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Date: 16 July 2014

INDIVIDUAL CONSULTANT PROCUREMENT NOTICE

for individual consultant and consultant assigned by consulting firm/institution

Country:	Viet Nam
Description of the assignment:	Senior International Expert for Comparative Study on “Criminal Sanctions and Other Legal Instruments to Enforce Environmental Law”
Project name:	Strengthening Access to Justice and Protection of Rights in Viet Nam
Period of assignment/services (if applicable):	September – December 2014

1. Submissions comprising of technical and financial components should be sent in separate email to: nguyen.thi.hoang.yen@undp.org no later than: **10 August 2014 (Hanoi time)**.

With subject line: International consultant 3.3 – Amendment of the Penal Code, focusing on environment offences

Submission received after that date or submission not in conformity with the requirements specified this document will not be considered.

Note:

- Any individual employed by a company or institution who would like to submit an offer in response to this Procurement Notice must do so in their individual capacity, even if they expect their employers to sign a contract with UNDP.
- Maximum size per email is **7 MB**.
- Any request for clarification must be sent in writing, or by standard electronic communication to the address or e-mail indicated above. Procurement Unit – UNDP Viet Nam will respond in writing or by standard electronic mail and will send written copies of the response, including an explanation of the query without identifying the source of inquiry, to all consultants.

2. Please find attached the relevant documents:

- [Terms of Reference \(TOR\)](#)..... (Annex I)
- [Individual Contract & General Conditions](#)..... (Annex II)
- [Reimbursable Loan Agreement](#) (for a consultant assigned by a firm) [& General Conditions](#) (Annex III)
- [Insurance Coverage Table](#)..... (Annex IV)
- [Vendor Form](#) (Annex V)

- [Guidelines for CV preparation](#)..... (Annex VI)
- [Format of financial proposal](#)..... (Annex VII)

3. Documents to be included in the submission:

Interested individual consultants must submit the following documents/information **(in English, PDF Format)** to demonstrate their qualifications:

a. **Technical proposal:** The technical proposal shall include:

- Signed Curriculum vitae
- Copy/link of minimum 1 relevant publication/writing sample.
- An abstract of 350 words summarising a proposal for assessment framework and applicable methodology in line with the assessment specified in this TOR
- A tentative work-plan for the expert’s engagement
- Reference contacts of past 4 clients for whom you have rendered preferably the similar service

a. **Financial proposal (with your signature):**

- The financial proposal shall specify a total lump sum amount in **US Dollar** including consultancy fees and all associated costs i.e. airfares, travel cost, meal, accommodation, tax, insurance etc. – see format of financial offer in Annex VII.
- Please note that the cost of preparing a proposal and of negotiating a contract, including any related travel, is not reimbursable as a direct cost of the assignment.
- If quoted in other currency, prices shall be converted to US Dollar at UN Exchange Rate at the submission deadline.

4. Evaluation:

Your technical proposals will be evaluated using the following criteria:

1	Consultant(s)’ experiences/qualification related to the services	Max points
1.1	Advanced degree in comparative legal studies, interdisciplinary legal studies, and/or political science studies	150
1.2	At least 10 years experience conducting applied research in developing countries, preferably in the analysis of Asian and emerging middle income economies	150
1.3	Demonstrated expertise on environmental law and/or criminal law studies	200
1.4	A strong international publications record; Proven ability to write clear, jargon-free English	300
2	Technical proposal	
2.1	Clear abstract and work-plan	200
	TOTAL	1000

A two-stage procedure is utilized in evaluating the proposals, with evaluation of the technical proposal being completed prior to any price proposal being opened and compared. The price proposal of the Proposals will be opened only for submissions that passed the minimum technical score of 70% of the obtainable score of 1000 points in the evaluation of the technical proposals.

The technical proposal is evaluated on the basis of its responsiveness to the Term of Reference (TOR).

Maximum 1000 points will be given to the lowest offer and the other financial proposals will receive the points inversely proportional to their financial offers. i.e. $S_f = 1000 \times F_m / F$, in which S_f is the financial score, F_m is the lowest price and F the price of the proposal under consideration.

The weight of technical points is 70% and financial points is 30%.

