



## **USAID Nove Pravosuddya Justice Sector Reform Program**

### **REQUEST FOR APPLICATIONS (RFA) № 07-NJ-07-2018**

#### **Analysis of New Supreme Court Case Law**

Issuance Date: July 20, 2018

Dear Applicant:

The USAID Justice Sector Reform Program “New Justice” (hereinafter – the USAID New Justice Program or the Program) implemented by «Chemonics International Inc.» announces a competition for grant application to conduct independent analysis of the Supreme Court Grand Chamber and four Cassation Courts decisions. The grants will be awarded and implemented in accordance with USAID and US Government regulations governing grants under contracts and USAID Nove Pravosuddya Justice Sector Reform Program’s internal grant management policies.

The objective of this activity is to support civil society organizations (think tanks, NGOs, etc.) in analyzing case law of new Supreme Court (hereinafter – SC) as from the start of its operations, namely, from December 15, 2017, including decisions of the SC Grand Chamber and Cassation Courts. The grantee has to review such decisions in terms of their compliance with the principles of the European Convention of Human Rights (hereinafter – ECHR) developed in the European Court of Human Rights (hereinafter – ECtHR) case law, as well as to analyze the SC decisions with regard to their consistency, quality of reasoning, and application of proportionality principle.

The USAID New Justice Program intends to provide from 1 to 3 grants, each up to UAH 350,000 worth. The size of the specific grant shall be determined through negotiations taking into account specifics of the activity/project financed by grant money and it may exceed the limited amount. The applications must be submitted no later than August 20, 2018, by 6:00 p.m., local time.

Project and Chemonics employees may not ask for, and applicants are prohibited from offering, any money, fee, commission, credit, gift, gratuity, thing of value, or compensation to obtain or reward improper favorable treatment regarding this solicitation. Any improper request from a project employee should be reported to the chief of party or [BusinessConduct@chemonics.com](mailto:BusinessConduct@chemonics.com).

Annexes included with this Request for Applications:

- **Annex A** - Grant Application Template
  - A.1 – Instruction
  - A.2 – Grant Application Form
  - A.3 – Implementation Plan Timeline
- **Annex B** – Grant Application Budget Form

- **Annex C** – Applicant Self-Assessment Form
- **Annex D** – Required Certifications
  - *Certification of “Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction (AAPD 14-03, August 2014)”*
  - *Prohibition on Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements – Representation (April 2015)*
  - *Certification Regarding Terrorist Financing*
  - *Certification of Recipient*
- **Annex E** – Mandatory and Required As Applicable Standard Provisions:
  - Standard Provisions for U.S. and Non-U.S. Nongovernmental organizations receiving a fixed amount award can be accessed through the following URL:  
<http://www.usaid.gov/sites/default/files/documents/1868/303mat.pdf>
  - Standard Provisions for Non-U.S., Nongovernmental recipients receiving all other types of grants can be accessed through the following URL:  
<http://www.usaid.gov/sites/default/files/documents/1868/303mab.pdf>

## **SECTION I. PROGRAM DESCRIPTION**

### **IA. OBJECTIVE**

The USAID New Justice Program is providing financial support through grants to civil society organizations (hereinafter – CSOs) to analyze new Supreme Court decisions, adopted by the Grand Chamber and four Cassation Courts. The objective of this activity is to provide civil society in Ukraine with independent overview of the newly formed SC case law to see to what extent it meets public expectations in the course of judicial reform implementation. The grantee is expected to review SC decisions in terms of their compliance with the principles of the ECHR developed in the ECtHR case law, as well as to analyze them with regard to consistency, quality of reasoning, and application of the proportionality principle.

### **IB. BACKGROUND**

New Justice Program is a four year and four-month program that is designed to support the judiciary, government, parliament, Bar, law schools, civil society, media, and citizens to create the conditions for an independent, accountable, transparent, and effective justice system that upholds the rule of law and to fight corruption in Ukraine. In achieving this overarching goal, New Justice Program focuses on the following five key objectives:

Objective 1: Judicial Independence and Self-Governance Strengthened;

Objective 2: Accountability and Transparency of the Judiciary to Citizens and the Rule of Law Increased;

Objective 3: Administration of Justice Enhanced;

Objective 4: Quality of Legal Education Strengthened; and

Objective 5: Access to Justice Expanded and Human Rights Protected

### **IC. DETAILED PROGRAM DESCRIPTION**

On June 2, 2016, the Verkhovna Rada adopted the Law on Amending the Constitution of Ukraine (hereinafter – the Law) regarding the justice sector and the revised version of the Law on Judiciary and Status of Judges to implement constitutional changes. These legislative changes aim to finalize judicial reform in Ukraine, to strengthen the independence and accountability of the judiciary and individual judges in order to ensure that the judiciary is more responsive to citizens. Implementation of constitutional changes is also about the optimization of Ukrainian court system, the key judicial governance and self-governance institutions through improvement of their structure, composition, scope of authority and functions.

