UNHCR needs to be proactive and strengthen its response to ensure that protection at sea, access to territory and access to asylum are guaranteed for those in need.

The importance of strengthening UNHCR's response is clearer in the context of COVID-19 during which the Government of Trinidad and Tobago closed the borders in March 2020 thereby in principle eliminating access to territory for persons with international protection needs. UNHCR has received and reported on incidents of asylum-seekers from Venezuela attempting to enter Trinidad or upon entering being detained for illegal entry, held in quarantine and subsequently returned to Venezuela. Other areas of concern that UNHCR wishes to address for asylum – seekers and refugees are right to education, healthcare and work rights.

2. Objectives, expected results and time frame

Main Objective: The objective of this consultancy is to explore and act on the legal pathways for incorporating the 1951 Refugee Convention into the national legal framework in Trinidad and Tobago.

To achieve the expected result, the following is required:

	Expected outcome	Time frame
1	<p>Compendium of a minimum of 20 judicial decisions in Trinidad and Tobago on issues related to the 1951 Refugee Convention specifically:</p> <ul style="list-style-type: none"> • access to the territory, • right to seek asylum, • non- penalization for illegal entry and remain, • Administrative detention • Healthcare • Work rights • access of none national children to education. 	6 weeks
2	A summary analysis of how the principles of the refugee international law are interpreted by judicial officers when issuing decisions of cases of foreign persons	2 weeks
3	A recommendation of the available legal pathways at the national courts to comply with the 1951 Refugee Convention	1 week
4	Legal opinion on the administrative obstacles affecting refugee, migrant and asylum seeker children to access public education and how to address them in court	4 weeks
5	Recommendation of the legal pathways for the implementation of the “National Policy to address refugee and asylum matters in the Republic of Trinidad and Tobago	4 weeks
6	Participate in refugee law and protection training activities hosted by UNHCR	1 week

7	Working with UNHCR and partners to guide attorneys with their matters, maximum 5 hours per week	Ongoing
8	Identify one case per list of issues to engage in strategic litigation before the courts, including: <ul style="list-style-type: none"> • access to the territory, • right to seek asylum, • non- penalization for illegal entry and remain, • Administrative detention • Healthcare • Work rights • access of non-national children to education. 	8 weeks

3. Fees

4. Background and Qualifications

The Contractor is required to have the following requirements:

- University Degree in Law
- Advanced Legal Qualifications
- Degree or Masters in Public International Law, International Relations, Human Rights or a related field desirable though not a requirement
- At least five (6) years experience as a practising Attorney - at - Law called to the Bar of Trinidad and Tobago with emphasis on litigation
- Expertise in constitutional law, public law, immigration law and human rights law

- Basic Knowledge of the international legal framework governing human rights and migrant rights and the protection and humanitarian issues affecting asylum – seekers and refugees in Trinidad and Tobago
- Fluency in oral and written English, Spanish language skills an asset although not a requirement
- Excellent research and analytical skills
- Excellent oral and written communication skills
- Knowledge of Microsoft Programs and Spreadsheets
- Ability time-manage and organise a varied workload including tasks with strict and urgent deadlines
- Proven capacity to represent the organization to external stakeholders in a professional manner
- Member in good standing of the Law Association of Trinidad and Tobago

5. Institutional arrangements

The work of the contractor engaged shall be supervised by the UNHCR Legal Associate based in Port of Spain, Trinidad and Tobago. He/she will work in consultation with the Protection Officer and other Protection units in the MCO Panama and Trinidad and Tobago offices. As such, submission of the above-mentioned deliverables shall be made through the Protection Associate and the Protection Officer. The Contractor shall submit draft content to both, and the confirmation of acceptability of the deliverables shall be undertaken by UNHCR under the oversight of the Protection Officer.

6. Expected duration of the assignment

The tentative start date of the contract is expected to be during the week commencing **1st July 2022**. The tasks are expected to be completed within 6 months from the date of signing of the contract. The contractor is required to prepare and submit a work plan in a way that it allows the achievement of all deliverables within the 6 months period.

7. Duty Station

The selected contractor shall not be required to be present at the UNHCR office and may work independently with coordinated visits, only if required, to UNHCR and NGO Partners. Giving the current situation amid COVID19, initially all the works can be delivered remotely.

8. Payment terms

Payment under the contract will be output-based and will be made upon the satisfactory completion of the assignment. The Contractor will be required to submit a proposed fee structure as part of the Financial Offer.

9. Confidentiality

It is expected that the selected contractor maintains the highest level of confidentiality on the information provided before, during and after the completion of the assignment. The company/individual shall practice the highest standard of professional and ethical values and norms in providing this consultancy service.

10. How to Apply

Interested applicants should submit a proposal in the following manner:

- Company/Individual profile highlighting the qualifications that meet the minimum criteria stated in Section 7 above, and at least three (3) references;
- Statement on why the company/individual is the most suitable contractor for the work, and a brief methodology on how he/she/company will approach and conduct the work (with the methodology clearly explained); and

- The Financial Proposal containing the final and all-inclusive total price offer (professional fees, all envisaged travel costs, living allowances, insurance, etc.) for the full range of services required, broken down into all major cost components associated with the services. The total price shall be in a fixed lump-sum amount, and milestone payments corresponding to outputs shall be indicated in the proposal.