Proposal obtaining the highest weighted points (technical points + financial points) will be selected.

An interview with the candidate given the highest combined score may be held before contract awarding, if deemed necessary.

5. Contract

“Lump-sum” Individual Contract will be applied for freelance consultant (Annex II)

“Lump-sum” RLA will be applied for consultant assigned by firm/institution/organization (Annex III)

Documents required before contract signing:

- Personal History
- International consultant whose work involves travel is required to complete the course on Basic Security in the Field and submit certificate to UNDP before contract issuance.

Note: The Basic Security in the Field Certificate can be obtained from website:

<https://training.dss.un.org/consultants>. The training course takes around 3-4 hours to complete. The certificate is valid for 3 years.

- Full medical examination and Statement of Fitness to work for consultants from and above 62 years of age and involve travel. (This is not a requirement for RLA contracts).
- Release letter in case the selected consultant is government official.

6. Payment

UNDP shall effect payments to the consultant (by bank transfer to the consultant’s bank account provided in the vendor form (annex VI) upon acceptance by UNDP of the deliverables specified the TOR.

- 1st payment: 20% of the contract value upon acceptance of the research outline
- 2nd payment: 50% of total contract value upon receipt of the draft research report in line with the requirements set forth in Section 3.2 and 3.3 of the TOR
- 3rd payment: 30% of total contract value upon acceptance of the final research report.

If two currencies exist, UNDP exchange rate will be applied at the day UNDP instructs the bank to effect the payment.

7. Your proposals are received on the basis that you fully understand and accept these terms and conditions.

You are requested to acknowledge receipt of this Procurement Notice and to indicate whether or not you intend to submit proposals.



TERMS OF REFERENCE (TOR)

SERVICE:	Senior International Expert for Comparative Study on “Criminal Sanctions and Other Legal Instruments to Enforce Environmental Law”
DUTY STATION	Home-base with one mission to Hanoi, Vietnam
EXPECTED DURATION	The service to be provided from September to December 2014
PROJECT	Strengthening Access to Justice and Protection of Rights in Viet Nam (Project 58492)

1. BACKGROUND

In pursuing sustainable growth, environmental protection has been one of the priorities that the Party and State in Vietnam highlights in its development strategies. Apart from the Party’s various directives and resolutions on environment protection, Law on Environment Protection (LEP) in Vietnam—passed in 1993--has been revised comprehensively in 2005 and again in 2014. Various legal documents to guide the implementation and enforcement of the Law on Environmental Protection are issued which create an important legal framework for environment protection. Even in the initial environmental law of 1993, it is stipulated that acts causing serious damage to the environment are subject to criminal punishment, in complementary to other sanctions, such as obligation of compensation to environmental pollution victims or administrative sanctions including but not limited to fines and other penalties. These laws and regulations, however, had little or no deterrent effect on corporations, individuals, or local governments to comply with requirements on environmental protection. Indeed a major source of failure of the environmental protection legislation was the weak enforcement and ineffective coordination of environmental management. Last but not least, environmental criminal law covers narrower ground which consists a number of provisions in the Penal Code—of 1999, and amended in 2009.

In the Penal Code of 1999 and the 2009 amendments, there are 10 provisions--within Chapter XVII-- to recognize environmental crimes. Even the increased fine to violations of the LEP coupled with the possible imprisonment of individual offenders, environmental violations continue widespread, not only the acts of toxic waste dumping in economic zones, at craft villages and mining sites, but also the acts of illegally importation of wastes, household wastes, the hazardous substances of dioxin, including radioactive substances; illegal logging and hunting, trade and transport of rare and precious animals. These violations have negatively affected on the development of national economy, directly infringed upon the legitimate rights and interest of the people. More seriously, violations of environmental law have triggered public disorder and insecurity in some areas. Corporations such as Vedan, Tungkuang, Miwon, among others¹, had been caught and fined of discharging polluted waste into rivers. In many cases, corporations and even small enterprises found it more cost-effective to continue to pollute more than the law allowed and simply pay any associated fines if indeed the corporation was actually found and convicted of violating environmental laws or regulations. Perversely, corporations actually had a disincentive to comply with environmental laws or regulations as compliance generally raised their operational costs which meant that many corporations obeying the environmental laws, whether out of a sense of legal duty or public obligation, were disadvantaged and lost a competitive edge and consequently suffered in the marketplace to competitors who disregarded environmental laws and regulations.