As a part of judicial reform, the Law envisaged redesign of the Ukrainian judiciary to substitute four tiers' court system with three tiers framework, whereas the Supreme Court shall become a single cassation instance and shall ensure consistency and unification of case law.

In implementation of provisions of the Law, the HQC conducted selection of the candidates to the SC justices' positions, and in November 2017, the President of Ukraine appointed 115 Justices to the Cassation Courts with the Supreme Court. In December 15, 2017, the SC started its operations and formed the Grand Chamber, the chambers with the four Cassation Courts, and the permanent working groups, including those ones for development of the case law unification strategy, and on the standards of the court decision structure (hereinafter – the WGs).

One of the key objectives of the USAID New Justice Program is increasing the role of civil society and its participation as advocates for and monitors of the judicial reform. To this end, the USAID New Justice Program is supporting various CSO's initiatives, including their interest to analyze national highest court decisions. With this aim, New Justice will support interested civil society organizations (think tank, NGOs, etc.) in analyzing the SC decisions from its Grand Chamber and chambers of four Cassation Courts.

It is expected that the applicants will propose the already developed and tested methodology for court decisions' analysis.

This grant project envisages funding to implement the following tasks:

- Adjust proposed in the grant application methodology to the needs of research and analysis of the SC decisions.
- Develop criteria to select SC decisions of different jurisdictions with respect to public interest subject matters.
- Study the selected decisions of the SC Grand Chamber and chambers of the Cassation Courts with regard to their compliance with the principles of the ECHR and case law of the ECtHR, and in the light of their consistency, quality of reasoning, and application of proportionality principle.
- Prepare the report on the findings in terms of the SC Grand Chamber and chambers of Cassation Courts decisions' quality and their dissimilarity from case law of the previous Supreme Court of Ukraine.
- Based on the results of analysis, in order to adjust and improve case law, develop list of recommendations for Supreme Court justices, as well as for the National School of Judges of Ukraine with regard to the content of training programs for SC Justices.
- Present analysis' results, research outcomes and recommendations to the interested stakeholders on the public event.

It is expected that applicants will be able to demonstrate their experience in similar monitoring/analytical activity and justify the application of proposed methodology based on previous experience along with the comparative analysis tools.

The USAID New Justice Program is clearly aware that some grant award winners may require technical assistance in improving the efficiency of their operation and therefore the Program proposes that applicants indicate in their applications the need for receiving such assistance and/or training.

## **ID. AUTHORITY/GOVERNING REGULATIONS**

New Justice grant awards are made under the authority of the U.S. Foreign Affairs Act and USAID's Advanced Directive System (ADS) 302.3.5.6, "Grants Under Contracts." Awards made to non-U.S. organizations will adhere to guidance provided under [ADS Chapter 303](#), "Grants and Cooperative Agreements to Non-Governmental Organizations" and will be within the terms of the USAID Standard Provisions as linked in the annexes, as well as the New Justice grants procedures.

ADS 303 references an additional regulatory document issued by the U.S. Government's Office of Management and Budget (OMB) and the U.S. Agency for International Development:

- 2 CFR 200 [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E](#)

Full text of 2 CFR 200 can be found at [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl). New Justice is required to ensure that all organizations receiving USAID grant funds comply with the guidance found in the regulations referenced above, as applicable to the respective terms and conditions of their grant awards.

Under the New Justice grant program, USAID retains the right at all times to terminate, in whole or in part, New Justice grant-making authorities.

## SECTION II. AWARD INFORMATION

New Justice anticipates awarding from 1 to 3 grants, each **UAH 350,000 (three hundred fifty thousand UAH)** worth. The final amount will be dependent upon grant activities and final negotiation. The duration of the grant award under this solicitation is expected to be no more than **4 months**. The estimated start date of grants awarded under this solicitation is October 1, 2018.

