

TERMS OF REFERENCE

FOR INDIVIDUAL CONSULTANTS

- Post Title:** International consultant for review of human trafficking legislation in Lao PDR, its implementation and alignment with UN Convention against Transnational Organized Crime and Trafficking in Persons Protocol
- Agency:** United Nations Office on Drugs and Crime (UNODC)
- Duty Station:** Vientiane, Lao PDR (The methodology is supposed to be finalized before arrival at Vientiane. The report may be finalized at home after the presentation of key findings according to the draft report.)
- Duration:** 21 work days (from August to September 2013)

1. BACKGROUND

The Lao PDR acceded to the United Nations Convention against Transnational Organized Crime (hereafter 'UNTOC') and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter 'TIPP') on 26 September, 2003. The accession to the UNTOC and TIPP prompted a strengthening of the legal framework on human trafficking in the country.

UNTOC is the main international instrument in the fight against transnational organised crime.

As such, it represents a major step forward in the fight against transnational organised crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those problems. The TIPP is the first global instrument with an agreed definition on trafficking in persons. One of the purposes of this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that can support efficient international cooperation in investigating and prosecuting trafficking in persons cases. TIPP recognizes the complexity of the trafficking in persons phenomena which leads it to espouse a comprehensive approach in combating it, including steps to prevent the crime, prosecute its perpetrators and protect its victims with full respect for their human rights.

In Laos there are a series of laws in place which conform to at least some of the provisions of UNTOC and TIPP. In 2004, the Lao Law on Development and Protection of Women was enacted to define trafficking in women as an offence, articulate rights of victims and oblige officials concerned to provide assistance to victims, followed by the introduction of Article 134 in the Penal Law in 2005, which criminalizes human trafficking in general. Article 134 of the Penal Law defines human trafficking as:

“the recruitment, moving, transfer, harbouring, or receipt of any person within or across national borders by means of deception, threats, use of force, debt bondage or any other means [and using such person in] forced labour, prostitution, pornography, or anything that is against the fine traditions of the nation, or removing various body organs [of such person], or for other unlawful purposes”.

Under the Penal Law, offenders of human trafficking are to be punished with at least five years of imprisonment and at least 10 million kip of fines. There are also other provisions and laws such as the Law on the Protection of the Rights and Interests of Children, and the Labour Law, which may be used as a legal basis to prosecute human trafficking and associated crimes, and to protect victims.

To help implement these laws a range of mechanisms has been set up. There is an Anti-Trafficking Division with corresponding units operational at the provincial level under the Ministry of Public Security, which is the National Police Department of Laos. The Ministry of Labour and Social Welfare, Ministry of Education and Lao Women’s Union operate shelters and provide protection and assistance services for victims of human trafficking and other violence and abuses in close cooperation with international agencies. At the national level there is a National Steering Committee on Human Trafficking, which coordinates government responses to human trafficking and the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) Task Force. Relevant national stakeholders cooperate with international agencies on prevention, protection, prosecution and policy in relation to human trafficking. Lao PDR also cooperates actively on counter-human trafficking issues with other countries through bilateral MOUs, the COMMIT process, ASEAN and other mechanisms. Collaboration with international and national NGOs is becoming more and more active especially in the field of victim protection.

Lao PDR has made considerable effort to develop and implement its national laws and provisions on human trafficking, and meet its obligations under the UNTOC and TIPP. However, prosecution rates remain very low and victim protection is still limited. There are also gaps in the legal framework, which hamper effective implementation of the existing laws on human trafficking and associated crimes. There are several differentiated versions of definition of human trafficking under different statutes, for example Article 24 of the Law on Development and Protection of Women defining trafficking in women as:

“the recruitment, hiding, moving, transportation, transfer, harbouring, [or] receipt of women, within or across national borders, by means of deception, the giving or receiving of bribes, threats, the use of force, [the use of] other forms of coercion, abduction, debt bondage or by other means[,] for forced labour, [for] prostitution, [for] publishing pornography and what is in contradiction to fine national culture, [for] the removal of various body parts, or for other unlawful purposes”.

It is similar, but still inconsistent in part with the Penal Law’s definition. Because of such inconsistency in key provisions, frontline practitioners are often unable to identify the

right law and provisions to apply to cases before them. Victim protection and assistance is provided for under the Law on the Development and Protection of Women, but this extends to women and children only. There are also concerns about victims being fined upon returning from abroad and being prosecuted for offences such as illegal migration or prostitution – often direct consequences of their situation as trafficked persons.

Legal and law enforcement officials, and other concerned stakeholders, have expressed the need for a comprehensive law on human trafficking to avoid the complexities involved in applying different laws to investigate, prosecute, convict and sentence traffickers, to prevent the crime and to protect victim's rights. Strengthening the legal framework on human trafficking is a priority area under COMMIT, and several neighbouring countries have developed national anti-human trafficking laws in recent years. Responding to calls for a comprehensive law on human trafficking, the Government announced in 2012 its plan of developing a comprehensive anti-human trafficking law by 2014.

Thus, there are multiple reasons for undertaking a comprehensive review of the existing national legislation related to human trafficking in Lao PDR at this point in time. UNODC has offered technical assistance to the Lao Government in conducting a desk review of the current national legislation to be used in further study and development of a draft comprehensive law on human trafficking.

