

TERMS OF REFERENCE

CONSULTANCY TO CONDUCT AN OVERALL REVIEW AND ANALYSIS OF LEGISLATION FRAMEWORK RELATED TO CHILD LABOUR IN VIET NAM

Output 1.2: Improved coherence of legislation and guidance policy related to child labour in alignment with international labour standards

Activity 1.2.1: Review related laws, policies and regulations through consultation with ILO specialists, BCPC and MOLISA Legal Affairs Department to identify gaps and discrepancies and formulate recommendations.

1. Background and Justification

Child labour in Viet Nam

The National Child Labour Survey conducted in 2012 shows that there are 1.75 children in child labour in Viet Nam, of whom over 32.4% work excessively long hours (more than 42/week). Of Viet Nam's 1.75 million child labourers, an overwhelming majority (85%) live in rural areas and 15% in urban areas. Sixty percent of child labourers are boys and 40% are girls. The largest number of children in child labour fall in the 15-17 age group (58%), followed by the 12-14 age group (almost 27%) and alarmingly nearly 15% in the 5-11 age bracket.

The vast majority of child labour is in the agricultural sector with 1.18 million children or 67% of all child labourers. The manufacturing-construction and services sectors attract 276 thousand (15.8%) and 293 thousand (16.6%) children, respectively.

These young child workers constitute a particular policy concern, as they are vulnerable to workplace abuses, and at risk of work-related ill-health or injury. They are also affected by compromised education. Children's work appears to represent a substantial barrier to schooling, and it underscores the link between child labour and efforts towards Education For All.

The response - Legislative framework

Viet Nam has ratified the two core ILO Conventions relating to children and work, Convention 138 (1973), on the Minimum Age for Admission to Employment, and Convention 182 (1999) on the Worst Forms of Child Labour. It has also ratified the Convention Concerning Forced or Compulsory Labour (Convention 29, 1930), which complements the other two in the fight against the slave trade. The ratification of these Conventions, especially the Conventions 138 and 182, is indicative of the political commitment on the part of the Government of Viet Nam in the fight against child labour and its willingness to commit internationally to taking immediate and time-bound actions to prevent and eliminate the worst forms of child labour.

In 2012, Viet Nam has revised the Labour Law, in which the Chapter XI on the provisions for minor workers has been revised accordingly in the way of harmonization and consistency with the international child labour standards regarding minimum age for employment, unrestricted work, working conditions and hazardous work for minors that Viet Nam has ratified. Following the revision of the Labour Law, regulations and guidance papers for implementation of the Law have been developed and/or revised/updated. Among others, the two key Circulars that are directly related to the children' and minor's work, include the Circular No. 10/2013/TT-

BLĐTBXH, dated 10 June 2013 on *Issuance of the List of Occupations and Work Places in which the employment of minor workers are prohibited*, and the Circular No. 11/2013/TT-BLĐTBXH, dated 11 June 2013 on *Issuance of the List of Light Work that allow the employment of children under 15 years of age*, have been revised and updated.

Civil Code No. 91/2015/QH13 passed by the National Assembly on November 24, 2015 is organized into 27 chapters with new content primarily as amended and supplemented to meet requirements of the social-economic development of the country and international integration; completing the rules on civil act capacity, guardianship and representation to better protect civil rights of minors; who have difficulties in cognition, behavioural mastery, people without capacity for civil acts, thereby helping them to be equal with other actors in civil relations.

The Criminal (Penal) Code No. 100/2015/QH13 was passed by the National Assembly XIII on November 27, 2015 including 26 chapters provides new basic points, especially it provides additional provisions on improvement of policies dealing with people under 18 years old, at the same time, the Code provides punishment regulations of violations in employment of workers who are under 16 years old.

Recently on 7 June 2016, the Prime Minister issued the Decision No.: 1023/QĐ-TTg on Approval of the Programme on Prevention and Elimination of Child Labour for the period 2016 – 2020; the Programme aims at raising awareness, and strengthening capacity and responsibilities of authorities and concerned agencies at all levels, as well as of employers, community people, parents and children about child labour issue. The Programme targets to provide timely support and assistance to 100% of cases that are detected child labour.

ILO in partnership with Viet Nam in combating child labour

Since 2000, the International Labour Organization (ILO) has carried out a series of projects and programmes for the prevention and elimination of child labour to support the Government of Viet Nam to fight against this problem.