Payments will either be made on a reimbursement basis in tranches corresponding to achievement of agreed upon milestones or on a monthly advance and liquidation basis. The type of grant (standard or fixed amount) will be determined during the negotiation process.

## SECTION III. ELIGIBILITY

### IIIA. ELIGIBLE RECIPIENTS

- Applicants must be a registered Ukrainian NGO, professional organization, think tank or other organization formally constituted, recognized by and in good standing with appropriate country name authorities, and compliant with all applicable civil and fiscal regulations.
- Applicants must be able to demonstrate successful past performance in implementation of integrated development programs related to New Justice priority areas.
- The applicants should have: (a) previous experience in conducting independent monitoring of relevant subject matters' area; (b) professionals with legal background for providing high quality summaries based on the monitoring results and conclusions.
- Applicant must be knowledgeable in the issues of functioning of the Ukrainian judiciary.
- Applicants must display sound management in the form of financial, administrative, and technical policies and procedures and present a system of internal controls that safeguard assets; protect against fraud, waste, and abuse; and support the achievement of program goals and objectives. New Justice will assess this capability prior to awarding a grant.
- Applicant must have sufficient computer equipment and software for the project implementation
- The following are required to be submitted as part of the application package in response to an RFA found in Annex D.
  - Certification of "Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction (AAPD 14-03, August 2014)"

- Prohibition on Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements – Representation (April 2015)
  - Certification Regarding Terrorist Financing
  - Certification of Recipient
- Successful applicants will be requested to submit a paper and electronic copy of their application in English.
  - The project will work with the successful applicants to draft a marking and branding plan which will be annexed to the grant agreement.
  - Faith-based and community groups will receive equal opportunity for funding in accordance with the mandated guidelines laid out in ADS 303.3.28 except for faith-based organizations whose objectives are for discriminatory and religious purposes, and whose main objective of the grant is of a religious nature.

New Justice encourages applications from new organizations who meet the above eligibility criteria.

### **IIIB. INELIGIBLE RECIPIENTS**

New Justice grant support may not be extended to the following:

- Organizations that are not legally registered;
- Governmental organizations or any state-owned institutions;
- Any entity that has been found to have misused USAID funds in the past (unless specifically approved by the CO);
- Political parties, groupings, or institutions or their subsidiaries and affiliates;
- Organizations that advocate or promote anti-democratic policies or illegal activities;
- Faith-based organizations whose objectives are for discriminatory and religious purposes, and whose main objective for the grant is of a religious nature;
- Any entity included in any supplementary information concerning prohibited individuals or entities that may be provided by USAID;
- Any entity whose name appears in the System of Award Management (SAM) – [www.sam.gov](http://www.sam.gov) with an active exclusion;
- An organization that refuses to sign all required certifications and assurances.

## **SECTION IV – APPLICATION AND SUBMISSION INFORMATION**

### **IVA. INSTRUCTIONS TO APPLICANTS**

Applicants must propose strategies for the implementation of the program description described above, introducing innovations that are appropriate to their organizational strengths.

#### **IVA1. APPLICANT SELF-ASSESSMENT**

All organizations selected for award are subject to a pre-award risk assessment conducted by New Justice, to ascertain whether the organization has the minimum management capabilities required to handle US government funds. The applicant self-assessment is the first step in the pre-award risk assessment process. The Applicant Self-Assessment Form is contained in Annex C.

Instructions and a template for the full application are in Annex A. Applicants that submit full applications that meet or exceed the merit review criteria will be notified of next steps in the application process.

## **IVA2. GRANT APPLICATION**

Templates to be utilized when developing the application are provided in Annex A-B. Applicants shall present their technical application and budget in the formats provided and shall follow the instructions and guidelines listed in these annexes.

All grant activity costs must be within the normal operating practices of the Applicant and in accordance with its written policies and procedures. For applicants without an audited indirect cost rate, the budget may include direct costs that will be incurred by the Applicant to provide identifiable administrative and management costs that can be directly attributable to supporting the grant objective.

The Application must be signed by an authorized agent of the Applicant.

## **IVA3. ELIGIBLE EXPENSES**

Grant activities funded by the New Justice program will meet the following general criteria.

