

## **TOR of International Expert/Consultant (or mixed team)**

### **Developing the analysis on the experiences of some countries worldwide with regard to the accession to and implementation of ILO Convention 98**

#### **1. Background and necessity**

On December 31, 2015, the Prime Minister of Vietnam issued Decision No. 2528/QĐ-TTg approving the implementation Plan and the proposal to accede to the UN and ILO Conventions in the field of labour and society. According to Decision No. 2528/QĐ-TTg, the roadmap for Vietnam to consider the proposal for ratification Conventions No. 98 is within the period of 2016-2020.

Vietnam is in the process of amending and supplementing the Labor Code of 2012 (focusing on contents of dialogue at workplace, collective bargaining, collective agreement, trade unions, settlement of labour dispute, etc). One of the requests set out for revision of Labour Code is the maximum of the legislative internalization of basic international labour standards, which is suitable for conditions and qualification of economic, social and political development of Vietnam. In addition, Vietnam is conducting preliminary review after two years of implementation of Decision No. 2528/QĐ-TTg of the Prime Minister.

In the context of extensively Vietnam's integration, including participation in new generation FTAs, the role and importance of the ILO's basic conventions, including the Convention No. 98 which is becoming increasingly clear. According to the EU-Viet Nam Free trade agreement, the Parties undertake: i) to respect, promote and effectively implement the basic international labor standards, standards of freedom of association and collective bargaining; ii) undertake ongoing efforts to advance ratification of ILO basic conventions that have not yet been ratified, including the Convention 98 and 87. Under the Comprehensive and Progressive agreement for Trans-Pacific Partnership (CPTPP), Member States of the Agreement undertake to adopt and maintain in law and in practice the basic labor standards under the 1998 Declaration of the ILO, including the ILO Convention 98 and 87.

Therefore, it is necessary to conduct a study on possible ratification of ILO Convention 98 at this time. The implementation of this activity is carried out in the context of the inheritance of some work done in the past, notably some activities such as Reports analyzing some contents which have not been in conformity with the Labour Code and some International labour standards, mainly the basic standards (2014); Surveys carried out on the level of awareness and institutional capacity in implementing Conventions No. 87 & 98 in Hai Phong, Ho Chi Minh City and Dong Nai (2015); Studies and discussion on the interpretation of the Commission on Freedom of Association with respect to freedom of association and collective bargaining standards (2016). It should be noted that, however, most of the activities previously done, generally have narrow scope of research, and due to various reasons, are often not put in the context/specific aims of orienting towards the ratification of Conventions No 98. Therefore, in addition to the dossier that MOLISA is preparing, MOLISA is seeking ILO support to conduct the analysis to capture the practical experiences of other countries who has ratified C.98.

#### **2. Contents and scope of work for proceeding the ratification of C.98**

The main contents of work is: Developing the submitted Dossier for review and ratification of ILO Convention No. 98. As regulated by the International Treaties of 2016, the submitted Dossier for review and ratification of ILO Convention No. 98 will consist of the following basic documents (in addition to some other documents):

- Report on evaluating the conformity of the provisions of Convention No. 98 with the provisions of the Vietnamese legal systems.
- Report on evaluation of political, defensible, security, socio-economic impacts and other impacts of Convention No. 98
- Report on recommending the amendment, supplementation, abolition or promulgation of legal documents for the implementation of Convention No. 98
- Tentative implementation plan of Conventions if Viet Nam ratified C.98
- Preparing the request letter of Government to submit to the President office and National Assembly for review and ratification of Convention No.98

While MOLISA is being proceeding those above-mentioned reports, an international consultant or mixed team (international and local consultant) expected to carry out the analysis of which focus on the practical experiences of other countries where the C.98 was ratified. The analysis should cover (not limited) the key following aspects:

1. **How have some member countries revised the law and enhanced the implementation in practice in order to meet the requirements of Convention 98? Focusing on: i) countries that ratified C98 without ratifying C87; and ii) countries transforming from single-representation industrial relations to multi-union industrial relations system (at least 3 countries)**
2. **What are the advantages and difficulties of some member countries during implementation? Roles and participation of the employers' organizations and the employees' organizations in the implementation process?**
3. **Provide some good models (to be learned) and/or bad experience (to avoid) of some countries on effective collective bargaining, focusing on the roles of the Government in promoting collective bargaining and monitoring effectively the implementation of Convention No. 98.**

*Note: Prioritize to select countries which can help Vietnam with lessons learnt, with priority given to ASEAN countries.*

### **3. Management and budget: TBD (EU funded project)**

The consultant (and mixed team with two national consultants) will be working directly with acting NPC of EU FPRW project and under overall guidance and supervision of the Director of ILO Hanoi Country Office. The consultant expects to work/consult (whenever necessary) with MOLISA and Social Partners for drafting and finalizing the report.

