

From Protocol to Practice: A Bridge to Global Action on Forced Labour (The Bridge Project)

Terms of Reference (ToR) for research on Employment Relationship in the Brick Kiln Industry in Nepal

CONTEXT

From Protocol to Practice: A Bridge to Global Action on Forced Labour (The Bridge Project) aims to support global and national efforts aimed at combating forced labour under the 2014 ILO Protocol and Recommendation on Forced Labour. The Bridge Project will work globally, as well as in five priority countries (Mauritania, Nepal, Niger, Peru and Malaysia), to advance and provide a concrete grounding to this strategy. The project aims to build on the momentum that led to the adoption of the Protocol and Recommendation and to foster an understanding of their effective implementation at the global, regional, national and local levels.

The project will strive to eliminate traditional and state-imposed forced labour systems and to significantly reduce contemporary forms of forced labour, which are often linked to human trafficking. This will be done through the following intermediate objectives:

1. Increased knowledge, awareness, and ratification of the ILO Protocol and Recommendation;
2. Improved and responsive national policies and/or action plans and/or legislation on forced labour with strong implementation, monitoring, and enforcement mechanisms;
3. Increased efforts to collect reliable data in order to carry out research and share knowledge across institutions at national, regional, and global levels;
4. Workers' and employers' organizations actively support the fight against forced labour; and
5. Increased awareness and access to livelihood programs for victims of forced labour.

The Nepal component of the project follows the above intermediate objectives, including awareness raising on P29 and R203 and policy advocacy and research in combating forced labour and trafficking with an ultimate goal of creating conducive environment to ratify the protocol. In addition, the project will provide support to the government of Nepal for implementing its re-habilitation plans of freed-Haliyas through livelihood supports to the victims of forced labour, particularly the freed-Haliyas, in selected districts in far western region.

Nepal has made some progress on fighting traditional bonded labour practices through ban on the bonded labour practices (Kamaiya, Kamlhari and Haliya) and supporting the victims for their

resettlement. However, there are still other sectors in which the practices of bonded and forced labour exist. One such sector reported by different development agencies is Brick Industry¹ which is reported to be using the worst forms of child/bonded/forced labour in Nepal². The United States Department of Labour (USDOL) has listed brick as one of the products made using forced/child labour in Nepal³.

The brick industry is providing livelihood to the individuals and families among the poorest in Nepal, often internally migrant workers working under the labour contractors (Naikes). The production of brick is a seasonal activity, particularly in dry season. It starts in October/November and ends on March/April, although the selling continues throughout the year. Different actors play their roles in brick production in Nepal. Poor and marginalized communities in the villages look for survival strategies and often end up working for labour contractors. The workers come from those areas/communities where schools are either too far, the quality of education is low or the cost of education is high for the families. The labour contractors, normally known as Naikes (leaders), get advance money from the brick kiln owners/managers to accumulate workers for brick production. The brick kilns are operated in the suburbs of growing cities like Kathmandu valley. The employers (kiln owners) completely rely on the Naikes for the hiring of workers, particularly for raw brick making and transportation.

Despite the reporting of child/forced labour, reliable figures on the phenomena are still areas in need of in-depth research with robust methodologies. Some studies have been conducted by different development partners⁴ (ILO, World Education) that highlight prevalence of bonded labour in the brick industry, its negative impact on environment as well as abuses of animals (donkeys used to transport the bricks from the field to the chimneys). However, these studies do not exactly provide the figures of forced/bonded/child labour in the industry. This shows a research gap in promoting a decent work environment in the brick production sector which is booming in Nepal due to post-earthquake reconstruction work. The figures of forced/bonded and child labour can be estimated by gathering data on number of workers/children, their socio-economic condition, employment status/relationship, earnings, benefits, working hours and other benefits provided by the employers and its comprehensive analysis.

