

INDIVIDUAL CONSULTANT PROCUREMENT NOTICE



Date: 27 January 2015

Country: UNDP Bangkok Regional Hub - Thailand

Description of the assignment: Consultant-Analysis of legal and policy environment towards the ratification of the Marrakesh Treaty

Duty Station: Home based with no travel required

Project name: UNDP – World Blind Union Asia Pacific - UNESCAP joint project on disability rights

Period of assignment/services (if applicable): During February – June 2015

Proposal should be submitted a by email to rcb.procurement.th@undp.org no later than **10 February 2015**

Any request for clarification must be sent in writing, or by standard electronic communication to the address or e-mail indicated above. UNDP Bangkok Regional Hub 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.

- **BACKGROUND**

Access to knowledge is a human right. It is a prerequisite for achieving full human potentials and inclusive development, as it opens the door for education, employment, improved health, social and political participation, and access to justice. However, due to lack of published works in accessible formats, the right to knowledge is often highly restricted or even denied for nearly 300 million people who are blind or visually impaired as well as people with reading difficulty through other physical, learning or cognitive disabilities. Lack of equitable, timely and affordable access to written knowledge therefore further exacerbates and perpetuates challenges and rights violations faced by persons with disabilities. It ultimately hinders global effort towards inclusive development, as 90% of these “persons with print difficulties” live in developing countries.

It is estimated that less than 1% and 7% of published books in developing and developed countries, respectively, are ever made into formats accessible for persons with print disabilities such as Braille, large print or audio. One of the major factors contributing to this “book famine” has been legal barriers

to reproduction of copyrighted works in accessible formats and their cross-border dissemination. A study by the World Intellectual Property Organization (WIPO) found that only 57 countries, or less than a third of WIPO member states, had incorporated legal provisions to allow copyright limitations and exceptions for the use by persons with visual disabilities. Furthermore, such provisions do not appear to be available in most developing countries.

The perpetual “book famine” goes against the spirit of and the obligations arising from the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which has been ratified or acceded to by nearly 150 countries in the world. The importance of greater access to published works in accessible formats will become more pronounced as the world is expected to witness an increasing number of persons with print disabilities due to population ageing and rapid growth of non-communicable diseases such as diabetes, both of which increase the risk and prevalence of disabilities.

This is particularly concerning for the Asia-Pacific region, which WHO projects will record the world’s greatest number of deaths from non-communicable diseases by 2020, and where the ageing population is increasing “at an unprecedented pace”. The region is also experiencing a rapidly growing epidemic of diabetes, a leading cause of blindness, thereby likely significantly increasing the number of persons with visual impairment over years to come. Legal barriers to the export and import of accessible works, to the use of text-to-speech functions, or to the legitimate circumvention of copyright protection in digital formats for the use by persons with print disabilities also do not match the current reality of increasing global digitization.

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled was concluded in June 2013. The historic conclusion of the treaty has paved the way for an enabling legal environment to address these challenges, to mitigate the book famine for the goal of accessing “the same book, at the same time and at the same price” by persons with print disabilities, while balancing the protection of authors’ rights.

The Marrakesh Treaty strongly resonates with the principle of “leaving no one behind” and a focus on “tackling exclusion and inequality” advocated by the UN Secretary General in his 2013 report “A Life of Dignity for All,” which envisions the post-2015 development agenda. Additionally, according to a global survey “My World” on priority issues for the post-2015 period led by the UN, education has consistently topped the list. Educational opportunities for children with disabilities, which are already highly limited in developing countries, can be greatly enhanced by making educational materials available in accessible formats. Greater access to knowledge in accessible formats facilitated by the Marrakesh Treaty will therefore play a significant role in transforming these visions and aspirations into reality as the world enters the post-2015 period.

Despite these opportunities, challenges remain. The Marrakesh Treaty requires twenty countries to ratify it in order to enter into force. To date, only one country, India, has ratified it in the region. Development of an enabling environment to take full advantage of the Treaty is therefore urgently needed in the region. Several steps need to be taken, including awareness-building and policy advocacy, copyright and other law reviews and harmonization, capacity development, and greater community engagement.