¹ In 2013, there were more than 2,303 violations caught and fined—increased 7% compared to 2012--with the total amount of more than 40 billion Vietnamese Dongs, according to the statistics of Ministry of Public Security, Environmental Policy Agency.

The weak environmental legislation and its loopholes need to be fixed. Enforcing environmental laws and regulations—an important ingredient in protecting the environment and reducing environmental harm—has to be improved. In 2014, a new Law on Environment Protection will be passed, while the Penal Code is being reviewed. Therefore, it is timely to conduct a comparative study on ‘criminal sanctions and other legal instruments to enforce environmental law’ in order to provide policy recommendations for Vietnam in amending the Penal Code, and the related laws and regulations to combat effectively with environmental crimes. The study will help examining experiences of other countries in recognizing environmental crimes and enforcing criminal sanctions—as well as other sanctions—which can be useful lessons for Viet Nam to consider in amending the Penal Code and broadly in reforming the criminal justice and environment management systems in years to come.

This study seeks to identify and analyze a set of three countries—to be suggested by the expert—who face similar challenges and managed to set up effectual mechanisms in dealing with environmental crimes, and compare with Viet Nam’s to point out good practices and lessons from similarities and peculiarities across the selected administrations and judiciaries.

UNDP Viet Nam, in coordination with the Ministry of Justice within the framework of Project 58492, will procure one senior international expert, in line with this TOR, to carry out the study.

2. OBJECTIVES

- The aim of this project is to address differences and similarities in the practice with respect to environmental criminal law in the various countries. Further an evaluation will be made using comparative law and addressing international tendencies.
- The research will adopt a comparative legal analysis approach to examine the law—including Penal Code and other laws—and practice that the studied country(s) has adopted to protect the environment and prosecute individuals and organizations (corporations and/or legal entities); and to analyze the way and trend in which the country (within its legal, socio-economic and institutional context) emphasis in combating environmental crimes and violations.
- Drawing on the overall country analysis in 2.1.1 above, the research will identify the most appropriate or effective way to strengthen the enforcement of criminal sanctions which appear significant in relation to remove legislative shortcomings and to enhance effectiveness in making environmental offenders—individual or corporate executive—liable for illegal acts which directly harm the environment, and to consider the degree to which such factors can be successfully implemented in the context of Viet Nam.

3. SCOPE OF WORK AND DELIVERABLE

3.1 The research will undertake a comparative analysis of legislation on environmental crimes, criminal sanctions and available legal instruments to enforce environmental law in three (3) selected countries that their experiences can be useful for Viet Nam.

3.2 A research report is expectedly less than 50 paged research paper which addresses a common set of questions and presented in a coherent manner as the Structure of the Country Report suggested in 3.3 below in order to facilitate the analysis of common themes and areas of difference, trends, strengths and weaknesses to provide useful recommendations for Viet Nam.

3.3 The country research report should include relevant annexes such as extracts from the country’s Constitutions and laws, collected survey data and any other relevant information provided under this assignment in relation to the subject research.

3.4 Subject to agreement with the expert, the research report should follow the following structure:

- Summary of country reports
- Legislative framework:
 - o Key laws and regulations on environmental crimes and violations
 - o Criminal penalties: sanctions, character and relationship to administrative sanctions

- Administrative sanctions: sanctions, character and relationship to criminal sanctions
- Existence of instruments which prohibit individuals and corporations/ organizations from environmental offences: legal possibilities, characters and institutions, implementation and examples
- Enforcement framework:
 - The role of enforcing bodies and individuals in connection with environment offences: the right to start a prosecution, the role of individuals, enforcing bodies, police and prosecutor with respect to the investigation and adjudication of environment crime
 - Criminal liability of corporations for environmental offences: corporate liability, other possibilities and drawbacks, criminal liability of corporate managers/directors
 - Criminal liability for environmental offences by public servants and public authorities: criminal liability and other liabilities, implementation and examples
- Concluding remarks: There should be overall assessment of the strengths and weaknesses of each system in the context of the country's institutional, socio-economic and legal framework, main current challenges and controversies; key issues for future reform to strengthen criminal enforcement of the environmental law.
- Country reports
- List of references

4. METHODOLOGY

To the possible extent, the analysis will have to be based on statistical data and documented material, including the compilation of recently published studies and reports. The research methodology will include the revision, analysis and synthesis of data, statistics, documents and publications on the theme.