- The proposed activity must respond to the goals and objectives of the New Justice program described in Section I of the RFA.
- Execution of grant activities must take place in Ukraine and with Ukrainian beneficiaries and meet objectives of one or more of the principal Program components. New Justice will look for evidence that a potential grant will address one or more of New Justice's expected outcomes, such as promoting effective interrelations between the judiciary, executive, and legislative branches of government with due respect for judicial independence.
- The activities to be implemented under the grant must be aimed at improvement of the judicial sector in Ukraine to ensure consistency and unification of case law.
- The Proposed activity must include gender considerations, including but not limited to a target of equal participation in the activity by men and women
- The proposed activities may be the sole or primary work of an organization, or a special dimension or function of an organization largely dedicated to other programs.
- Grants will cover only necessary and allowable costs linked to the execution of the activity such as program staff salaries, consultant fees, training, meetings and seminars, publications, office and travel expenses, and other direct costs. The specific costs to be funded under New Justice must conform to the USAID guidelines for funding activities.
- Activities can only begin upon signature of the agreement between the applicant and Chemonics. Costs incurred before execution of the agreement (including signed certifications and assurances) will not be reimbursed.

## **IVA4. INELIGIBLE EXPENSES**

New Justice grant funds may not be utilized for the following:

- Construction or infrastructure activities of any kind.
- Ceremonies, parties, celebrations, or “representation” expenses.
- Purchases of restricted goods, such as: restricted agricultural commodities, motor vehicles including motorcycles, pharmaceuticals, medical equipment, contraceptive products, used equipment; without the previous approval of New Justice, or prohibited goods under USAID regulations, including but not limited to the following: abortion equipment and services, luxury goods, etc.
- Alcoholic beverages.
- Purchases of goods or services restricted or prohibited under the prevailing USAID source/nationality Sudan, Cuba, Iran, North Korea and Syria).
- Any purchase or activity, which has already been made.
- Purchases or activities unnecessary to accomplish grant purposes as determined by the New Justice Program.
- Prior obligations of and/or, debts, fines, and penalties imposed on the Grantee.
- Creation of endowments.

#### **IVB. APPLICATION AND SUBMISSION INFORMATION**

Applications shall be submitted in **Ukrainian** and may not be more than 25 pages. An authorized representative of the organization submitting an application shall sign the original application’s cover page as well as affix the organization’s official stamp on it

**Attention!** Successful applicants will be requested to submit their application in English.

The application should consist of the following documents:

- Grant Application Form (see Annex A.2);
- Implementation Plan Timeline (see Annex A.3);
- Grant Application Budget Form with explanations (see Annex B);
- Applicant Self-Assessment Form (see Annex C);
- Certifications (see annex D):
  - Certification of “Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction (AAPD 14-03, August 2014)”
  - Prohibition on Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements – Representation (April 2015)
  - Certification Regarding Terrorist Financing
  - Certification of Recipient
- Supporting documents:
  - copy of registration certificate (on registration of the legal entity in the Unified Register of Enterprises and Organizations of Ukraine);
  - copy of the organization’s Statute;
  - copy of the recent auditor statement/ tax report on using funds of non-profit institutions and organizations/ “balance sheet” for your prior fiscal year;
  - copy of the document entitling the head of the organization to signature (minutes of the meeting, order of appointment, etc.);
  - description of employees’ expertise and qualification (CVs of grant staff and key experts);
  - letter from the applicant confirming its(his) readiness to open a separate bank account in hryvnia in case the grant is awarded and this is required by grant agreement.



The applications must be submitted **in electronic and printed** format.

Please submit ***one original and three copies of the application*** in printed format to USAID New Justice Program to the below address and with the code and title of the Grant Program: **“RFA № 07-NJ-07-2018 – “Analysis of new Supreme Court case law”**”.

USAID New Justice Program  
36 Ivana Franka St.  
3<sup>rd</sup> floor, 3<sup>rd</sup> office  
Kyiv, Ukraine 01030  
E-mail: [saf@new-justice.com](mailto:saf@new-justice.com)

Please submit the application in electronic format at [saf@new-justice.com](mailto:saf@new-justice.com) with the code and title of the Grant Program within the subject **“RFA № 07-NJ-07-2018 – “Analysis of new Supreme Court case law”**”.

**Applicant Self-Assessment Form, Certifications and Supporting documents** can be submitted only in 1 copy and only in a printed version.

The applications must be submitted no later than **August 20, 2018, by 6:00 p.m., local time**. Applications submitted after the deadline or not complying with the requirements will not be considered. New Justice Project will not accept applications sent by e-mail only. New Justice will not return any applications submitted.