To advance these works in the region, the World Blind Union-Asia Pacific, the World Blind Union – Asia Blind Union, the UNDP Asia Pacific Regional Centre, and the UN Economic and Social Commission for Asia and the Pacific (ESCAP) have initiated a joint effort. As part of the effort for evidence-informed advocacy, we are seeking a qualified legal consultant to conduct analyses of legal environment in select countries in Asia and the Pacific.

2. OBJECTIVE, SCOPE OF WORK, RESPONSIBILITIES AND DESCRIPTION OF THE PROPOSED ANALYTICAL WORK

Objective of the assignment

The overall objective of the assignment is to provide evidence and legal/policy guidance to facilitate discussions on the amendment of national intellectual property legislations and other relevant laws and policies, which are prerequisites to the ratification and effective enforcement of the Marrakesh Treaty.

Scope of Work

The consultant is expected to perform the following tasks:

- Identify and analyse national copyright and other relevant legislations such as criminal, disability, and library laws to identify specific areas for amendment, addition or removal in accordance with the Marrakesh Treaty. Countries to include are China, Cambodia, Fiji, Indonesia, Mongolia, Nepal, and Viet Nam.
- Provide case studies on how enabling legal environments were created in India (which has ratified the Treaty) and how they are being created in Mongolia and Thailand (which are in the process of legal changes and ratification). Identify which specific legal changes and processes have been made/attempted in these three countries and lessons learned for other countries.
- Produce a comprehensive report to facilitate legal and policy discussions on the Marrakesh Treaty ratification and implementation. The primary intended audience of the report are decision makers and key stakeholders including politicians, government officials including public library officials, and development partners.
- Make suggestions to enhance the quality and value of the report as necessary.
- Communicate regularly and coordinate closely with WBUAP, WBU, UNDP, and UNESCAP to discuss the progress and make adjustments as necessary.

3. REQUIREMENTS FOR EXPERIENCE AND QUALIFICATIONS

I. Academic Qualifications:

- An advanced degree in law

II. Years of experience:

- At least 15 years of professional experience

III. Language:

- Fluency in English is essential

IV. Competencies:

Functional Competencies:

- A proven track record on legal research
- Excellent writing, research and analytical skills
- A clearly demonstrated knowledge of the Marrakesh Treaty
- Experience of working with the blind community
- Strong analytical skills and ability to consolidate information from multiple sources
- Strong presentation skills

Client Orientation

- Contributing to positive outcomes for the client
- Anticipates client needs;
- Works towards creating an enabling environment for a smooth relationship between the clients and service provider;
- Demonstrates understanding of client's perspective.

Promoting Organizational Learning and Knowledge Sharing

Developing tools and mechanisms

- Makes the case for innovative ideas documenting successes and building them into the design of new approaches;
- Identifies new approaches and strategies that promote the use of tools and mechanisms.

Core Competencies:

- Promoting ethics and integrity, creating organizational precedents;
- Building support and political acumen;
- Building staff competence, creating an environment of creativity and innovation;
- Building and promoting effective teams;
- Creating and promoting enabling environment for open communication;
- Creating an emotionally intelligent organization;
- Leveraging conflict in the interests of UNDP & setting standards;
- Sharing knowledge across the organization and building a culture of knowledge sharing and learning. Promoting learning and knowledge management/sharing is the responsibility of each staff member;
- Fair and transparent decision making; calculated risk-taking.

4. DURATION OF ASSIGNMENT, DUTY STATION AND EXPECTED PLACES OF TRAVEL

Contract Duration: During February – June 2015.

Duty Station: Home based with no travel required

5. FINAL PRODUCTS

At the end of the assignment period, the Consultant is expected to have completed a report outlining the findings as per the outline below (See the Section 'Final Product's) as well as an assessment of means by which acceleration towards ratifications of the Marrakesh treaty may be achieved.

- A regional report of publishable quality, which is succinctly written in a simple language.
- At least two drafts shall be submitted before the final version and comments from reviewers adequately incorporated into the subsequent versions.
- First draft to be submitted by 15 April 2015
- The final draft to be submitted before 30 May 2015.

