**TERMS OF REFERENCE**

|  |  |
| --- | --- |
| Service | Study on the right of access to justice and legal services for international migrant workers and their family members in conformity with international standards |
| Consultancy | One national consultant – team leader (20 working days)  One international consultant – senior expert (12 working days)  One national consultant – team member (24 working days) |
| Duty station | Hanoi and home based |
| Expected Duration | From November to February 2021 |
| Supervision | The consultants will work closely with the Program Officer in charge at the UNDP Governance and Participation Unit and the Legal Department (LD) of Ministry of Labour, Invalids and Social Affairs (MOLISA) |

* **BACKGROUND**

### International migration is likely to increase in the twenty-first century for reasons that range from persistent demographic and economic [inequalities](https://www.sciencedirect.com/topics/economics-econometrics-and-finance/inequality) to revolutions in communications and transportation that increase mobility. It is in large part related to the broader global economic, social, political and technological transformations that are affecting a wide range of high-priority policy issues. Labor movement is considered an activity promoting socio-economic development, economic restructuring, job creation, poverty reduction. However, migration also creates elements of vulnerability for workers and families, including difficulty in accessing services to protect their rights and interests.

### In 1990, the United Nations adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). This Convention guarantees the rights of migrant workers and their family members comprehensively and fully on the civil, political, labor, economic, and social rights migrant workers. This Convention is considered a declaration on the human rights of migrant workers and their family members. The International Labor Organization (ILO) has adopted two conventions on migrant workers, including the Convention No. 97 - Migration for Employment Convention in 1949 and the Convention No. 143 on migration in abusive conditions and on promotion of equal of opportunity and treatment of migrant workers in 1975.

### According to the Department of Overseas Labour, MOLISA (2019), the number of Vietnamese working abroad has recently been on a sharp rise. In 2018, more than 142,000 workers went abroad through formal channel, including 50,000 female workers[[1]](#footnote-1). They have been faced with many difficulties and challenges, particularly in accessing to justice and legal services as well as to other social services.

### In addition, foreigners entering Vietnam to work and study also tend to increase, with over 80,000 foreign workers up to now (the Department of Employment, MOLISA, 2018). This poses many challenges for Vietnam as there is a lack of close, timely and comprehensive coordination in managing foreign labourers among local authorized agencies while violations have not been strictly handled.

### Vietnam is working on a proposal to amend the 2013 Law on Employment, the 2014 Law on Social Insurance and the 2006 Law on Sending Vietnamese Workers to Work Abroad under Contracts and to prepare research for the ratification of the ICRMW.

### To ensure that the rights of international migrant workers and their families, especially their right of access to justice and legal services be protected, under the Justice and Legal Empowerment Programme funded by the European Union (EU JULE), the United Nations Development Programme (UNDP) and the Legal Department of the Ministry of Labour, Invalids and Social Affairs (MOLISA) commission a study to assess the compatibility of Vietnamese laws and practices with international standards on the right to access to justice and legal services for international migrant workers and their family members.

### This term of reference is to commission a research team of two national consultants and one international consultant to conduct the study, with specific objectives and deliverables described hereinbelow.

* **OBJECTIVES OF THE ASSIGNMENT**

To review and evaluate the policies and legal framework of Vietnam to ensure the rights of international migrant workers and their family members, especially their right to access to justice and legal services in conformity with international standards; and to analyse the applicable possibility of these international standards in Viet Nam.

* **SCOPE OF WORK**

The activity will be carried out by 02 national consultants and 01 international consultant commissioned by UNDP in cooperation with the MOLISA Legal Department. The consultants will work together as a team. The Legal Department, MOLISA will support the consultants to conduct the study.

