



International Labour Organisation (ILO)

Request for Proposals (RFP): CONDUCTING A LEGAL GAP ANALYSIS ON ESWATINI'S OCCUPATIONAL SAFETY AND HEALTH LEGISLATION AGAINST ILO'S C155- OCCUPATIONAL SAFETY AND HEALTH CONVENTION, 1981 (NO. 155), P155- PROTOCOL OF 2002 TO THE OCCUPATIONAL SAFETY AND HEALTH CONVENTION, 1981, AND C187- PROMOTIONAL FRAMEWORK FOR OCCUPATIONAL SAFETY AND HEALTH CONVENTION, 2006 (NO. 187)

The ILO DWT/CO in Pretoria requests any interested Individual National or International Consultant (External Collaborator) to submit a **technical and financial proposals** (including CVs) to undertake the above assignment.

Deadline: 11 February 2023 at 23:59 South African Standard Time and proposals should be sent to the following email: lpc_pry@ilo.org

TERMS OF REFERENCE

1. INTRODUCTION

The Constitution of Eswatini is the legal basis for subordinate statutes e.g. the Occupational Safety and Health Act No.9 of 2001 provides for the safety and health of persons at work, including plant and machinery use. Whilst the legislation contains several positive elements, several gaps continue to exist. A situational analysis into the national OSH system and infrastructure that culminated in a National OSH Profile launched in 2021 identified several policy gaps and proposed for the development of a National OSH Policy, the review of the OSH Act of 2001, and ratification of C155 and C187.

The Constitution of Eswatini provides a firm and progressive basis for engendering OSH legislation in the country. Consequently, some of the legislation on OSH attempts to address gender in the workplace. Despite efforts made at engendering OSH in legislation, a lot still requires to be done to ensure that OSH legislation is sufficiently responsive to gender issues. The Occupational Safety and Health Act needs to provide a broad basis upon which to deal with gender issues such as ergonomic

designs of workstations and exposure to some chemicals that can have adverse effects on expectant mothers and the unborn.

The Kingdom of Eswatini is in the process of developing a national OSH policy through which gender responsive preventive and control measures will be operationalized. The draft National OSH policy that now awaits Cabinet approval will seek to promote equal treatment, non-discrimination, and vulnerability reduction through OSH, and to prevent, identify and manage all forms of harassment in the workplace.

Considering the recent inclusion of OSH amongst the 4 Fundamental Principles and Rights at Work, coupled with the designation of Occupational Safety and Health Convention, 1981 (No. 155) and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) as fundamental conventions, the Government of Eswatini has laid priority to instituting legislative reforms to ensure their better alignment to these Conventions, and towards their possible ratification. Furthermore, considering the proposed abrogation of the Underground Work (Women) Convention, 1935 (No. 45), the ILO Governing Body, at the recommendation of the Standards Review Mechanism Tripartite Working Group, has requested the Government of Eswatini to consider ratifying related up-to-date Conventions. To close the gap in protection upon the abrogation of C45, Eswatini is requested to consider ratifying the Occupational Safety and Health Convention, 1981 (No. 155) and its Protocol of 2002, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) among others.

A detailed Legal Gap Analysis of law and practice in Eswatini in respect of Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) is required to provide information to government and social partners on gaps between existing national legislations, regulations, policies and programmes, and the requirements of ILO OSH Conventions. The key element of the Gap Analysis is to strengthen the alignment of national laws and regulations with ILO OSH instruments, and to support national efforts towards ratifying the ILO OSH Conventions. This analysis will provide empirical evidence on the capacity of the country to ratify key international instruments on OSH. The analysis will focus on the Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

2. OBJECTIVES

The Objective of this consultancy is to conduct a gap analysis of Eswatini law and practice in respect of Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), to inform legislative reform for OSH, including the review of the OSH Act, as well as to ascertain readiness to ratify the two Core Conventions. The analysis will provide information on gaps between existing national legislations, regulations, policies and programmes, and the requirements of Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

This work will seek to do the following:

a) review provisions of the OSH Act of 2001 and supporting regulatory framework, including but not limited to Machinery and Construction Works Act, No. 17 of 1972 and accompanying regulations; Employment (Amendment) Act 1985. No. 4, as well as the Workmen's Compensation Act, No.7 of 1983, and its accompanying regulations; to assess the extent to which they reflect the principles and

provisions of Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187);

b) identify whether and how existing laws and regulations and practice or changes to law reflect and comply with the provisions of Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187);

c) Provide clear recommendations to the Ministry of Labour & Social Security (MoLSS) and other concerned national government entities on how to improve the national legal framework by aligning them with Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); and

d) improve the understanding of the Government and the Social Partners in terms of the requirements of international labour standards on OSH, namely Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

3. METHODOLOGY

The consultancy assignment will identify and collect all existing relevant national legislation and regulations in. The work should include an in-depth comparative analysis of the collected material with Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and identification of legal and policy gaps. The analyses of national legislation should reflect the current situation of the country. The analysis will be qualitative in nature and will use both primary and secondary data. Primary data will be collected through key informant interviews and focus group discussions. Secondary data will be gathered through desk review and inventory of existing OSH legislation, policies and programs including those implemented by government agencies outside the MoLSS.