### **4. Task schedule and deliverable**

Main Deliverables: consultant (or mixed team) will provide the following deliverables and tasks:

- Deliverable 1: the analysis plan and report outline (in agreement with ILO and MOLISA).
- Deliverable 2: Draft analysis report in English for ILO and MOLISA's comment/inputs.
- Deliverable 3: Final analyses report (with less than 20 pages excluding annexes) in English and Vietnamese (together with other supporting documents).

Below are indicative inputs and tasks to be completed, and **estimated** numbers of working days foreseen for evaluator(s).

|   | Tasks   | Estimated # of working days of international consultant | # working days of National consultants (02 pax.) <sup>1</sup> | Proposed timeline                  | Key deliverable   |
|---|---|---|---|------------------------------------|---|
| 1 | Desk review of related documents; briefing with project manager and ILO; Prepare research plan and draft report outline           | 2   |   | 22 Oct – 26 Oct. 2018              | List of reviewed documents<br><br>Research plan<br><br>Report outline |
| 2 | Start to prepare the zero draft report (based on agreed outline with ILO) and share with ILO/MOLISA                               | 8   | 02 per. X 5 days  | 02 – 10 November 2018 (in-country) | Zero draft report available   |
| 3 | Consultants teams up (international and national) for analyzing, consulting with key stakeholders and refine the draft the report | 5   | 02 per. X 3 days  | 16 - 20 November 2018              | 1 <sup>st</sup> draft available                                       |
| 4 | Addressing/incorporating the ILO, MOLISA and other stakeholder's comment and input  | 1   | 1   | 25 November                        | Improved draft report available and share with ILO                    |
| 5 | Based on 2 <sup>nd</sup> round comment from ILO and MOLISA, finalizing the report in English and Vietnamese                       | 2   | 1   | 28 November 2018                   | Final report in E and V   |
|   | <b>Total</b>  | <b>18 days</b>  | <b>18 days</b>  |                                    |   |

## 5. Qualifications requirement

### *For international consultant*

- Master Degree with minimum 5 years of strong and substantial experience in the field of social and labour research;
- Experience and understating the Viet Nam context (political, socio-economic, culture, labour, etc.)
- Knowledge of ILO's roles, mandate, tripartisims mechanism, fundamental conventions as well as UN research norms is a plus;
- Excellent analytical skills and strong study report writing skills in English;
- Commit to be available to deliver this evaluation at highest level of quality during November 2018;

### *For National consultants:*

- Master Degree with minimum 5 years of strong and substantial experience in the field of social and labour policies and research;
- Excellent knowledge on the Viet Nam context (political, socio-economic, culture, labour, etc.)

<sup>1</sup> One local consultant who very familiarize with Govt. procedures on Convention ratification as well as ILO convention progress. Other should have experiences on legislation development system

- Familiarize with the ILO's roles, mandate, tripartism's mechanism, fundamental conventions as well as UN research norms is a plus;
- Excellent in data/information collection, tabulation and analytical skills;
- Good English skill
- Commit to be available to deliver this evaluation at highest level of quality during November 2018;

#### **6. Legal and Ethical Matters**

- The consultant is expected to respect ILO's policy and codes of conduct when conducting this evaluation.