Currently, in partnership with MOLISA as the key Government partner of Viet Nam, ILO is implementing the project, titled *“Technical Support for Enhancing National Capacity to Prevent and Reduce Child Labour in Viet Nam” (ENHANCE)*. The overall goal of the project is to build a comprehensive and efficient multi-stakeholder response for the prevention and reduction of child labour in Viet Nam. Through achieving this goal, the project will contribute to support Viet Nam in implementing the international commitments on fundamental principles and rights at work.

Among others, the key objectives of the ENHANCE project are to provide support to improve coherence of national legislation and guidance policy related to child labour in alignment with international labour standards, particularly with regard to hazardous work. The project also targets to provide supports in policy development in relation to core labour standards, especially child labour standards obligations so that these form an integral part of Viet Nam’s evolving international trade integration.

The needs of review and analysis of the legislative framework in Viet Nam

In order to identify the needs for the ENHANCE project’s technical support in improving legislation and guidance policies related to child labour, an overall review and analyses of the

national legislation framework is needed. The review and analyses will help to identify the gaps and inconsistency between national laws and regulations related to child labour, as well as incoherence between the national legislation and international standards, especially in the context of new legal developments and revisions (such as the Penal Law, the Civil Law, the Children Law, the Education Law, Law on Occupational Safety and Health etc.), and in particular, the need for a coherent and operational definition of child labour issued through a legal document, as well as opportunities to help review, revision/supplementation of the circulars regarding hazardous work for minors.

The review and analyses will be conducted in line with the priorities and road map for development/completion of legal framework of the MOLISA, period 2016-2020.

2. Scope of Assignment

An institution, herein after to be called the Contractor, will be selected to conduct this assignment through a call for bidding process. The Contractor will be required to undertake the following tasks:

- Conduct an overall review and analysis of the national legislation and policy framework related to child labour to identify gaps and inconsistencies between the laws;
- Identify the incoherence between the national legislation and international standards pertaining to child labour;
- Propose recommendations to improve the gaps and incoherence; and
- Give a presentation on the review findings in a workshop organized by ENHANCE project in collaboration with the Department of Legal Affairs and the Bureau for Child Care and Protection of MOLISA.

3. Reporting

An annotated outline for the report will be shared with the ENHANCE project for inputs and agreement before drafting the report.

The Review and Analysis Report in both English and Vietnamese language will be produced by the Contractor with key content that should include: assessment methodology; findings from legislation review and analyses; and recommendations and conclusion. The list of legal and policy documents applied for the review will be included in the Annex of the Report.

Draft report in English and Vietnamese language will be sent to the ENHANCE project for technical inputs, and also for sharing with the project PMU, Department for Legal Affairs for comments and inputs.

5. Collaboration

The contracted institution will work under the supervision of the ENHANCE Chief Technical Advisor (CTA) and/or his designated personnel. Besides, the contracted institution is expected to closely collaborate and consult with the Legal Affairs Department of MOLISA in conducting this review and analysis.

4. Time frame

This proposed activity is estimated to be completed within a period of 1 month from the date of the Service Contract signing. One week after the signature of the Service Contract, the Contractor is required to submit a detailed Work-plan for conducting the study which includes tentative timeline for working and submission of study methodology, draft report and final report etc.

5. Submission of Proposal

The interested and relevant institutions are invited to submit their proposal to the ENHACE project with the following details:

Completed proposal with following details:

- Assessment methodology/approach
- Detailed budget estimations

Demonstrated experiences and capacity:

- Evidence of similar study work done by the institution, especially on child labour legal issues in Viet Nam, within the past 10 years for the ILO and/or other UN agencies and international organizations

All proposals must be submitted in English to the ENHANCE Project CTA through email at ogasawara@ilo.org with copy to oanh@ilo.org by **5:00pm on 18 April 2017**. Proposals submitted after the deadline will not be accepted. Only short-listed candidates will be contacted.

6. Evaluation of Proposal

All the proposals will be evaluated in accordance with ILO regulations and criteria. The proposals will be scored against the below criteria. The scoring will be tabulated and the proposals will be ranked based on the numerical scores received. Detailed screening results will not be released. Only shortlisted ones will be invited for interviews/presentation of their proposal for final selection if need be.

Criteria	Value of Criteria
1. Technical Proposal	50
• Institution relevant experience and capabilities	30
• Review and analysis methodology/Approach	20
2. Financial Proposal	30
3. Evidence of experience in similar work done	20
Total	100