Applicants are responsible for ensuring that their applications are prepared and submitted in accordance with the instructions stated in the RFA.

Please submit all questions concerning this solicitation via email to [saf@new-justice.com](mailto:saf@new-justice.com). New Justice Project will assist applicants in understanding the application process.

## **SECTION V. APPLICATION MERIT REVIEW CRITERIA**

Full applications will be evaluated against the merit review criteria in the table below.

<b>MERIT REVIEW CATEGORY</b>	<b>RATING -POINTS (100 TOTAL MAXIMUM)</b>
<b>1. Technical quality</b>	<b>70 POINTS</b>
Feasibility of Design and Technical Approach	30
Impact on Target Group	15
Gender Awareness	5
Past Performance	20
<b>2. Organizational capacity</b>	<b>25 POINTS</b>
Management and Programmatic capacity	15
Sustainability/Financial Self-Reliance	10
<b>3. Cost</b>	<b>5 POINTS</b>
Cost Efficiency	5

These merit review criteria elements are described more fully below.

## 1. Technical quality

**Feasibility of Design and Technical Approach:** The quality and feasibility of the application in terms of the viability of the proposed technical approach, (i.e., the proposed technical approach can reasonably be expected to produce the intended expected results), appropriateness of the proposed methodology, innovativeness, and the work plan for achieving project objectives.

The technical approach must directly contribute to the achievement of the grant program expected results and performance under the grant program, and must be measurable under the following New Justice Project's objectives indicators:

1. Percent of partner CSOs performance improvement recommendations implemented by courts
2. Number of citizens providing inputs in judicial reform implementation and monitoring and court performance evaluation.

Applicants should also develop 1 or 2 specific indicators for each of the application objectives.

- **Impact on Target Group:** The extent to which the proposed activity corresponds to the needs of target group(s) and will directly benefit it (them). Also, the degree to which it will directly or indirectly stimulate other organizations and resources to replicate, develop, or implement activities supporting the objectives of New Justice.
- **Gender Awareness:** The extent to which the funded activity includes a gender component or represents a strong commitment to women as beneficiaries.
- **Past Performance:** Previous or ongoing experience of implementing similar activities. This, in fact, examines an Applicant's track-record, which is a critical factor in assessing the capacity of the Grantee to implement the activity.

## 2. Organizational Capacity

- **Management and Programmatic Capacity:** Evidence of the capability to undertake and accomplish the proposed activities aimed to strengthen professionalism and efficiency of the Ukrainian judiciary. The proposal should demonstrate the organization's effectiveness in terms of internal structure, technical capacity, and key personnel, in meeting the overarching grant program goal. In addition, the applicant must demonstrate adequate financial management capability. Appraisal will be based principally on the checks of references by New Justice; the background, qualifications, reputation, appropriateness and skills of its key personnel; and the "track record," reputation, and achievements (including development of self-sufficient, sustainable activities) of the organization involved.
- **Sustainability and Financial Self-Reliance:** The extent to which the funded activity will result in building and/or strengthening the capacity of the community and local organizations, and whether the activity itself is sustainable or will stimulate sustainability of the organization.

## 3. Cost

- **Cost Efficiency:** The degree to which budgeting is rational and reflects best use of the organization's and grant resources.

Additionally, New Justice will ensure environmental soundness and compliance in design and implementation as required by 22 CFR 216.

## SECTION VI. AWARD AND ADMINISTRATION INFORMATION

All grants will be negotiated, denominated and funded in the national currency - hryvnia. All costs funded by the grant must be allowable, allocable and reasonable. Grant applications must be supported by a detailed and realistic budget as described in Section IV.

Issuance of this RFA and assistance with application development do not constitute an award or commitment on the part of New Justice, nor does it commit New Justice to pay for costs incurred in the preparation and submission of an application. Further, New Justice reserves the right to accept or reject any or all applications received and reserves the right to ask further clarifications from the offerors. Applicants will be informed in writing of the decision made regarding their application.

### ANNEXES

- **Annex A** - Grant Application Template
  - A.1 – Instruction
  - A.2 – Grant Application Form
  - A.3 – Implementation Plan Timeline
- **Annex B** – Grant Application Budget Form
- **Annex C** – Applicant Self-Assessment Form
- **Annex D** – Required Certifications
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