2. OBJECTIVES AND EXPECTED SCOPE OF WORK

The objectives of the consultancy are:

- To review existing national legislation relevant to human trafficking in Lao PDR in order to assess its current compliance with UNTOC, TIPP and other relevant international instruments;
- Identify achievements and gaps of the existing national legislation relevant to human trafficking, regarding both the actual legislation and its implementation, with respect to its compliance with UNTOC, TIPP and other relevant international instruments;
- Assist national experts appointed by the Government in understanding gaps in the existing national legislation's compliance with UNTOC, TIPP and other relevant international instruments, and lead discussions on formulating a new comprehensive law on human trafficking which will fully comply with the international standards set by the UNTOC, TIPP and other laws; and
- Prepare recommendations to strengthen and align national legislation and its implementation with international instruments and standards.

As preparations to develop a comprehensive law on human trafficking are underway, which are being led by the Secretariat to the National Steering Committee on Anti-Human Trafficking in close cooperation with other relevant stakeholders, it is anticipated that this review will provide substantial input and recommendations in the drafting process of the new law. For this purpose a highly experienced international consultant needs to be recruited to ensure the level of capacity required to undertake this study.

The consultant will consult a wide range of resources including international instruments, local laws, case law, both international and national, studies, reports and other relevant materials. He/she will also need to interview key stakeholders within the Lao Government and relevant international agencies working on human trafficking issues in the country. In the wake of this preparation work, the consultant will be expected to formulate a plan of what the comprehensive law should include, as well as concrete steps of how the drafters should proceed with drafting the law. To facilitate the consultant's interaction with the Government, the project will request the Government to form a national expert group or the like consisting of key Government officials. Through discussion with the national experts, the consultant will be also expected to facilitate their understanding of gaps between existing national laws and key requirements of the UN convention and protocol.

3. DELIVERABLES

- One report (up to approximately 100 pages including annexes) on the existing national legislation relevant to human trafficking in Lao PDR, its implementation and alignment with UNTOC and TIPP and other relevant international instruments, covering its achievements and gaps.
- The report should include findings of gaps in national legislation and implementation viewed from the international standards, a compilation of good practices, achievements and case studies exemplifying its current implementation and practices, what the comprehensive law should include, and recommendations upon concrete steps to be taken by the drafters in drafting the law.

All drafts and final report with applicable annexes will be submitted in both hard copy and digital formats (soft copy) in English. The soft copies may either be submitted via email or on a CD, flash memory or other storage devices in Microsoft Word format.

4. DURATION OF ASSIGNMENT

21 work days from July to September 2013.

A suggested timeline of assignment is as follows:

| Item # | Activities | # of days |
|---------------|--|------------------|
| 1 | Finalisation of methodology | 2 |
| 2 | Review of national laws and other secondary resources, and comparison with international instruments and standards | 4 |
| 3 | Interviews with key stakeholders and collection of case studies in Vientiane | 5 |
| 4 | Analysis of data, additional consultation with national experts and compilation of draft report | 7 |
| 5 | Presentation of key findings with key stakeholders | 1 |
| 6 | Finalisation of report | 2 |
| | Total Days | 21 |

5. DUTY STATION AND EXPECTED PLACES OF TRAVEL

The bulk of the consultant's work, especially those from interviews with stakeholders through presentation of key findings with key stakeholders, will take place in Vientiane

and UNODC will provide office space and internet access for the consultant. UNODC will also provide transportation and translation support to carry out interviews, discussion and other necessary work in Lao PDR. While the consultant is not expected to travel to provinces outside Vientiane at this moment, he/she may be requested to make short travels to major cities for interviews and discussion with key stakeholders if necessary. Details will be discussed and agreed upon with the consultant after he/she was selected.

Air tickets and train tickets for all official missions will be provided by UNODC with 80% of advance DSA once travel authorization is approved. Travel settlement of the remaining 20% of DSA and other official expenses borne during the missions will be paid after the completion of the mission.

6. MONITORING AND PROGRESS CONTROLS

The consultant shall work under the overall supervision of the UNODC Country Representative and under substantive supervision of the project coordinator. Indicators to evaluate his/her performance are:

- Quality of the documents produced;
- Technical competence; and
- Timeliness of delivery.

7. QUALIFICATIONS

Education: Advanced university degree (Master's degree or equivalent) in Law with specialisation in international law and/or criminal law.

Experience: Minimum 7 years experience as a law professional. Strong experience in technical assistance in the development and reform of legislation and legal systems preferably on human trafficking, victim and witness protection, organised crime and international treaties is a distinct asset. Proven and successful consultancy record is an advantage.

Language: Fluency in English. Clear and concise writing skills, and strong presentation skills. Lao language knowledge is an advantage.

Other: Computer literacy and working level in Microsoft Office. Knowledge of the Lao PDR's legal system and its compliance with international standards and previous work experience in technical assistance in Lao PDR is a strong advantage. Experience in the region of Southeast Asia is also an asset.

8. HOW TO APPLY

Interested applicants should submit the following documents:

(a) Letter of interest - not exceeding three pages - clearly stating suitability for the position *with:*

(1) Daily consultancy fee

(2) Proposed daily living allowance (meals and accommodation) for Vientiane, Lao PDR

(3) Proposed airfare (if applicable) to Vientiane, Lao PDR).

(b) UNDP Personal History Form

(can be downloaded from: <http://www.unodc.org/laopdr/en/employment.html>) and detailed curriculum vitae based on the criteria stated above.

Please submit the application by e-mail to: <fo.lao@unodc.org>.

Application deadline is 5 August 2013.

Note:

(a) Please clearly indicate the position you are applying for.

(b) Failure to submit supporting documents as specified in the announcement will result in an incomplete application. Applicants who submit incomplete applications will NOT be considered.

(c) Applicants employed as a civil servant or government official, whose applications are successful, will be required to provide a letter from their employer indicating no objection to paid employment with UNODC for a period of unpaid leave from current employer.

Due to the volume of applications, only candidates under positive consideration will be notified.