This consultancy will use the following methods:

Desk Review.

The desk review shall determine the extent to which national laws and regulations and other measures meet the requirements of Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). Using ILO provided Support Kit and the accompanying Checklists, the Individual Consultant will undertake a desk review to determine:

a) The type and scope of existing legislation, strength and critical gaps that exist in the legislative frameworks regarding workers' safety and health in the workplace, including:

- enforcement of OSH law through an adequate and appropriate labour inspection system;
- provision of guidance and information on OSH at all levels of society, and with employers and workers;
- protection of workers, particularly young workers, from workplace hazards including situations presenting imminent and serious danger;

- transposition of national OSH policy into action at the enterprise level;
 - the duties and responsibilities of employers and the rights and duties of workers, as well as the cooperation and collaboration required to ensure a safe and healthy working environment; and
 - the requirements and procedures for the recording and the notification of occupational accidents, occupational diseases, dangerous occurrences, commuting accidents and suspected cases of occupational diseases.
- b) The responsible agencies and organizations for the implementation of each of these laws and regulations.
- c) The relevant key stakeholders and their roles in driving OSH compliance.

Gap Analysis

The analysis will use 12 Checklists as contained in the [ILO's Support Kit for Developing Occupational Safety and Health Legislation](#), illustrating:

a) The extent to which the law or practice in the country already meets the requirements and aligns with provisions of Occupational Safety and Health Convention, 1981 (No. 155), its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

b) In the case of finding gaps or inconsistencies:

- The extent to which national law or practice can be adjusted, and
- The provisions of Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) for which such adjustment would be difficult and justification thereof.

4. TIMELINES AND EXPECTED OUTPUTS/ DELIVERABLES AND TIMELINES

The Individual Consultant will abide to the timelines suggested below:

	Task	Number of contract days	Delivery date
1	Compiling the inception report with list of relevant stakeholders, workplan with timelines and suggested data collection tools.	5	6 March
2	Conducting desk review	7	16 th March
3	Conducting stakeholder interviews	10	12 th April
4	Compiling the draft gap analysis report	10	28 April
5	Incorporating suggestions from the Ministry and the ILO if any	3	15 th May
6	Presenting the gap analysis findings (PPT) to stakeholders (1 x validation meeting)	1	23 rd May
7	Finalizing the Gap Analysis report with recommendations (incorporating suggestions from stakeholder validation meeting)	2	30 May
Total contract days		38	

The Individual Consultants will produce the following outputs:

- a) A detailed inception report.
- b) A Draft Gap Analysis Report and PowerPoint Presentation for stakeholder validation workshop.
- c) A Gap Analysis validation meeting report with attendance registers.
- d) A validated Gap Analysis Report not exceeding 45 pages (as per Annex A) and appended Gap Analysis Checklists.

5. REPORTING

The Gap Analysis Report will be **in accordance with Annex A** in this Terms of Reference with recommended Checklists as annexes. The report will:

- a) describe existing national policies and legislation relating to OSH
- b) highlight existing legal, policy and institutional gaps and needs vis-à-vis provisions by Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and
- c) provide prioritized recommendations on the best strategies and interventions for harmonization of national law, policies, and relevant OSH frameworks with provisions by Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

6. REQUIRED SKILLS AND EXPERIENCE

6.1 An Individual Consultant must demonstrate or provide evidence of meeting the following minimum requirements:

- a) University degree in Occupational safety and health, or Environmental/public health or related field. University degree or diploma in Labour law will be an added advantage.
- b) At least 5-7 years of professional experience in Occupational Safety and Health, preferably at national level or in at least three different sectors.
- c) Compiled at least 1 legislative gap analysis or national system profiling against ILO instrument/s. Experience in labour law and legislation drafting will be an added advantage.
- d) At least 3 years of experience in working with government, and workers' and employers' organizations.
- e) Understanding of ILO Conventions and Recommendations on Occupational Safety and Health.
- f) Excellent writing, communication, and presentation skills.
- g) Experience in designing, organizing, and facilitating workshops, consultations, meetings, fora and focus group discussions.
- h) Ability to work in team and provide team leadership.

6.2. An Individual Consultant must:

- i) Be available to complete the assignment withing proposed timelines.
- j) Not be conflicted, in any form, to conduct this consultancy or part thereof.