1. National consultant – Team leader (20 working days):

*General tasks (1 day):*

* Take ultimate responsibility for the study;
* Take the lead in technical discussions and responsibility for the whole process of the assignment with UNDP and the Legal Department of MOLISA;
* Cooperate closely with the research team members, the Legal Department of MOLISA and UNDP during the process of completing the assignment;

*Specific tasks (19 days):*

|  |  |  |
| --- | --- | --- |
| No | Tasks | Time allocation |
|  | Draft and revise the outline of the report; share the drafts timely for inputs/comments; | 2 |
|  | * Using the analysis prepared by the national team member on Vietnamese policies and legal framework on protecting the rights of international migrant workers and their family members, especially their right to access to justice and legal services to make comparison to international standards provided by the international consultant; * Using the analysis prepared by the international consultant to analyse Vietnamese legal framework, identify legal gaps and recommendations * Using the analysis on best practices prepared by the international consultant, propose lessons for Viet Nam; | 5 |
|  | Develop the draft report based on the inputs from other consultants; share the draft report with UNDP and the Legal Department MOLISA; Incorporate inputs from UNDP and the Legal Department MOLISA; | 6 |
|  | Prepare and deliver presentations on the draft report at the seminar to consult with relevant agencies on the draft report, which will be organized by the Legal Department MOLISA;  Discuss with the international consultant and the team member to finalize the report | 2 |
|  | Finalize the report in both Vietnamese and English to submit to UNDP and the Legal Department MOLISA based on the inputs from consultants and the workshop participants.  Ensuring high quality of the entire the Study for publishing; | 4 |
|  | **Total** | **19 days** |

1. National consultant – Legal expert (24 working days):

General tasks (1 day):

* Work closely with team leader; stay in close touch with the Legal Department MOLISA and UNDP during the process of completing the assignment.

*Specific tasks (23 days):*

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| --- | --- | --- |
| No | Tasks | Time allocation |
|  | Desk review related research, legal documents on the topic | 5 |
|  | Provide inputs/comments to the report outline prepared by the team leader | 1 |
|  | Conduct an analysis of Vietnamese policies and legal framework to protect the rights of international migrant workers and their family members, especially their right to access to justice and legal services; | 4 |
|  | Develop and finalise the interview questionnaire based on the inputs from the national-team leader, UNDP and the MOLISA Legal Department; | 2 |
|  | Facilitate one group discussion, which will be organized by the MOLISA Legal Department to collect information and data from target groups, including: (1) representatives of relevant functional government agencies, and (2) representatives of organizations/groups or associations working on international migrant workers  Conduct interviews with respondents at the group discussion to collect information and data, including: (1) representatives of relevant functional government agencies, and (2) representatives of organizations/groups or associations working on the migrant issues;  Analyse information and data collected from the group discussion and interview results and share with the team leader | 5 |
|  | Provide inputs/comments to the draft report; | 2 |
|  | * Attend the seminar to consult with experts on the draft report, which will be organized by the MOLISA Legal Department; deliver brief presentation to summarize pre-workshop feedback on the draft report and responses; document all feedback and share with consultant team * Discuss with the international consultant and the team member to finalize the report | 2 |
|  | Work with the team leader to incorporate feedback into the draft report and finalize the report; | 2 |
| **Total** | | **23 days** |

1. International consultant – Senior legal expert (12 working days):

The international consultant is expected to collaborate with the national consultants in the following tasks:

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| --- | --- | --- |
| No | Tasks | Time allocation |
|  | * Conducting an overview of ICRMW and its substantive articles, and related General comments focusing on analyzing rights of migrant worker and their family members under the ICRMW’s, highlighting the rights to access to justice and legal services; * Analyzing ICRMW’s requirements for the state members (procedure provisions, focusing on the obligation of States parties under the articles of the Convention, reporting procedure, the process and working methods of the CMW Committee...) * Providing substantive information on the status of ratification, drawing experiences from 03 countries with clear reasons for selection. Special focus should be given to countries that have similar justice system with Viet Nam; * Sharing above deliverables with the national consultant team | 5 |
|  | Providing inputs to the report outline; providing inputs to the draft report prepared by the team leader before the consultation seminar; | 2.5 |
|  | Attending the seminar on the draft of the report (remotely) and presenting results of the analysis mentioned above  Attending the meeting with the national team after the consultation seminar to finalize the report (virtually) | 1.5 |
|  | Editing/proofreading the final English report prepared by the national consultants. | 3 |
|  | **Total** | **12 days** |