With the ratification of both forced labour conventions⁵ and having a constitution and laws that ban slavery and forced labour, Nepal government is committed to end child/forced labour and

¹ Brick production is reported as one of the worst forms of child and bonded and forced labour in Nepal. The production takes place during November – April each year in which majority of workforce is internally migrated seasonal labours.

² <https://www.sciencedirect.com/science/article/abs/pii/S0145213417302892>

³ <https://www.dol.gov/ilab/reports/child-labour/list-of-goods/>

⁴ http://ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_542925.pdf
<http://nepal.worlded.org/wp-content/uploads/2014/02/bfp-children-in-brick-factories.pdf>

⁵ The government of Nepal has already ratified both ILO conventions (No- 29 and No-105) and is committed to reflect the provisions of these conventions in Nepalese laws and constitution.

modern slavery. The steps taken by the government on reviewing the bonded and child labour acts and preparing the National Master Plan on Child Labour are key initiatives towards full respect and application of these commitments. However, the government still needs technical guidance from development partners towards full implementation of these commitments made by these laws and constitution. The association of brick producers is also committed to end child/forced labour in the industry and is eager to collaborate with government and other development partners. However, the challenge is substantial, given, among others, the seasonality of work, lack of workforce near the kilns, dependency on labour contractors, and the level of poverty of the workers dependent to the brick production. A few organizations⁶ are taking initiatives to support the government's initiative in reducing forced/child labour in the brick industry in Nepal. Their efforts are concentrated towards raising awareness and providing support to the victims of child labour in the brick industry. A new initiative⁷, with the involvement and leadership of private sector, is introduced to start responsible business practice which needs to expand its scope to cover all the kilns. The information on actual number of workers, working conditions and employment relationships in the industry can provide a reliable database to everyone for preparing integrated strategies, plans and programs to fight forced/child labour. In the context of such growing concern of stakeholders with handful of initiatives to end forced/bonded/child labour in the sector, an in-depth research came into the top priority work for drafting integrated and comprehensive interventions. The research on root causes that trigger the supply of workers in bonded/forced conditions will open eyes for all stakeholders in targeting focused interventions.

OBJECTIVES

1. Estimation of total workforce in the brick industry, distribution on age/sex/origin/caste/ethnicity.
2. Provide rigorous evidence, if identified, on the magnitude of forced labour/bonded labour/child labour in the brick industry and on conditions of work, main hazards, and socio-economic background where forced labour/bonded labour/child labour occurs (by age/sex/origin/caste/ethnicity, if data allows);
3. Develop a comprehensive socioeconomic and demographic profile of the workers in the brick industry, including potential variables of discrimination such as ethnicity, nationality, migration status, sex, age, among others;
4. Identify what are the main factors at household, community and industry levels affecting the involvement in forced labour/bonded labour/child labour;
5. Provide specific policy recommendations on how to eliminate and prevent forced labour/bonded labour/child labour in the brick industry;

⁶ UNICEF, ILO, World Education, Save the Children, Winrock International, Plan International, Tere des Homes, Sapla Neer and several local non-governmental organizations

⁷ <https://www.betterbricknepal.org/learn-more>

6. Produce, present and disseminate to the government, employers' and workers' organizations, NGOs and the general public a comprehensive report on forced labour/bonded labour/child labour in brick kilns. The report will highlight key results and their implications for policy and future research, thereby enhancing the knowledge required to promote action and alternatives, and promote awareness raising and advocacy.

DEFINITIONS

1. **Child labour:** Researchers should employ the definitions contained in the 18th ICLS Resolution on Statistics concerning Child Labour statistics, including, to the extent possible, the Amendment to the Resolution endorsed at the 20th ICLS.⁸ The research will follow the legal framework of the ILO Conventions, C. 138 and C. 182 on the Minimum age for admission to employment or work and Worst forms of child labour. The definition of hazardous work should be derived from existing national legislation. The necessary training will be provided by ILO-FUNDAMENTALS on the criteria and parameters that would define in detail child labour and its worst forms to facilitate measurement.
2. **Forced labour/bonded labour:** Researchers should employ the definitions contained in the Guidelines on measurement of Forced Labour, endorsed at 20th ICLS in October 2018. The exact instruments to be used will be discussed with the ILO-FUNDAMENTALS staff as needed⁹. To the extent possible, indicators based on the bonded labour definition from the Labour Act 2017 and based on particular forms of debt bondage (e.g. Kamaiya and Haliya) from the Kamaiya Labour Prohibition Act 2007 will be incorporated into the questionnaire.

