



ILO Country Office for Zimbabwe and Namibia

**Call for Proposals for Individual Consultant to
CONDUCT A LEGISLATIVE GAP ANALYSIS AGAINST ILO'S KEY CONVENTIONS ON
OCCUPATIONAL SAFETY & HEALTH (OSH) AND DEVELOP AN OSH BILL FOR NAMIBIA**

A. Background

The Namibian Constitution is the supreme law of the country that guarantees the fundamental rights of all the legitimate citizens. Article 95 of the Namibian Constitution provides specifically for the adoption of policies aimed at:

- a) *Enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizen are not forced by economic necessity to enter vocations unsuited to their age and strength;*
- b) *Active encouragement of the formation of independent trade unions to protect workers' rights and interests, and to promote sound labour relations and fair employment practices; and*
- c) *Membership of the International Labour Organization (ILO) and, where possible, adherence to and action in accordance with the International Conventions and Recommendations of the ILO".*

The Constitution is the legal basis for subordinate statutes e.g. Labour Act, which makes provision for the health, safety and welfare of employees. Therefore, Chapter 4 of the Labour Act 2007 (Act No: 11 of 2007) and the Regulations Relating to the Health and Safety of Employees at Work, made under the Labour Act, 1992 (Act 6 of 1992) compels employer to provide a safe and healthy working environment to employees. Whilst the legislation contains a number of positive elements, a number of gaps continue to exist.

The Situational Analysis on OSH conducted in 2014, profiled numerous gaps and challenges within OSH system particularly on the legislation framework. Among the challenges identified is the absence of the primary (stand-alone) OSH statute that can strengthen OSH enforcement in the country. A detailed Legal Gap Analysis 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 to ratify ILO OSH Conventions.

The impacts of the current COVID-19 pandemic have not spared Namibia's labour and employment market. In addition to lack of elaborated regulations or guidelines on hazardous biological agents and psychosocial risks, limited extension of OSH inspectorate functions to vulnerable sectors, such as the healthcare and informal economy, hamstrung the pace of interventions to mitigate COVID-19, as an OSH crisis. In March 2020, the government passed the State of emergency- COVID-19 Regulations, later amended by COVID-19 Regulations: Amendment (Proclamation 13 of 2020) on 17 April 2020. Subsequently in April 2020, the Labour Directives relating to the Covid-19: State of Emergency - Covid-19 Regulations (GN No. 110 of 2020). The Labour Directives prescribe the employer's duty to ensure prevention of the further spreading of COVID-19 in the workplace, the employee's right to leave the place of work deemed dangerous because of COVID-19 and employee's compensation benefits for occupationally acquired COVID-19 or COVID-19 related post-traumatic stress disorder. The specific guidelines "Workplace

Preparedness - Return Namibia to Work -COVID-19 were developed to facilitate a safe return to work.

Standards and guides toward improving national OSH legislation are found in over 40 international labour standards specifically dealing with OSH, including the newly adopted Violence and Harassment Convention, 2019 (No. 190), as well as over 40 Codes of Practice. The ILO provides these standards as essential tools for governments, employers, and workers to establish preventive practices and to provide for maximum safety at work. Three conventions define the fundamental OSH principles: Convention No. 155 (Occupational Safety and Health Convention, 1981), Convention No. 161 (Occupational Health Services Convention, 1985), and Convention No. 187 (Promotional Framework for Occupational Safety and Health Convention, 2006).

Occupational Safety and Health Convention, 1981 (Convention No. 155) was adopted during the 67th International Labour Conference (ILC) session on 22 June 1981. The Convention aimed at ensuring that the scope of national policy, law and practice in the area of OSH is as broad and comprehensive as possible, and applies to all branches of economic activity and to all workers in these branches. The Convention requires ratifying member states to take action to formulate and implement a coherent national policy on occupational safety, occupational health and the working environment. The policy shall aim to prevent occupational accidents and diseases, and continuously improve the working environment. It emphasizes the review of the national OSH situation to identify major problems, evolve effective methods for dealing with them and priorities for action, and evaluate results. The Convention requires the member state's action to address institutional responsibilities and cooperation to implement the national OSH policy to fulfil the complementary functions of administration and enforcement, consultation, coordination and cooperation, and knowledge generation and dissemination.

Similarly, *Occupational Safety and Health Convention, 2006 (Convention No.187)* requires ratifying member states to take action to formulate and implement a coherent national policy on occupational safety, aiming at prevention of occupational accidents and diseases, and to continuously improve the working environment.

