



БАЙГАЛЬ
ОРЧИН, АЯЛАЛ
ЖУУЛЧЛАЛЫН ЯАМ



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TERMS OF REFERENCE

2 May 2018

Project title:	"Environmental Governance for Sustainable Natural Resource Management"
Title of the assignment:	To conduct a research study on court decisions on cases, offences, and crimes related to environmental issues in mining;
Type of contract:	Individual contract (2) Lead expert - Lawyer specialized in administrative law (40 working days) Consultant - Lawyer specialized in criminal law (30 working days)
Contract duration	3 months (starting from 21 May 2018)

A. BACKGROUND

The Article 16.2 of the Constitution of Mongolia states that the citizens of Mongolia shall enjoy the right to a healthy and safe environment, and to be protected against environmental pollution and ecological imbalance. One of the environmental governance and rule of law factors that contribute to effective environmental protection in the mining sector is timeliness and effectiveness of law enforcement and judicial processes in resolving environmental offences and crimes. According to some estimations, illegal exploration and exploitation of mineral resources make up around 12-15% of environmental cases registered with the police. Of those registered cases, around 11% were resolved by the courts.

The purpose of this assignment is to review court decisions of cases related to environmental protection and mining, identify regulatory and procedural barriers or issues in adjudication of environmental cases, and propose specific actions for strengthening the environmental governance and rule of law in the mining sector.

This activity is part of the UNDP and Swedish Environmental Protection Agency project on "Environmental Governance for Sustainable Natural Resource Management". The project is being implemented by UNDP in partnership with the Ministry of Environment and Tourism (MET), Ministry of Mining and Heavy Industry (MMHI), General Agency for Specialized Inspection (GASI), and the National Human Rights Commission of Mongolia (NHRCM).

B. THE SCOPE OF WORK

1. Conduct a desk review of existing studies that are relevant to the assignment;
2. Review environmental protection and mining cases resolved by the courts over the past 5-10 years, and produce a **report on general trends and key findings**, including:
 - a. key overlapping legal provisions, gaps or omissions or administrative factors which may be contributing to legal disputes;
 - b. statistical data on number of cases and status/rate of resolution of complaints submitted by government agencies, local authorities, NGOs, or business entities;
 - c. cases where exploration and exploitation licenses have been restored, suspended/cancelled;

3. Review and analyze complaints submitted to law enforcement agencies, including those registered and dismissed by the police, prosecutors, and/or courts, by key categories, and provide an analysis of potential causes, issues, and proposed solutions;
4. Identify procedural gaps and issues in adjudicating environmental offences and crimes, and propose potential solutions;
5. Review the status of implementation of court decisions, and identify reasons for delay which affect the rule of law in environmental governance of the mining sector;
6. Undertake interviews where needed with relevant stakeholders, including environmental and mining inspectors, civil society, private sector, and local government representatives;
7. Work closely as a team;
8. Hold consultation meetings on preliminary findings and incorporate the feedback in the final report;

C. Key Deliverables

Deliverable 1. Draft report presenting data, findings, analysis, and proposed solutions, covering 4 areas listed in tasks 1-4 above in the Scope of Work;

Deliverable 2. Final report, incorporating feedback received on the draft report;

All key deliverables must meet writing/editing related quality standards, including the following;

- Consistency of the structure;
- Consistency of *Word* formatting, e.g. line spacing (1.15), title/subtitle/text fonts (unicode), indents;
- Spelling, grammar and syntaxes checked;
- Reference and related website links;
- Accuracy of data and dates;

D. Reporting arrangements

The contractors shall report the progress of their work to the UNDP project coordinator. The lead expert shall be responsible for synthesizing the findings and submitting the final draft and final reports.

E. Deliverables and payment schedule

Payments shall be made upon satisfactory acceptance of the Ministry of Environment and Tourism and UNDP project.

	Installments	Deliverables	Due date
1.	60% of the total fee	Deliverable 1	Within 2 months of signing the contract
2.	40% of the total fee	Deliverable 2	2 weeks before the end of the contract date

E. QUALIFICATIONS REQUIREMENTS

Qualification requirements for individual consultants are as follows:

1. Administrative lawyer (Lead expert)

- Master's degree or higher in law or legal studies;
- Minimum of 8 years of relevant experience in administrative and environmental law, environmental legislative drafting, legal analysis, or related fields;
- At least 2 assignments of similar nature and complexity;
- Proven analytical skills and ability to conceptualize and write concisely and clearly, and interpret administrative statistical data;

- Good report writing skills;
- Good working level of English language is an asset;

2. Criminal lawyer

- Master's degree or higher in law or legal studies;
- Minimum of 5 years of relevant experience in criminal and environmental law, environmental legislative drafting, legal analysis, or related fields;
- At least 2 assignments of similar nature and complexity;
- Proven analytical skills and ability to conceptualize and write concisely and clearly, and interpret administrative statistical data;
- Good report writing skills;
- Good working level of English language is an asset;

F. Criteria for Evaluation

Applications will be assessed on a basis of a cumulative analysis that will evaluate both the technical suitability and the financial proposal. The weight of the technical criteria is 70%; the weight of the financial proposal is 30%. Only candidates with a minimum of 70% in the technical evaluation will be considered for the financial evaluation.

G. Evaluation Scoring:

Technical proposal qualification			Points Allocated Per Criteria
Qualification and expertise of	a.	Expression of Interest Letter	10
	b.	Master's degree or higher in law or legal studies;	10
	c.	Minimum of 8 years of relevant experience in administrative and environmental law, environmental legislative drafting, legal analysis, or related fields;	15
	d.	At least 2 assignments of similar nature and complexity (Good report writing skills)	20
	e.	Proven analytical skills and ability to conceptualize and write concisely and clearly, and interpret administrative statistical data;	15
	f.	Methodology	20
	g.	Good working level of English language is an asset;	10
TECHNICAL SCORE OF INDIVIDUAL (Passing Rate = 70%)			100

I. Application procedure:

Qualified and interested expert is requested to submit the following documentations:

- Expression of Interest Letter using document linked in below Annex I
- CV with the list of publications and brief description of relevant assignments
- Technical proposal using document linked in below Annex II

- "All inclusive" financial offer

Annex I - [Individual IC General Terms and Conditions](#)

Annex II –[OFFEROR'S LETTER TO UNDP INTEREST AND AVAILABILITY AND FINANCIAL PROPOSAL](#)

Approved by: Daniela Gasparikova, Deputy Resident Representative