RESEARCH QUESTIONS

Characteristics of the brick industry

1. What is the size of the workforce in the brick industry in Nepal? What is the typology or the relevant typologies regarding the production units/enterprises of bricks?
2. What are the key characteristics of the brick production units/enterprises with presence of forced labour/bonded labour/child labour (e.g. location, volume of production, level of technology, integration in the supply chain, access to social services, and others as relevant)?

⁸ http://ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_112458.pdf
https://www.ilo.org/global/statistics-and-databases/meetings-and-events/international-conference-of-labour-statisticians/20/WCMS_647338/lang--en/index.htm

⁹ https://www.ilo.org/global/statistics-and-databases/meetings-and-events/international-conference-of-labour-statisticians/20/WCMS_647338/lang--en/index.htm

3. Key concerns of the employers in relation to decent employment relationship (loss form the advance payment systems) – why is it prevalent as it is contributing to debt-bondage practices? Can the method of direct payment to workers' be beneficial for both (workers and employers), and how can relevant unions and employers collabourate with each other to solve this problem?

Prevalence and characteristics of forced labour/bonded labour/child labour in the brick industry

1. How common is forced labour/bonded labour/child labour in the brick industry in Nepal? (who is affected) (characteristics of the observed population -age, sex, ethnicity and other relevant socio-demographic and demographic variables)
 - a. Prevalence: How common is forced labour/bonded labour/child labour in the brick industry? Is there a systematic use of forced labour/bonded labour/child labour in the brick industry in Nepal?
 - b. Areas: In what regions of the country are children and adults engaged in forced labour/bonded labour/child labour in the brick industry in Nepal?
 - c. Migration dynamics: Are children and adults working in regions where they live? Have children and adults travelled/migrated from other regions? Do children travel with their families? Are they unaccompanied children? Is force labour more prevalent among migrants compared to the local population?

What are the main characteristics of the work performed by children and adults in the brick industry? (What type of work?)

1. **Occupations:** In what occupations are children and adults engaged in the brick industry?
2. **Tasks:** What type of tasks do children and adults perform? What is the degree, if any, of gender specialization? How do children's tasks differ from those of adult workers?
3. **Risks:** What risks do these tasks pose to children's and adult's safety or health?
4. **Duration and time:** How many hours during the reference period do children and adults engage work in the brick industry? At what times of day and week do they work? (Morning/afternoon/night; school day/weekend)?
5. **Exposure to hazards and abuse:** What is the exposure to physical, psychological and/or sexual abuse to children and adults in the workplace?
6. **Work-related injuries and illnesses:** What occupational safety and health issues (injuries and illnesses) have resulted from children's and adult's involvement in these tasks?
7. Employment relationship at different layers of brick production work (who is the real employer, recruitment process, what is the wages paid along with the working hours, as well as other working conditions, how a brick kiln is chosen by the workers, do they continue to work in the same kiln every year?

8. **Payment:** Are children and adults paid for their work? How (cash, in kind)? What is the frequency of payment? How much?
9. **School attendance and performance:** What is the school attendance and school performance (attendance, drop out, repetition) of children working in the brick industry?
10. **Barriers to education:** What are the barriers and challenges (from the demand and supply sides) that children face in accessing education?
11. **Rights to Freedom of Association and Unionization:** Are the workers aware of their rights to join a union? Do they get freedom to join a union of their choice? Do unions have made collective bargaining agreements with the employers? What is the unionization rate and what services (if any) are being provided by the unions to their members? Are there legal or practical barriers to workers' exercise of FOA / CB? If so, what are they? Have there been any efforts by unions to organize these workers? If so, what was the outcome and why? If not, why not? Are there any examples of these workers trying to self-organize? If so, what was the outcome and why? If not, why not? What terms and conditions would workers want to change if they could?