7 REFERENCES/ RECOMMENDED READINGS

- a) Occupational Safety and Health Convention, 1981 (No. 155)
- b) Occupational Safety and Health Recommendation, 1981 (Recommendation No. 164)
- c) Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187),
- d) Occupational Health Services Convention, 1985 (No. 161)
- e) Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (No. 155)
- f) Violence and Harassment Convention, 2019 (No. 190)

- g) International Labour Conference 98th Session, 2009, Report III (Part 1B): General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981,
- h) Reports of the Committee of Experts on the Application of Conventions and Recommendations
http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_103485.pdf
- i) International Labour Conference, 106th Session, 2017, Report III (Part 1B): General Survey on the occupational safety and health instruments concerning the promotional framework, construction, mines and agriculture: Occupational Safety and Health Convention (No. 187), and Recommendation (No. 197), 2006; Safety and Health in Construction Convention, 1988 (No. 167), and Recommendation (No. 175), 1988; Safety and Health in Mines Convention (No. 176), and Recommendation (No. 183), 1995; Safety and Health in Agriculture Convention (No. 184), and Recommendation (No. 192), 2001;
- j) Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22, 23 and 35 of the Constitution), https://www.ilo.org/wcmsp5/groups/public/--ed_norm/---relconf/documents/meetingdocument/wcms_543647.pdf
- k) 10 Keys for Gender Sensitive OSH Practice – Guidelines for Gender Mainstreaming in Occupational Safety and Health, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/--protrav/---safework/documents/publication/wcms_324653.pdf
- l) The informal economy and decent work: a policy resource guide, supporting transitions to formality, https://www.ilo.org/emppolicy/pubs/WCMS_212689/lang--en/index.htm
- m) Managing Work-related Psychosocial Risks during COVID-19 Pandemic, https://www.ilo.org/global/topics/safetyand-health-at-work/resources-library/publications/WCMS_748638/lang--en/index.htm
- n) National OSH Act of 2001 and other relevant national legislation, such as Machinery and Construction Works Act, No. 17 of 1972 and accompanying regulations; Employment (Amendment) Act 1985. No. 4, Workmen’s Compensation Act, No.7 of 1983, and its accompanying regulations; Mines and Minerals Act, 2011, Mines, Works, and Machinery Act, 1960, and accompanying regulations, Explosives Act, 1961, and accompanying regulations, Construction Industry Council Act, No. 14 of 2013, the Building Act, No. 34 of 1968, the Public Health Act, 1969, and the Environment Management Act, No. 5 of 2002.
- o) National OSH Profile
- p) Draft National OSH Policy
- q) Any other relevant document

8 SUBMISSION AND INQUIRIES

The submission should include a **financial proposal** with a detailed breakdown of expenses (travel expenses as applicable, daily consultancy rate, etc.), and be sent to the lpc_pry@ilo.org (lpc **underscore** pry), no later than **11th February 2023**.

Annex "A"

RECOMMENDED STRUCTURE OF GAP ANALYSIS REPORT

The analysis report shall comprise of:

Background (4-5 pages)

- a general description of the current OSH system or OSH organizational structure in the country, in accordance with Article 4 of Convention 187. Including the following:
 - 1. Institutional framework
- The national report should feature an institutional organogram displaying all public authorities and bodies involved in designing and enforcing legislation and regulations on OSH (e.g., ministries with competences on OSH, Labour Inspectorate, National tripartite advisory body addressing OSH issues, National Research Institute on OSH, etc), including a summary of their role.
- 2. Legislative framework
- The national report should map and provide a detailed description of the current and updated legal OSH framework. This includes:
- Non-exhaustive list of legal instruments applicable to OSH:
 - Ratified ILO Conventions
 - Occupational Safety and Health Requirement in the Constitution
 - Legislation System of Occupational Safety and Health
 - Major OSH Laws
 - Major OSH Regulations
 - State-level Regulations and Departmental Rules
 - OSH Standards
 - Application of the ILO Occupational Safety and Health Codes (if and when implemented)
 - Technical standards, codes of practice and guidelines on OSH
 - Relevant collective agreements containing provision on OSH
 - Other

Statement of objectives & Methodology (1-2 pages)

- To assess whether existing legislation, policies and institutional frameworks meet the requirements of ILO standards: Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).
- To provide recommendations on the revision of national legislation, policies, and institutional frameworks to meet the requirements of ILO standards: Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Protocol of 2002, and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

Findings (30-35 pages)

- a thorough gap analysis of the existing legislation, policies, and institutional frameworks pertinent to OSH and the working environment and recommendations for improving these, including as relevant references to the comments by the Committee of Experts on the Application of Conventions and Recommendations about the Eswatini, if any;
- a special section devoted to all relevant legal, policy and regulatory provisions directed to enhancing workplace safety and health for working men and women;

- special consideration of the state of national OSH compliance including problems with implementing, enforcing, and monitoring of OSH related laws.

Recommendations (4-7 pages)

- specific prioritized recommendations on the necessary steps (legal, policy, regulatory and institutional) to strengthen the national OSH system to bring it into harmony with ILO OSH conventions, particularly but not limited to proposals for new labour legislation.

Annexes

- Gap analysis Checklists
- Inventory of tools used
- List key informants consulted
- Lists and copies and/or links to documents consulted

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