* **METHODOLOGY**

The methodology for the study should include:

* A desk review on the right of international migrant workers and their families, including the rights of access to justice and legal services according to international standards.
* Qualitive data collection through focus group discussions and interviews with representatives of agencies working on migrant issues.
* **FINAL PRODUCTS**

01 study report with maximum 10,000 words (equivalent to 20-25 pages) excluding annexes, with one version in Vietnamese and one version in English, following the following suggested outline:

* An executive summary of 1500 words max (highlighting key findings, research methodologies and purposes);
* Analysis of the ICRMW and related international standards on protecting the rights of international migrant workers and their family members; status of ratification of the ICRMW and requirements for state members; contexts for implementation of these standards in 03 selected countries and recommendations for Viet Nam
* With reference to international standards, reviews and assessment of Viet Nam’s policies and legal framework on protecting the right of international migrant workers and their family member, including the right to access to justice and legal services;
* Identification of challenges arising from the implementation of legal regulations in Viet Nam;
* Concrete evidence-based policy recommendations to improve law and strengthen law enforcement in Viet Nam.
* **DURATION OF ASSIGNMENT, DUTY STATION AND EXPECTED PLACES OF TRAVEL**

The assignment is expected to last for less than 6 months.

The consultants shall work as a team on this assignment and deliver final outputs as described in Section 5 above.

Duty station: For national consultants: Hanoi and home based

For international consultant: Home based

The contract becomes effective upon both parties signing the contract. The consultants are expected to provide services specified in this TOR from November 2020 to February 2021. The team, in collaboration with the the Legal Department (MOLISA) and UNDP Vietnam, shall deliver the deliverables as below:

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| --- | --- | --- | --- |
| **Outputs** | **Descriptions** | **Expected Results** | **Deadlines** |
|  | Submission of the work plan and outline | Approved workplan, outline | First week of November 2020 |
|  | Analysis of the Vietnamese policies, legal framework on protecting the right of international migrant workers and their families, especially the right to access to justice and legal services | A 5-page note of the analysis and initial findings | Second week of November 2020 |
|  | Analysis rights of migrant worker and their family members under the ICRMW’s and related General comments, focusing on the rights to access to justice and legal services (Substantive Provisions);  Analysis ICRMW’s requirements for the state members (procedure provision, including reporting, implementation mechanism...)  Substantive information about the status of ratification, drawing experiences from 03 countries with clear reasons for selection. Special focus should be given to countries that have similar justice systems with Viet Nam; | A 10-page note of the analysis and initial findings | Last week of November |
|  | Questions for focus group discussions and interviews; conducting interviews and focus group discussions to collect information and inputs from relevant stakeholders | Approved questions; | Last week of November 2020 |
|  | First draft of the report using results of desk review and data collected from the interviews | Draft report | Last week of December 2020 |
|  | Presentation of findings from the draft study report at a consultative seminar | PowerPoint presentations | Second week of January 2021 |
|  | Final study report based on the comments from UNDP and consultation seminar | Final report for proofreading | Last week January 2021 |
|  | Final edited report in English and Vietnamese | Approved report | Last week of February 2021 |

* **DEGREE OF EXPERTISE AND QUALIFICATIONS**

**National consultant – team leader**:

* Advanced degree in law;
* Proven track record of conducting research and data analysis
* A minimum of 20 years working experience in the area of law. Experience on assessment of legal framework is preferable;
* Demonstrated excellent knowledge and experience in the field of human rights, especially core UN conventions on human rights;
* Excellent writing skills in both Vietnamese and English languages; one writing sample in English and one in Vietnamese to be submitted;
* Working experience with government officials and international organizations preferred.