Industry measures

1. What measures at the industry/policy level (e.g. CSR certification, others) have proved more effective on withdrawing/preventing forced labour/bonded labour/child labour in the brick industry? Why? What is needed to extend/mainstream these measures into broader policies and programs?
 - a. Industry-side measures: Are any of practice in place by the industry with impacts in reduction of forced labour/bonded labour/child labour (CSR practices, social/labour certifications, etc.)?
 - b. To what extent has labour saving technology (mechanization and others) have been adopted in the production of bricks?
 - c. If these technologies have been adopted in the brick industry, has it had any meaningful impact on labour demand, particularly for children/migrants and vulnerable populations? Have these changes in labour demand had any meaningful impact on school attendance of children and adolescents?
 - d. As a result of the direct and indirect actions, have children/adults shifted to other types of work?

Policy and industry measures

1. **Enforcement:** What enforcement and monitoring mechanisms exist to ensure children and adults do not engage in forced labour/bonded labour/child labour? How effective is the labour inspection in enforcing the laws on these issues?
2. **Labour inspection:** Do labour inspectors come to these areas? Target? Routine?

Unannounced? What do they do if they find cases of forced labour/bonded labour/child labour?

3. **Social protection measures:** Are there social services providing remedial services to victims? How effective are these services in addressing the root causes of forced labour/bonded labour/child labour?
4. The research will look into the employment relationship at different layers of work for producing bricks in Nepal and recommend options to end forced/child labour practices. The research should provide knowledge-base for initiating three dimensional interventions - Prevention, Protection and Prosecution (PPP) measures to the fight forced/bonded/child labour.

METHODOLOGY

The study will use a mixed-methods quantitative and qualitative approach. The quantitative component will include data collection from sampled workers in brick kilns from all provinces to estimate the number of workers with age/sex disaggregated data and the extent of exploitative conditions and their perspectives on child/forced/bonded labour. The respondents for quantitative research will be adult/child workers engaged in the brick kilns. A structured or semi-structured questionnaire will be prepared and used to collect the information in consultation with ILO-FUNDAMENTALS. The universe of operational brick kilns will be taken from the findings of the first Nepal Economic Census 2018 conducted by the Central Bureau of Statistics whose preliminary report will be published in the beginning of September 2018.

Quantitative methods

The quantitative component will be based either in a probabilistic multistage sample of brick kilns and workers (adults and children), or a complete Census of establishments (in line with the discussions held with the Central Bureau of Statistics - CBS). If a sampling strategy is adopted, the sampling criteria should be elaborated to construct a statistical representative sample of the universe of brick kilns and sample weights calculated to extrapolate results to the entire population of workers in the brick sector. The sampling criteria and sample size for the different target populations will be refined during the design phase of the study in consultation with ILO-FUNDAMENTALS.

Particular attention should be given to ethical and methodological considerations to avoid under any circumstance that workers feel threatened or may be punished because of their participation in the study.

Qualitative methods

Qualitative methods will provide in-depth information on the characteristics of the work performed by the children and adults in the brick industry, the socioeconomic and cultural factors behind forced labour/bonded labour/child labour, the dynamics of the brick industry and

their influence on forced labour/bonded labour/child labour, and the characteristics and effectiveness of the institutional response in preventing and eliminating forced labour/bonded labour/child labour.