The expert will have to identify the sources of all kind of information, and cite them properly in the research. S/he is not necessarily expected to generate primary information, but to develop and present in-depth analysis based on compilation and processing of secondary sources.

The research paper is neither an essay of qualified opinions nor a newspaper type article. It needs to be grounded on evidence and documented data/information. UNDP and MOJ will support the research process when deems necessary, however, the ultimate responsibility on access and accuracy of data relies on the expert.

The research process is participatory and consultative, including meetings with Vietnamese policy makers, judges, investigators and researchers during the mission to Viet Nam. The expert will be expected to come on one (1) mission to Viet Nam after submission of the first draft of the report to discuss with Vietnamese researchers, MOJ, National Assembly's deputies, and other key stakeholders (i) to maximize the synergies between the comparative country research and the desk review of national experts on the existing penal code, environmental laws and practice in Vietnam; and (ii) to validate research's primary findings and recommendations in Viet Nam.

5. QUALIFICATION

The International Senior Expert should meet the following minimum requirements:

- Advanced degree in comparative legal studies, interdisciplinary legal studies, and/or political science studies;
- At least 10 years experience conducting applied research in developing countries, preferably in the analysis of Asian and emerging middle income economies;
- Demonstrated expertise on environmental law and/or criminal law studies;
- A strong international publications record;
- Proven ability to write clear, jargon-free English.

It is required that interested international senior experts include in their application dossiers:

1. a most updated CV with information about three referees for reference check;

2. an abstract of 350 words summarising initial concrete points (including names of countries to be suggested for lessons learnt for Viet Nam) to be made in the research study under this TOR;
3. a tentative work-plan for this research; and,
4. at least one relevant publication in English.

6. TIMING, DURATION AND LOCATION

The tentative timeframe for this research will be estimated **25 working days**, comprising of two concrete phases:

- Phase 1: September - October 2014: home-based research to develop a draft research report.
- Phase 2: October - December 2014: one mission to Hanoi to present the primary findings and policy recommendations (of the draft research report) and discuss with experts in Viet Nam for two (2) working days; working home-based to finalize the research report.

Note: This is the estimated number of days only and it is up to the consultant to allocate the number of days required to deliver the deliverable in this TOR as per the timeframes and reflect that in the financial offer.

The interested contractor shall suggest a tentative work-plan for this study to be done for further discussion with UNDP upon being selected, as indicated in Section 3.

7. PAYMENT TERMS

UNDP Viet Nam, at the request of the Project 58492, shall effect payments to the successful Contractor upon UNDP's satisfaction with the deliverable set forth in Section 3 above and after acceptance by UNDP of the request for payment submitted by the Contractor to the address specified in the contract.

Milestone payments for the two phases shall be as follows:

Sequence	Percentage of installments	Indicative Dates for Installments
1 st payment	20% of the contract value upon acceptance of the research outline	August 2014
2 nd payment	50% of the contract value upon receipt of the draft research report in line with the requirements set forth in Section 3.2 and 3.3	Oct – Nov 2014
Final payment	30% of the contract value upon acceptance of the final research report	December 2014

8. PROVISION OF MONITORING AND PROGRESS CONTROLS

The expert will work closely with designated contact person of the Ministry of Justice, Department on Criminal and Administrative Legislation, and UNDP Vietnam Programme Officer on Rule of Law and Access to Justice. The expert will report to UNDP Viet Nam.

Together with UNDP, the MOJ's Department of Criminal and Administrative Legislation and Project Management Unit shall monitor the assignment to ensure progress and quality.