A substantial part of the provisions of the Convention No 155 deal with the transposition of the national policy into action at the enterprise level and, in particular 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. The employer is required to ensure that, as far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.¹

Protocol of 2002 to the Occupational Safety and Health Convention, 1981 was adopted during the 90th ILC session on 20 June 2002 to supplement Article 4 of the Occupational Safety and Health Convention, 1981. This focuses particularly on the establishment and application of procedures for the notification of occupational accidents and diseases, by employers and, when appropriate, insurance institutions and others directly concerned, and the production of annual statistics of occupational accidents and diseases. The Protocol also requires ratifying Member States to publish annual representative statistics concerning occupational accidents, occupational diseases

¹ 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, Report 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

and, as appropriate, dangerous occurrences and commuting accidents, as well as the analyses thereof.

The purpose of the Protocol is to harmonize systems for the recording and notification of occupational accidents and diseases², and establish and periodically review requirements and procedures for the recording and the notification of occupational accidents, occupational diseases and, as appropriate, dangerous occurrences, commuting accidents and suspected cases of occupational diseases.³

The fundamental goals of the instruments under consideration are to prevent the occurrence of occupational accidents and diseases and to establish an increasingly safe and healthy working environment through progressive concerted action, both at the national and enterprise levels, with the full involvement of all stakeholders. These international standards constitute a blueprint for setting up and implementing national OSH systems that are comprehensive and adaptable to national conditions. Furthermore, the strategy advocate for calls of action in four main areas:

1. The formulation, implementation and periodical review of a national OSH policy expressing the political will to undertake comprehensive and coherent regulatory, enforcement and promotional action in this area;
2. The promotion of social dialogue through the full participation, collaboration and cooperation at all levels of employers, workers and their respective organizations, as well as other stakeholders;
3. The definition of the respective functions, responsibilities, rights and duties of the social partners; and,
4. The development and dissemination of knowledge, education training measures and of information.⁴

The consideration of gender dimensions of OSH, as well as the OSH needs for the workers in SMEs and informal economy has become pertinent. As stated by the ILO in its 2002 report on Decent work and the informal economy, "to address more fully the decent work deficits in the informal economy, it is necessary to extend basic minimum standards on substantive matters, such as conditions of work, safety and health and income security, as well as basic rules for fair treatment, for example with regard to job security and vulnerable groups".

Despite tripartite recognition that OSH is a critical concern and that Namibia needs to establish sound regulations, policies and programmes that strongly align with the ILO OSH Conventions to ensure all working men and women are protected in their workplaces, the country has yet to ratify any of the three key OSH conventions. Efforts to integrate ILO standards on OSH into national legislation are limited to the ratification of Convention No. 81 or the Labour Inspection Convention, 1947.

It is in this context that the Gap Analysis of key ILO Conventions relating to OSH vis-a-vis the country's OSH regulations, policies and programs, is to be conducted. 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 C155 -- Occupational Safety and Health Convention, 1981, and P155 -- Protocol of 2002 to the Occupational Safety and Health Convention, 1981, Convention No. 187

² Establishing comparable statistics through unified international classification schemes for compiling of statistics on occupational accidents and diseases

³ 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, Report 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

⁴ Ibid.

(Promotional Framework for Occupational Safety and Health Convention, 2006), and Convention No. 161 (Occupational Health Services Convention, 1985). It will also provide information required for the development of OSH Bill.

B. Objectives

The Objective of this consultancy is to conduct an OSH legal gap analysis, and then progressively to develop the OSH Bill. The review will provide information on gaps between existing national legislations,⁵ regulations, policies and programmes, and the requirements of ILO Conventions No. 155⁶ and the Protocol of 2002 to Convention No. 155, Convention No. 187 of 2006, and Convention No. 161 of 1985.

This work will seek to:

- a) Improve the understanding of the government of the Republic of Namibia and the social partners on the requirements of international labour standards on OSH, namely Convention No. 155, and the Protocol of 2002, Convention No. 187 of 2006, and Convention No. 161 of 1985;
- b) Review the relevant provisions of the Labour Act, OSH regulations, and supporting regulatory framework;
- c) Identify whether and how existing laws and regulations and practice or changes to law reflect the provisions of Convention No. 155 and its Protocol, Convention No. 187 of 2006, and Convention No. 161 of 1985 and practice in the country is required to comply with the Conventions.
- d) Assess the state of harmonization between Namibia legislation that deals with OSH, and relevant ILO standards, with special attention placed on legal and regulatory provisions directed to enhancing workplace safety and health for all working men and women;
- e) Strengthen the technical knowledge of necessary legal and regulatory amendments required in the event of ratification of Convention No. 155 and the Protocol of 2002, Convention No. 187 of 2006, and Convention No. 161 of 1985; and
- f) Provide clear recommendations to the Ministry of Labour, Industrial Relations and Employment creation (MLIREC) and other concerned national government agencies on how to improve the national legal framework by aligning them with these key ILO instruments.

