

International Labour Organization (ILO)

Terms of Reference for EXCOL:

Conduct a gap analysis of C189 and relevant National legislation in Nepal

Background

Domestic workers comprise a sizeable labour force globally - estimated at 75.6 million out of which 76.2 per cent are females (according to ILO). As per the ILO Convention 189, the term domestic worker is defined as any person engaged in domestic work with an employment relationship. A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker as per the Convention.

Women migrants from Nepal are currently largely engaged in domestic work, and migration remains an obligation for Nepali women rather than a conscious decision. In FY 2077/78 (2020-07-16 to 2021-07-15), the Department of Foreign Employment issued 405,477 labor licenses, with 30,090 of them going to women. The figures do not include the thousands of undocumented female migrant laborers. Apart from India, the United Arab Emirates (35.6 percent), Qatar (18.0 percent), Kuwait (7.7%), Saudi Arabia (7.7%), Cyprus (7.5 percent), Jordan (6.7 percent), and Malta (3.2 percent) are the top destinations for Nepali women, according to the Department of Foreign Employment's Migration Report 2020.

It is estimated that there are three million women in Nepal's labour market, with [90.5 percent working](#) in informal employment. There are 250,000 domestic workers in Nepal, though this does not capture the many Nepali migrant domestic workers working in other countries. [Survey conducted by WIEGO and GEFONT](#) shows that more than 80% domestic workers in Nepal do not have a written contract. Most of them are employed in live-out arrangements with multiple employers. Nepal's minimum wage provision does not apply to live-in domestic workers. Domestic work is often undervalued, informal and invisible, and mainly carried out by women and children- mostly adolescent girls. Domestic work is typically undertaken by workers in private workplaces based on informal terms, generally with no employment or work contracts, very low wages, and excessively long hours. The informal nature of work relations makes it particularly difficult to regulate and manage this sector. A significant number of domestic workers are not recognized as workers and do not have access to different rights and entitlements including social security provided by different national and international labour laws. This sector is not viewed as dignified sector of work. Domestic workers are considered as mere someone who are paid to perform household works and are not considered as employees or rights holders who possess rights to be treated humanely. These pre-existing vulnerabilities due to their invisibility, employment and wage insecurity, lack of access to benefits, etc. in practice is further exacerbated by COVID-19 pandemic

Objective

Domestic workers play an important role in the functioning of households and labour markets, yet they are frequently left out of social and labour protections and endure substantial work deficits. The Nepalese government acknowledged domestic workers in 2017 under the Labour Act 2017. Certain provisions regarding domestic workers are included in the new Labour Act. However, there is the need of reforms as it doesn't meet all the criteria of ILO C189. Domestic employment is promoted by the ILO C189 Conventions as a decent job with daily and weekly rest hours and the right to choose where they wish to live and spend their free time. Ratification will lead to further improvement of the existing labour law in Nepal, as well as measures that can handle domestic worker violence in an integrated manner.

Thirty-four of the 187 member nations of the International Labour Organization have ratified C189 and began the legislative reform process. Nepal has laws safeguarding domestic workers rights within Nepal, but none for migrant workers. The importance of this ratification has been recognized by the tenth session of UPR. It is vital for Nepal, as one of the largest sending nations for domestic workers, to ratify C189 so that it can negotiate with the country of destination for demanding better protection of migrant domestic workers abroad.

ILO Nepal Office has conducted series of consultation meetings and programs with relevant stakeholders and domestic workers. One of the pertinent recommendations provided through such consultations is to conduct gap analysis of C189 and relevant National legislation in Nepal. Acknowledging the need for gap analysis study ILO Nepal has decided to conduct the work. The main objective of gap analysis study is as follow:

- To have a comprehensive analysis of what are the obligations that government will have if C189 is ratified
- To have comparative analysis of what laws/provisions we already have in place and what are we lacking to meet the standards recommended in the C189.
- To inform relevant stakeholders and concerned government that signing C189 would help the country in demanding better protection of migrant domestic workers abroad. Also, to inform on the gaps and strategize for further advocacy work for ratification of C189.

Scope of Work

The ILO is seeking the services of a consultant to conduct following work:

- Analysis of national laws, regulations or other measures which are intended to give effect to the provisions of the ILO Convention 189, and to determine where changes are needed to amend or otherwise adjust national laws or regulations at par with C189.
- Analysis report/policy brief focusing on gaps in implementation of existing provisions related to domestic work, decent work deficits in the domestic work sector in the country and how to further strengthen the existing regulations.
- Provide valid recommendation and the analysis to support the ongoing advocacy work for ratification of C189.

Key Deliverables

The key deliverable are as follows:

- i. Policy brief including background information on situation of domestic workers in Nepal, tabular representation of review of national legislations comparing with the ILO C189 standards.
- ii. In depth analysis of implementation status of existing legislation and decent working opportunities for domestic workers in Nepal.
- iii. Does not exceed 5000 words
- iv. Is aligned with ILO house style manual (to be shared with the selected candidate upon beginning of contract)

In addition to this, the consultant will also be required to participate in two dissemination events/meetings.

Time Frame

The tentative timeline for the assignment is between 1st September 2022 to 17th October 2022 for a total of 20 working days.

- 3 days for preliminary review
- 3-5 days for interviews with relevant stakeholders (KII, FGDs)
- 7 days for draft report writing presentation of draft report and findings to ILO
- 3-5 days for finalisation of report

The activities and number of days proposed above are indicative only. This can be adjusted in mutual understanding and consideration of rationale as per the need. The technical expert may also propose additional activities with justification. Any changes or additional task will be discussed and decided mutually.

Eligibility and Requirement

The applicant should possess the following requirements:

- **Competencies:**
 - Minimum of university degree (Masters' or equivalent) in social science, communication, law, or related areas
 - Previous experience of working on research assignment on women's work, domestic work and in depth understanding on issues related to gender and human rights.
 - Previous experience of undertaking qualitative research and analysis
 - Excellent command of written and spoken English as well as Nepali.
- **Eligibility:**
 - Consultants contracted by the ILO for another task in the duration of the study are not eligible to apply
 - If the applicant is engaged in full-time employment, the applicant will be required to present a no-objection certificate from their employers **upon selection**.
- **List of Documents to be submitted:**
 - Cover Letter indicating an all-inclusive fee per day/financial proposal and tentative workplan
 - CVs of key personnel who will be engaged in the proposed activity

Submission and Deadline of Application

Applicants are requested to send an all-inclusive fee per day as well as any other related expenses for the study as part of the financial proposal and their CVs highlighting relevant experience as well as other supporting documents to KTM_Procurement@ilo.org no later than 23:30hrs, 23 August 2022. Please indicate “Gap analysis study C189” in your e-mail subject line.