- Upon contract signing, the contractor shall work closely with UNDP Programme Officer in charge and the designated contact person of the Ministry of Justice, Department of Criminal and Administrative Legislation to discuss and agree on the task requirements, working methodology;
- UNDP and the relevant stakeholders review and comment on the contractor's required outputs/reports in the TOR;
- The contractor reviews the comments and submits the revised outputs/ reports for further review and comments;
- UNDP shall monitor every stage of deployment of the project and shall evaluate the deliverables of each phase as described in Section 3 and 6 of this TOR.

UNDP shall disburse to the contractor against the milestones for each phase of the project. Each payment shall be made upon UNDP and MOJ's satisfaction with the deliverable. The final instalment shall be made to contractor only when UNDP and MOJ are fully satisfied with the final deliverable of this assignment.

Annex VI

GUIDELINES FOR PREPARING CV

WE REQUEST THAT YOU USE THE FOLLOWING CHECKLIST WHEN PREPARING YOUR CV:

Limit the CV to 3 or 4 pages

NAME (First, Middle Initial, Family Name)

Address:

City, Region/State, Province, Postal Code

Country:

Telephone, Facsimile and other numbers

Internet Address:

Sex, Date of Birth, Nationality, Other Citizenship, Marital Status

Company associated with (if applicable, include company name, contact person and phone number)

SUMMARY OF EXPERTISE

Field(s) of expertise (be as specific as possible)

Particular development competencies-thematic (e.g. Women in Development, NGOs, Privatization, Sustainable Development) or technical (e.g. project design/evaluation)

Credentials/education/training, relevant to the expertise

LANGUAGES

Mother Tongue:

Indicate written and verbal proficiency of your English:

SUMMARY OF RELEVANT WORK EXPERIENCE

Provide an overview of work history in reverse chronological order. Provide dates, your function/title, the area of work and the major accomplishments include honorarium/salary. References (name and contact email address) must be provided for each assignment undertaken by the consultant that UNDP may contact.

UN SYSTEM EXPERIENCE

If applicable, provide details of work done for the UN System including WB. Provide names and email address of UN staff who were your main contacts. Include honorarium/salary.

UNIVERSITY DEGREES

List the degree(s) and major area of study. Indicate the date (in reverse chronological order) and the name of the institution where the degree was obtained.

PUBLICATIONS

Provide total number of Publications and list the titles of 5 major publications (if any)

MISCELLANEOUS

Indicate the minimum and maximum time you would be available for consultancies and any other factors, including impediments or restrictions that should be taken into account in connection with your work with this assignment.

Please ensure the following statement is included in the resume and that it is signed and dated:

I CERTIFY THAT ALL INFORMATION STATED IN THIS RESUME IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I AUTHORIZE UNDP/UNOPS OR ITS AGENT TO VERIFY THE INFORMATION PROVIDED IN THIS RESUME.

(Signature)

Annex VII

FINANCIAL OFFER

Having examined the Solicitation Documents, I, the undersigned, offer to provide all the services in the TOR for the sum ofUSD.

This is a lumpsum offer covering all associated costs for the required service (fee, meal, accommodation, travel, visa, taxes etc).

Note: The number of work-days in the TOR is estimated only. The bidder should make his/her own estimate of the time taken to complete the assignment in line with this TOR and his/her proposal, and use this estimate as the basis for financial proposal.

Cost breakdown:

No.	Description	Number of days	Rate (USD)	Total
1	Remuneration			
1.1	Services in Home office			
1.2	Services in field			
2	Out of pocket expenses			
2.1	Travel			
2.2	Per diem			
2.3	Full medical examination and Statement of Fitness to work for consultants from and above 62 years of age and involve travel – (required before issuing contract). *			
2.5	Others (pls specify).....			
	TOTAL			

* Individual Consultants/Contractors who are over 62 years of age with assignments that require travel and are required, at their own cost, to undergo a full medical examination including x-rays and obtaining medical clearance from **an UN-approved doctor** prior to taking up their assignment.

I undertake, if my proposal is accepted, to commence and complete delivery of all services specified in the contract within the time frame stipulated.

I agree to abide by this proposal for a period of 120 days from the submission deadline of the proposals.

Dated this day /month of year

Signature