**International technical consultant**

* Advanced degree in law, social sciences or related fields;
* Excellent knowledge and experience in the field of human rights, especially in the rights of migrant workers and their family and ICRMW reporting;
* Sound understanding and working experience with international human rights mechanisms and instruments;
* Proven experience in working with other countries on ICRMW reporting;
* Excellent writing skills in English language; two writing samples in English to be submitted;
* Proven experience working with governments, inter-governmental organisations, the UN system and international and regional development partners;
* Knowledge about the Vietnamese context is an advantage;

**National consultant – team member:**

* Advanced degree in law;
* Knowledge about and 7 years of work experience (minimum) in the areas of law and/or human rights and UN’s core human rights conventions;
* Proven track record of conducting research and data analysis, with providing one writing sample in Vietnamese;
* Working experience with government officials, non-government organisations and international organizations
* **REFERENCE DOCUMENTS AND ADMINISTRATIVE SUPPORT**
* The MOLISA Legal Department will share available data reports and research with the consultant team
* UNDP will support the assignment through providing letters of introduction, coordinating the team to work with the MOLISA Legal Department and the international consultant. However, all administrative support required for this assignment (including interpretation, translation of the report into Vietnamese/English, translation of the questionnaire into Vietnamese/English, etc.) must be provided by the contractors except as otherwise agreed between UNDP and the consultants.
* The MOLISA Legal Department will organize two group discussions and support the national consultants to conduct focus group discussions, interviews and connect them with relevant stakeholders where possible.

* **CONTRACT PAYMENTS**
* 50% of the contract value will be paid after UNDP receives and verifies outputs 1, 2, 3, 4, 5 for both national consultants and International consultant;
* 50% of the total contract value will be paid after UNDP receives and verifies all remaining deliverables.
* **EVALUATION CRITERIA**

***National consultant – Team leader:***

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| --- | --- | --- | --- | --- |
| **Consultant(s)’ experiences/qualification related to the services** | | | | |
| 1.1 | Advanced degree in law; | | | 200 |
| 1.2 | Proven track record of conducting research and data analysis  A minimum of 20 years working experience in the area of law. Experience on assessment of legal framework is preferable;  Demonstrated excellent knowledge and experience in the field of human rights, especially core UN conventions on human rights; | | | 500 |
| 1.3 | Excellent writing skills in both Vietnamese and English languages; one writing sample in English and one in Vietnamese to be submitted;  Working experience with government officials and international organizations | | | 300 |
| Total |  |  |  | 1000 |

***International consultant****:*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Consultant(s)’ experiences/qualification related to the services | | | | |
| 1.1 | Advanced degree in law, social sciences or related fields; | | | 200 |
| 1.2 | Excellent knowledge about and experience in the field of human rights, especially in the rights of migrant workers and their family and ICRMW reporting;  Sound understanding of and working experience with international human rights mechanisms and instruments;  Proven experience in working with other countries on ICRMW reporting; | | | 400 |
| 1.3 | Excellent writing skills in English language; two writing samples in English to be submitted; | | | 300 |
| 1.5 | Proven experience working with governments, inter-governmental organisations, civil society, academics, UN system and international and regional development partners  Knowing about the Vietnamese context is an advantage | | | 100 |
| Total |  |  |  | 1000 |

***National consultant – team member***:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Consultant(s)’ experiences/qualification related to the services | | | | |
| 1.1 | Advanced degree in law | | | 200 |
| 1.2 | Good knowledge about and 7 years of work experience (minimum) in the areas of law and/or human rights and UN’s core human rights conventions; | | | 500 |
| 1.3 | Proven track record of conducting research and data analysis with providing one writing sample in Vietnamese; | | | 200 |
| 1.4 | Working experience with government officials, NGOs and international organizations | | | 100 |
| Total |  |  |  | 1000 |

1. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro bangkok/documents/genericdocument/wcms\_614384.pdf [↑](#footnote-ref-1)