The following tools will be utilized:

- a. Focus groups: For in-depth discussion on specific topics relevant for each group representing the diversity of cases
 - Child workers (girls, boys, below and above the minimum age, and by another relevant category: i.e. casts/migrant workers)
 - Parents
 - Employers and middlemen
 - Community leaders
 - Teachers and other educative staff, healthcare personnel and social workers
 - Labour inspection
 - NGO staff working on forced labour/bonded labour/child labour
- b. Key informant interviews: For in-depth discussion with key individuals
 - Representatives of government agencies with mandate on forced labour/bonded labour/child labour, central and local level (add relevant list of institutions, etc.).
 - Local governments in brick producing areas and areas of origin of migrant workers.
 - Employers/landowners
 - Representatives of the brick industry, representatives of the national employers' organizations
 - Associations of brick producers (cooperatives, small and medium producer' associations, etc.)
 - Brick Trade Unions, national trade unions.
 - National and International NGOs with projects on forced labour/bonded labour/child labour related issues.

USE OF THE DATA

Brick Kilns, being one of the worst sectors of bonded labour, draws attention of several development partners and stakeholders working in child/bonded/forced labour in Nepal. Despite the reports of bonded/forced and child labour in the industry, it is growing, and amicable solutions that respect the law of the land and follow international standards and norms are welcomed by all the stakeholders. The research can produce data and valuable information to prepare several interventions to fight forced/child labour. The government of Nepal, particularly the Ministry of Labour, Employment and Social Security is keen on implementing its National Master Plan on Child Labour and the data and information produced from this research will be a milestone to implement the NMP. This will also be equally useful for other development partners

like the IAWG¹⁰ and local stakeholders like FLEAG¹¹ in designing targeted interventions in the Brick Kilns and sources or communities that are dependent in the brick production in Nepal.

CENTRAL BUREAU OF STATISTICS (CBS) TO CONDUCT RESEARCH

The Central Bureau of Statistics (CBS), being a competent authority in Nepal to collect and disseminate data, will conduct the research in consultation with the technical committee while deciding the sampling method, drafting and testing questionnaire, data analysis and report preparation. The technical committee chaired by the Joint Secretary of the MoLESS will consist the representatives from the following institutes:

- a. Representative of Ministry of Labour Employment and Social Security (chair)
- b. Representative of CBS
- c. Representative of ILO
- d. Representative of UNICEF
- e. Representative of apex body of Employers
- f. Representative of apex body of Workers

The National Project Coordinator of the Bridge Project will work as member secretary of the technical committee and will organize meetings in consultation with the committee members as and when required.

ILO AND UNICEF TO PROVIDE FINANCIAL SUPPORT

The funding for the research will be provided jointly by the ILO and the UNICEF following a memorandum of understanding with the CBS. The breakdown of the support to be provided by the ILO and the UNICEF is mentioned in the excel sheet as Annex – 2 and further details of roles and responsibilities of the ILO, UNICEF and the CBS will be mentioned in the Agreement to be signed amongst the three organizations, ILO, UNICEF and the CBS.

TASKS TO BE PERFORMED

1. Literature review on forced labour/bonded labour/child labour in the brick industry;
2. Review the current knowledge on recruitment practices and employment conditions in the brick kiln industry;
3. Designing of an appropriate sampling method and qualitative tools to conduct the study in coordination with the ILO Bridge Project staff, forced/bonded labour specialist and the labour statisticians;

¹⁰ International Agency Working Group (IAWG) is a loose network of international organizations including two UN Agencies (ILO and UNICEF) that are actively working on child labour issues in Nepal. The other organizations are – Plan International, World Vision International, World Education, Save the Children, Tere des Hommes, Winrock International and Sapla Neer.

¹¹ FLEAG - Forced Labour Elimination Advocacy Group - is a network of local NGOs active in Child/Forced labour and trafficking in Nepal.

4. Conduct data/information collection from the sampled brick kilns, interviewing the workers, employers, labour contractors and other concerned stakeholders;
5. Analyze the data and prepare reports and make presentations in a sharing workshop with the key stakeholders.

