



REPUBLIC OF NAMIBIA



MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT CREATION

14TH LABOUR ADVISORY COUNCIL
EXPLANATORY MEMO DATED SEPTEMBER 2021

ON

ILO CONVENTION NO. 156 of 1981 CONCERNING EQUAL OPPORTUNITIES AND EQUAL
TREATMENT FOR MEN AND WOMEN WORKERS: WORKERS WITH FAMILY
RESPONSIBILITIES, 1981, (NO. 156)

1. Introduction

This Explanatory Memorandum is submitted to the Minister in support of the Labour Advisory Council's (LAC) recommendation that Namibia should ratify the ILO Convention No. 156 of 1981 Concerning Equal Opportunities and Equal Treatment for Men and Women Worker: Workers With Family Responsibilities.

The Convention is intended to create effective equality of opportunity and treatment between men and women workers with family responsibilities and between such workers and other workers at workplace. It aims at making family and occupational responsibility compatible.

The ratification of Convention no. 156 by Namibia, will strengthen the existing protection extended to women and men workers with responsibility in relation to their children as well as other family members of their immediate family who clearly need their care or support, where such responsibility restrict their career.

A gap analysis prepared for the LAC, demonstrated that the majority of the provisions of the Convention can be implemented through already existing provisions of Namibian law. The Memo summarises the Preamble and each Article of the Convention, while making reference, where applicable, to the relevant provisions of the Namibian Constitution, International Law, Labour Act 2007 and Local Authority Act of 1992.

2. Preamble

The Preamble introduces the international legal and socioeconomic context of the Convention.

2.1 It notes the ILO's seminal Declaration of Philadelphia (1944), which recognizes that "all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity";

2.2 It sets out as the legal context, several ILO International Labor Standards, namely, Equal Remuneration Convention No. 100 of 1951 and its Recommendation No. 90 of

1951, the Discrimination (Employment and Occupation) Convention No. 111 of 1958 and its Recommendation No. 111 of 1958, and Part VIII of the Human Resources Development Recommendation No. 150 of 1975;

- 2.3 It recognizes that the Discrimination (Employment and Occupation) Convention No. 111 of 1958, does not expressly cover distinctions made on the basis of family responsibilities and thus considers that supplementary standards are necessary in this respect;
- 2.4 It recognizes the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers; and
- 2.5 It considers that many of the problems facing all workers are aggravated in the case of workers with family responsibilities and recognizes the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general.

3. Articles of the Convention

Article 1: Application and definitions

This Convention applies to men and women workers whose responsibilities of caring for and supporting their dependent children and/or other members of their immediate family may restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

The term “workers with family responsibilities referred to the workers covered in the above paragraph.

The Convention obligates a Member State to define in its laws, the terms “dependent child and other member of the immediate family” who clearly need care or support.

Relevant Namibian Statutory Provisions: The Labour Act, Act No. 11 of 2007, section 5(2)(b) protects workers with family responsibility against discrimination in any employment decision directly or indirectly, or to adopt any requirement or engage in any practice which has the effect of discrimination against any individual on the ground of family responsibilities among others.

Section 5(1)(c) of the Labour Act defines “family responsibility” to mean the responsibility of an employee to an individual - (i) who is a parent, spouse, son, daughter or dependant of the employee; and (ii) who, regardless of age, needs the care and support of that employee;

Article 1 of the Convention is covered by the provisions of the Labour Act as the term “dependent child and other member of the immediate family” is covered by the definition of “family responsibility” as defined above.

Article 2: Scope of application:

The Convention applies to all branches of economic activity and all categories of workers.

Relevant Namibian Statutory Provisions: Section 5 of the Labour Act applies to all workers in all branches of economic activities including Workers with family responsibility.

In addition, Article 14(3) of the Constitution guarantees protection for a family unit, workers with family responsibility form part of family unit.

Article 3: Equality of opportunity and treatment for men and women workers

A Member State is obligated to make national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

The Convention refers to the definition of the term *discrimination* as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention no. 111 of 1958.