**Annex 1:**

| <b>C.98's plan of action</b> |   |  |   |  |
|------------------------------|---|--|---|--|
| <b>No</b>                    | <b>Activity</b>   | <b>Method of implementation and outputs</b>  | <b>Time</b>   | <b>Responsibility</b>  |
| 1                            | Establish experts' group  | <p>- <i>Method of implementation:</i> Develop and issue Decision of MOLISA approving expert's group.</p> <p>- <i>Output:</i> The experts' group might consist of 10 persons including: MoLISA expert, Viet Nam General Confederation of Labour expert, Viet Nam Chamber of Commerce and Industry expert, National Assembly Office expert, President Office expert, Government Office expert, Ministry of Foreign Affairs expert, Ministry of Justice expert, Independent expert from Institute of Labour Science and Social Affairs</p>  | 4-5/2018.   | National expert<br><i>Done by MOLISA (copy of decision is available)</i>                       |
| 2                            | Technical meeting of expert's group   | <p>- <i>Method of implementation:</i> Organise technical meeting</p> <p>- <i>Output:</i> The expert's group discuss and agree on the plan, method, content, assignment</p>   | 1 day<br>June or 2 <sup>nd</sup><br>week of<br>July /2018 | National expert  |
| 3                            | Conduct survey of actual implementation of Viet Nam law regarding the application of the right to organize and collective bargaining, focusing on the practices of: i) acts of anti-union discrimination; ii) employers' interference; and iii) Government's work on protection of trade union rights and promotion of collective bargaining. | <p>- <i>Method of implementation:</i> Conduct survey in 03 provinces (Hai Phong, Ho Chi Minh, Binh Duong)</p> <p>- <i>Time for survey:</i> 3 days at each province</p> <p>- <i>Participants:</i></p> <p>Representatives of managers:<br/>At each province, selecting 5 representatives from Department/ Board/ Sectors related to contents of the survey including: Department of Labour, Invalids and Social Affairs (2 related divisions including legal affairs division and labour and wage division), Provincial Federation of Labor, Management Board of Industrial zone/ manufacturing area....</p> <p>Enterprise sample:<br/>At each province, selecting 3 enterprises with diversified types of ownership (state owned, private, FDI), sectors/ production fields/ business/ services / enterprises operating at multi-trades/ sectors...</p> <p>Workers sample:<br/>Survey sample structure of workers is distributed according to the following criteria: migrant worker/ resident worker, sex (male / female); age group (18-34, 35-54, age 55 and over); unskilled / trained workers; training levels: primary vocational training, intermediate vocational training, college and university or higher; direct/indirect labor; Workers working in different sectors (textile - garment, footwear, processing, electronic assembling, woodwork).</p> <p>- <i>Output:</i> Survey report of actual implementation of Viet Nam law regarding the application of the right to organize and collective bargaining</p> | 1 <sup>st</sup> 2 wks of<br>July/2018                     | National expert (MOLISA, VCCI, VGCL, relevant expert)<br><br>TU representatives at study sites |