C. Methodology

The Ministry of Labour, Industrial Relations and Employment Creation (MLIREC) will identify and collect all existing relevant national legislation and regulations in Namibia. The work should include an in-depth comparative analysis of the collected material with relevant ILO standards, and identification of legal and policy gaps. The analyses of national legislation should reflect the current situation of the country. This may include the updating of national legislative reviews that were carried out recently.

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 MLIREC. The Individual Consultant shall submit, for ILO and MLIREC's approval, an inception report containing a work

⁵ Namibia Regulation 156: 'Regulations Relating to the Health and Safety of Employees at work Regulations Relating to Safety and Health of Employees at Work', Namibia Labour Act, 11 of 2007, Namibia Employee's Compensation Act, No. 30 of 1941, Mines and Work Ordinance No. 20 of 1968, and others as to be identified.

⁶ Also with reference to Recommendation No. 164 to Convention No. 155

plan, which indicates activities to be carried out over the contract days to achieve the key milestones and deliverables.

This consultancy will use the following methods:

i. **Desk Review.**

The desk review shall determine the extent to which national laws and regulations and other measures meet the requirements of ILO Convention No. 155, Convention No. 187 of 2006, and Convention No. 161 of 1985. The Individual Consultant will prepare the gap analysis report using the prescribed gap analysis matrix. Using ILO provided tools, the Individual Consultant will undertake a desk review to determine:

- a) The type and scope of existing legislation, and their impact on ensuring the safety and health of workers in the workplace.
- 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.
- d) Critical gaps that exist in the legislative frameworks with regard to 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;
 - systems for the recording and notification of occupational accidents and diseases; 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.

ii. **Gap Analysis**

The analysis will use a **GAP ANALYSIS MATRIX** (attached as **Annex "A"**) illustrating:

- a) The extent to which the law or practice in the country already meets the C155, C161 and C187 provisions.
- b) In the case of finding gaps or inconsistencies:
 - The extent to which national law or practice can be adjusted, and
 - The provisions of C155, C161 and C187 for which such adjustment would be difficult and justification thereof.

iii. **Reporting**

The process will culminate into the production of a gap analysis report, in accordance with the **RECOMMENDED STRUCTURE OF GAP ANALYSIS REPORT** attached to the contract as **Annex "B"**. 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 C155, C161 and C187, and
- c) provide prioritized recommendations on the best strategies and interventions for harmonization of national law, policies and relevant OSH frameworks with provisions by C155, C161 and C187.

iv. Validation

Through the MLIREC's facilitation, the Gap Analysis Report will solicit social partners and key stakeholders' comments and views at a tripartite validation workshop. After validation and approval, the report will be widely disseminated, as part of awareness raising and concerted efforts to enhance readiness to ratify the OSH instruments.

v. OSH Bill drafting

The Individual Consultant will, in accordance with the Gap Analysis findings and recommendations and through stakeholder consultation draft an OSH Bill that aims to:

- a) Close the identified gaps, overlaps, inconsistencies, and other issues identified by the gap analysis;
- b) Facilitate promulgation of specific and up-to-date regulations as necessary
- c) Provide for strengthening of national OSH system and coordination mechanisms, and
- d) Ensure comprehensive provision of safety and health of men and women at workplace, in all sectors, including SMEs and informal economy.

The Individual Consultant will develop the OSH Bill, through the process covering, but not restricted to the following steps:

1. Prepare the Bill's outline, covering but not limited to the areas as listed in **RECOMMENDED OUTLINES OF OSH BILL (Annex "C")**
2. Conduct consultations with stakeholders
3. Develop the OSH Bill that is appropriate, clear, simple, precise, coherent, internally and externally consistent, and gender sensitive.
4. Present the draft OSH Bill to a tripartite PLUS for consultation and validation
5. Submit the final draft of OSH Bill and report on consultation and validation to ILO via MLIREC

D. Expected Consultancy Outputs/ Deliverables

The Individual Consultant will produce the following outputs:

- a) An inception report that includes the work plan detailing the activities to be undertaken to gather information. The work plan shall include tripartite validation workshop/s with constituents where findings and recommendations of the gap analysis report will be discussed, and the consultation workshops for OSH Bill development and validation.
- b) A Draft Gap Analysis Report for validation,
- c) A Gap Analysis validation meeting report with attendance registers,
- d) A validated Gap Analysis Report not exceed 40 pages (annexes excluded) and appended Gap Analysis Matrix in accordance with **Annexes "A" and "B"**,
 - Progression to OSH Bill development will depend on the Individual Consultant performance on the GAP Analysis
- e) A zero draft OSH Bill for stakeholder consultation,
- f) The Reports on OSH Bill consultation and validation, with corresponding attendance registers, and

g) A validated OSH Bill in accordance with **Annex "C"**

NB. The Individual Consultant, MLIREC and ILO will jointly agree the design of consultation sessions and validation meetings.

E. Timelines

The Individual Consultant shall deliver the Outputs within the following deadlines.

Outputs/Deliverables		#of contract days	Period	Deadline
1	Inception Report	3	31 March - 7 April	7 April 2021
2	Draft Gap Analysis Report	20	8 April - 7 June	7 June 2021
3	Gap Analysis Validation Workshop	2	16-17 June	17 June 2021
4	Validated Gap Analysis Report	5	18 - 30 June	30 June 2021
5	Zero Draft OSH Bill for stakeholder consultations	17	1 July - 5 August	5 August 2021
6	Stakeholder Consultations meetings (5 x 1-day sessions)	5	6 August- 1 September	1 September 2021
7	1st Draft OSH Bill	10	2-22 September	22 September 2021
8	OSH Bill validation workshop	2	12-13 October	13 October 2021
9	Tripartite PLUS validated OSH Bill	6	14-29 October	29 October 2021
Total contract days		70 days		

F. Payment Schedule

The ILO will process payments in accordance with the payment schedule, upon confirmation of satisfactory delivery.

	% of Contract Cost	Stage
1	10%	Approved Inception Report
2	40%	Validated Gap Analysis Report
3	50%	Validated OSH Bill

G. Minimum requirements

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

- a) Master degree in Occupational Safety and Health
- b) At least 7 years of professional experience in Occupational Safety and Health
- c) Labour law background and experience in legislation drafting as an additional advantage
- d) Sound knowledge of the Namibian OSH legal context
- e) Experience in working with government, and workers' and employers' organizations
- f) Understanding of ILO Conventions and Recommendations on Occupational Safety and Health
- g) Excellent writing, communication and presentation skills
- h) Experience in drafting/preparing assessment reports and strategic plans
- i) Experience in designing, organizing and facilitating workshops, consultations, meetings, fora and focus group discussions
- j) Availability and ability to complete the exercise within the prescribed timeframe
- k) Not conflicted, in any form, to conduct this consultancy or part thereof.

NB: The CV of the solely designated Consultant shall accompany proposal submitted by a company.

Proposal submitted by a team of consultants or a consortium shall not be considered

H. 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) Report of the Committee of Experts on the Application of Conventions and Recommendations, http://www.ilo.org/wcms5/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/wcms5/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/wcms5/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/safety-and-health-at-work/resources-library/publications/WCMS_748638/lang--en/index.htm
- n) Namibia Labour Act, 11 of 2007
- o) Namibia Regulation 156: 'Regulations Relating to the Health and Safety of Employees at work
- p) Namibia Employee's Compensation Act, No. 30 of 1941
- q) Stage 2: State of Emergency - Covid-19 Regulations: Namibian Constitution (Proclamation No 17 of 2020), https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=110038&p_country=NAM&p_count=6
- r) COVID-19 Regulations: Amendment (Proclamation 13 of 2020), <https://gazettes.africa/archive/na/2020/na-government-gazette-dated-2020-04-17-no-7180.pdf>
- s) Labour Directives relating to Covid-19: State of Emergency - Covid-19 Regulations (GN No. 110 of 2020), https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=110037&p_country=NAM&p_count=6

I. Submission of proposals

Interested Individuals are requested to submit a proposal of how they intend to undertake the assignment.

The submission should include a separate financial proposal with a detailed breakdown of consultancy fees and related expenses. Annexes A, B and C can be requested via e-mail at viriri@ilo.org

The proposal should reach the ILO no later than 5 March 2021 and should be sent to the following email addresses:

Technical Proposal: harare@ilo.org Financial Proposal: FIN_HARARE@ilo.org (note it's FIN_HARARE)