Relevant Namibian Statutory Provisions: Section 5(1)(b) read with section 5(2)(b) of the Act prohibits discrimination in any **employment decision** directly or indirectly, or to adopt any requirement or engage in any practice which has the effect of discrimination against any individual on the ground of family responsibility.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) was ratified by Namibia in November 2001. The definition of *discrimination* as contained in Convention 111 is binding to Namibia by virtue of Article 144 of the Namibia Constitution which states that "international agreements are binding upon Namibia and shall form part of the law of Namibia"

Article 4: Equality of opportunity and treatment for men and women workers

Member States are obligated to make policy that will ensure that workers with family responsibilities exercise their right to choose employment of their choice and that their needs in terms and conditions of employment and in social security are taken into account.

Relevant Namibian Statutory Provisions: Article 21 (1) (j) of the Namibian Constitution guarantees the right to practise any profession, or carry on any occupation, trade or business.

In addition, the Labour Act, section 5 (1) (b) (i), (ii) and (iii) read with section 5(2) (b) provides for workers with family responsibility to choose employment of their choice, to have access to: vocational guidance; training and placement service; and the provision of benefits.

Article 5: Community planning and community services

Member states where possible and depending on national conditions should take into account the needs of workers with family responsibilities in community planning and to develop or promote community services, public or private, such as child-care and family services and facilities.

Relevant Namibian Statutory Provisions: Section 88 of Local Authorities Act 23 of 1992, makes provision for public meetings to discuss matters of public interest. The measures under this article could be probably discussed at public meetings at local authority levels under section 88 of the Local Authorities Act.

In addition, Namibia consented to the United Nation Convention on the Elimination of all forms of Discrimination against Women (CEDAW) of 1979.

CEDAW requires ratifying governments to "take all appropriate measures to eliminate discrimination against women in employment" and to "encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities".

Article 6: Information sharing and public education

The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

Relevant Namibian Statutory Provisions: Section 121 (3) of the Labour Act, empowers the Labour Commissioner, where possible, to provide registered employers' organisations and registered trade unions with advice and training relating to the objects of the Act.

Article 3(b) of the ILO Convention No. 81 of 1947 on Labour Inspections empowers the labour inspectors to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions. This Convention was ratified by Namibia in September 2018.

Also, the Ministry has in place a Public Education Strategy on the provisions of the Labour Act.

Article 7:

Member states shall take into account where possible and in accordance with national conditions and including measures in the field of vocational guidance and training, to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities

Relevant Namibian Statutory Provisions: The measures under this Article are provided for in terms section 5 (1) (b) (i) and (v) read with 5 (2) (b) of the Labour Act.

In addition, absence from work due to family responsibility does not interrupt the period of employment thus employees may resume duty after a period of leave granted in terms of the Labour Act for family responsibility.

Article 8: Protection against dismissal

The Article prohibits termination of employment based on the ground of family responsibilities.

Relevant Namibian Statutory Provisions: measures under this Article are provided for in terms section 5 (1) (b) (v) and (vi) read with 5 (2) (b) of the Labour Act.

Section 7 of the Labour Act provides for a means of legal remedies for any violation of fundamental rights under section 5 of the Labour Act. A party who alleges an infringement may approach the Labour Commissioner for arbitration or the Labour Court for enforcement of that right or protection or other appropriate relief.

Article 9: Implementation of the provisions of this Convention

The provisions of this Convention may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these

methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

Relevant Namibian Statutory Provisions: Provisions in our laws exist for the application of the provisions of the Convention. The following methods can be used to apply the provisions of the Convention: Labour Act, collective agreements, arbitration awards or court decision).

Article 10: Stages in the implementation of the Convention

The provisions of this Convention may be applied by stages, if necessary, account being taken of national conditions: Provided that such measures of implementation as are taken shall apply in any case to all the workers covered by Article 1, paragraph 1.

This Article contains flexibility clauses that enable member states to progressively implement the provisions of the Convention in stages, if necessary, taking into account national condition.

In giving effect to the measures of Convention No. 156, apart from the existing relevant statutory provisions, Namibia will be guided by the Workers with Family Responsibilities Recommendation No. 165 of 1981. The Recommendation supplements the Convention and provides more detailed guidance on how the Convention could be applied.

Article 11: Consultation with Employers and Workers Organisations

Employers' and workers' organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention.

Relevant Namibian Statutory Provisions: Namibia subscribed to social dialogue and Tripartism system as provided for by the ILO Convention No. 144 of 1976 on Tripartite Consultation. Convention No. 144 was ratified by Namibia in 1995. Consultation with employers and workers organisation will be channelled through the existing structure.

-END-