|   |  |  |           |   |
|---|--|--|-----------|---|
|   |  | <p><i>(Qualitative survey methods and plan at each province are attached)</i></p> <p>Support from Local TU representatives: contact, collect and gathering the quantitative information/data of TU at grassroots level such as number and percentage of TU representative (disaggregated by position: president, vice president, members...) who are having also the management function in the enterprise, zones, province; total workers, dismissal, end contract, no extend contract for TU representative because of TU's related works...</p>   |           |   |
| 4 | Develop the report to assess the compatibility between regulations of the Convention and Viet Nam legal system                               | <p>- <i>Method of implementation:</i></p> <ul style="list-style-type: none"> <li>+ Study regulations and requirements of the Convention 98 of the ILO and observations of the ILO Committee of Experts on the issues of organizing and collective bargaining;</li> <li>+ Desk review of documents, analysis and evaluation of relevant experts;</li> <li>+ Organize relevant technical meetings;</li> <li>+ Base on survey report of actual implementation of Viet Nam law regarding the application of the right to organize and collective bargaining</li> </ul> <p>- <i>Output:</i> The report to assess the compatibility between regulations of the Convention and Viet Nam legal system</p>  | 7-8/2018  | <p>National expert and international expert</p> <p>* Note the implementation content for international expert:</p> <ul style="list-style-type: none"> <li>- Review the incompatible points between relevant regulations of Viet Nam legal system and the Convention 98</li> </ul> |
| 5 | Develop report to assess impacts on political, national defense, security, social-economic dimensions and other impacts of the Convention 98 | <p>- <i>Method of implementation:</i></p> <ul style="list-style-type: none"> <li>+ Assess conditions related to the application of the right to organize and collective bargaining in Viet Nam;</li> <li>+ Analyze and forecast impacts on political, national defense, security, social-economic dimensions and other impacts in case Viet Nam ratifies Convention 98;</li> <li>+ Organize relevant technical meeting;</li> <li>+ Base on survey report of actual implementation of Viet Nam law regarding the application of the right to organize and collective bargaining</li> </ul> <p>- <i>Output:</i> The report to assess impacts on political, national defense, security, social-economic dimensions and other impacts of the Convention 98</p> | 9-10/2018 | <p>National expert and international expert</p> <p>* Note the implementation content for international expert:</p> <ul style="list-style-type: none"> <li>- Experience and practice of other countries after the ratification of Convention 98</li> </ul>                         |
| 6 | Develop report on proposed revision, supplementation or cancellation of legal documents in case Viet Nam ratifies Convention 98              | <p>- <i>Method of implementation:</i></p> <ul style="list-style-type: none"> <li>+ Assess and forecast on the context of Viet Nam;</li> <li>+ Expert analyze and assess;</li> <li>+ Organize relevant technical meeting;</li> <li>+ Base on survey report of actual implementation of Viet Nam law regarding the application of the right to organize and collective bargaining</li> </ul> <p>- <i>Output:</i> The report on proposed revision, supplementation or cancellation of legal documents in case Viet Nam ratifies Convention 98</p>   | 9-10/2018 | <p>National expert and international expert</p> <p>* Note the implementation content for international expert:</p> <ul style="list-style-type: none"> <li>- Give specific proposal on</li> </ul>  |

|   |  |  |            |  |
|---|--|--|------------|--|
|   |  |  |            | revision, supplementation or issuance of new legal documents to meet requirements of Convention 98   |
| 7 | Develop tentative plan to implement the Convention in case Viet Nam ratifies Convention 98   | <p>- <i>Method of implementation:</i></p> <p>+ Research of experts on the requirements of the Convention for a member State;</p> <p>+ Organize some technical meetings to reach agreement among concerned agencies.</p> <p>- <i>Output:</i> The tentative plan to implement the Convention in case Viet Nam ratifies Convention 98</p>   | 11/2018    | National expert  |
| 8 | Permanent expert's group synthesize and complete the dossier and prepare request letter of Government to submit to the National Assembly for review and ratification of Convention No.98 | <p>- <i>Method of implementation:</i></p> <p>+ synthesize and complete the dossier according to the International Treaties of 2016</p> <p>- <i>Output:</i></p> <p>+ The dossier for ratification C.98</p> <p>+ The request letter of Government to submit to the National Assembly for review and ratification of Convention No.98</p>   | 11-12/2018 | National expert  |
| 9 | Organize 2 consultation workshops on key documents of the dossier on the ratification of Convention 98 (in the North and in the South)   | <p>- <i>Participants:</i></p> <p>Representatives of some Ministries, sectors and provinces, tripartite representatives in industrial relations, Bureau and Departments of MoLISA, some social organizations, some NGOs and enterprises ...</p> <p>- <i>Content:</i></p> <p>+ Introduce content of fundamental international labour standard of the ILO on freedom of association and the right to collective bargaining as regulated by the pairs of Conventions 87 and 98</p> <p>+ Present results of reports and tentative implementation plan as indicated in the document package on the ratification of Convention 98</p> <p>+ Discussion by the participants and conclusions</p> <p>- <i>Tentative time:</i></p> <p>02 days each workshop in December 2018</p> <p>- <i>Tentative venue:</i></p> <p>Quang Ninh and Ho Chi Minh City<br/>(<i>The list of participants and agenda are attached</i>)</p> | 12/2018    | National expert and international expert<br>* Note the implementation content for international expert:<br>- Introduce content of fundamental international labour standard of the ILO on freedom of association and the right to collective bargaining as regulated by the pairs of Conventions 87 and 98 |

According to the meeting between Legal Dpt. and ILO organized 01 June 2017, the dossier for C98 ratification will be submitted for NA's appraisal in May 2019. Further revision/update of plan is being discussed with Legal Dpt.