The final report shall be structured as follows:

- **Executive Summary and Recommendations** (approx. 3-5 pages)
- **Introduction/Background** (approx. 3-5 pages)
 - Human development impacts from lack of access to knowledge and information (e.g. poverty, education, unemployment, ill health, elevated risks in disaster situations, social exclusion, and rights violations, among others).
 - Right to knowledge as a prerequisite to inclusive development and the principle of "leaving no one behind" as advocated for by the UN Secretary General for the post-2015 development agenda; the Incheon Strategy to Make the Rights Real; the Asia Pacific Decade of Persons with Disabilities, 2013-2022; CRPD implementation, among others.
- **The Marrakesh Treaty explained** (approx. 3-5 pages)
 - Background/ Book famine
 - key provisions and expected benefits
 - necessary conditions for ratification/enforcement
- **Status of current efforts on the Marrakesh Treaty ratification in the Asia-Pacific region**
 - Background/ongoing efforts at the global, regional and national levels (approx. 3-5 pages)
 - Case studies of the countries with advanced efforts - India, Mongolia and Thailand (approx. 3-5 pages per country)

- For each country case study, address:
 - Specific legal and policy measures addressed (Provide a table illustrating how certain legal provisions and policy measures have been or are being amended/proposed).
 - Legal and policy processes involved
 - Good practices and lessons for other countries
- **Country legal review**
 - For each country (approx. 5-7 pages per country):
 - Analysis of the current legal and policy environment in light of the Marrakesh Treaty ratification and enforcement
 - Comparative lists of legal provisions and policy measures with the first column listing the current provisions; the second column listing recommended texts; and the third column providing the rationale and comments
 - Overall recommendations and conclusion
- **Ways forward** (approx. 2-3 pages)
 - Include a reference to and raise awareness for potential threats to published works in accessible formats as the result of higher standards of intellectual property protection (e.g. disallowing legitimate circumvention of the DRM technology) as part of free trade agreements outside the WTO framework such as the Trans-Pacific Partnership Agreement. Intellectual property protection beyond what is required by the WTO TRIPS agreement could also hamper access to affordable assistive technologies and devices for the blind such as Braille printers, digital readers, and screen readers.
- **Appendix**
 - The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled

6. PROVISION OF MONITORING AND PROGRESS CONTROLS

The consultant will report directly to a Policy Specialist based at the UNDP Bangkok Regional Hub.

The Policy Specialist will communicate and work closely with the consultant to ensure timely delivery and quality of expected outputs.

7. DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE PROPOSALS.

Interested individual consultant must submit the following documents/information to demonstrate your qualifications:

1. **Proposal:** Brief proposal explaining why you are the most suitable for this consultancy and confirmation on availability to take up assignment for the whole period.
2. **Financial proposal:** The financial proposal must indicate **Lump sum professional fee in USD.**
To submit Financial Proposal, please use Template of Submission of Financial Proposal provided in Annex I.
3. Personal CV and/or P.11¹ including past experience in similar projects and the name and contact details of 3 references

8. FINANCIAL PROPOSAL

Professional Fee;

The contract will be based on Lump sum professional fee

The financial proposal will specify the **Lump sum professional fee (with break down of Daily fee x number of working day) in USD.** The payments will be made to the Individual Consultant based on the completion of the deliverables indicated in the TOR. **To submit Financial Proposal, please use Template of Submission of Financial Proposal provided in Annex I.**

9. EVALUATION

The award of the contract will be made to the individual consultant whose offer has been evaluated and determined as:

- a) responsive/compliant/acceptable, and
- b) Having received the highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation.
 - * Technical Criteria weight; 70%
 - * Financial Criteria weight; 30%

Only candidates obtaining a minimum of 350 technical points would be considered for the Financial Evaluation

Criteria	Weight	Max. Point
<u>Technical</u>	70%	500
• Experience related to services	50	250
• Written proposal/test AND/OR interview result	20	100
• Expertise & Availability	30	150
<u>Financial</u>	30%	100

¹ UNDP P.11 Form can be downloaded from

http://www.undp.org/content/dam/undp/library/corporate/Careers/P11_Personal_history_form.doc

ANNEXES

**ANNEX I – TEMPLATE FOR OFFEROR’S LETTER TO UNDP CONFIRMING INTEREST AND AVAILABILITY
FOR THE INDIVIDUAL CONTRACTOR (IC) ASSIGNMENT AND SUBMISSION OF FINANCIAL PROPOSAL**

ANNEX II - INDIVIDUAL CONSULTANT GENERAL TERMS AND CONDITIONS