DELIVERABLES

1. Draft data collection plan: including the linkage between the research questions and the methods envisaged to answer them (see table 1).
2. Draft of data collection instruments for the qualitative and quantitative components of the mixed-methods research.
3. Sampling strategy (in case sampling is applied), providing comprehensive details on sample size calculation, sample distribution, sample selection, calculation of weights and sampling errors.
4. Draft dataset of qualitative and quantitative components of the study, with corresponding scripts (“do-files”) used for the calculation of indicators.
5. Draft report to be submitted to the ILO within the agreed date for feedback.
6. Final report (hard and soft copies) to be submitted to the ILO incorporating the feedback/suggestions received from the ILO experts. Preparation of a Power Point Presentation incorporating the findings and its presentation during a stakeholder’s dissemination workshop in Kathmandu.

Table 1. Research questions and associated research methods

			Research methods						
			Literature review	Quantitative data collection				Qualitative data collection	
				Household -based surveys		Workplace/ establishment-based surveys		Focus groups	
				Household/parent questionnaire	Child questionnaire	Questionnaire for intermediaries engaging workers	Questionnaire for employers/ landholders		
Research questions	Characteristics of the brick industry	What is the size of the workforce in the brick industry in Nepal? What is the typology or the relevant typologies regarding the production units/enterprises of bricks?							
		What are the key characteristics of the brick production units/enterprises with presence of forced labour/bonded labour/child labour (e.g. location, volume of production, level of technology, integration in the supply chain, access to social services, and others as relevant)?							
		Key concerns of the employers in relation to decent employment relationship (loss form the advance payment systems – why is it prevalent as it is contributing to debt-bondage practices? Can the method of direct payment to workers’ be beneficial for both (workers and employers), and how can relevant unions and employers collaborate with each other to solve this problem?							
	Prevalence and characteristics of forced labour/bonded labour/child labour in the brick industry	How common is forced labour/bonded labour/child labour in the brick industry in Nepal? (who is affected) (characteristics of the observed population -age, sex, ethnicity and other relevant socio-demographic and demographic variables) a. Prevalence: How common is forced labour/bonded labour/child labour in the brick industry? Is there a systematic use of forced labour/bonded labour/child labour in the brick industry in Nepal? b. Areas: In what regions of the country are children and adults engaged in forced labour/bonded labour/child labour in the brick industry in Nepal? c. Migration dynamics: Are children and adults working in regions where they live? Have children and adults travelled/migrated from other regions? Do children travel with their families? Are they unaccompanied children?							
		What are the main characteristics of the work performed by children and adults in the brick industry? (What type of work?)							

	Industry measures	What measures at the industry/policy level (e.g. CSR certification, others) have proved more effective on withdrawing/preventing forced labour/bonded labour/child labour in the brick industry? Why? What is needed to extend/mainstream these measures into broader policies and programs?							
	Policy and industry measures	Enforcement: What enforcement and monitoring mechanisms exist to ensure children and adults do not engage in forced labour/bonded labour/child labour? How effective is the labour inspection in enforcing the laws on these issues?							
		Labour inspection: Do labour inspectors come to these areas? Target? Routine? Unannounced? What do they do if they find cases of forced labour/bonded labour/child labour?							
		Social protection measures: Are there social services providing remedial services to victims? How effective are these services in addressing the root causes of forced labour/bonded labour/child labour? Freedom of Association measures: worker's awareness on their rights, collective bargaining, unionisation rates							

DURATION

The task needs to be completed within February – July 2019.

- Deciding research methods in consultation with the ILO Bridge Project staff – by 28 February 2019
- Field work - Desk Review and KII with concerned stakeholders, organizing FGDs and preparation of Case Studies, data collection from sampled kilns – by May, 2019
- Data analysis and report preparation and submission to the ILO – by June, 2019
- Dissemination Workshop – by July, 2019

TREATMENT OF INFORMATION

All data and information received for the purpose of this assignment are to be treated confidentially and are only to be used in connection with the execution of these terms of reference.