

Asia Pacific Labour Law Review

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Workers' Rights for the New Century

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AMRC is an independent non-governmental organisation
that focuses on Asian and Pacific labour concerns.

The Center provides information, research, publishing, training, labour networking
and related services to trade unions, pro-labour groups, and other development NGOs.
AMRC's main goal is to support democratic and independent labour movements in Asia and the Pacific.
In order to achieve this goal, AMRC upholds the principles
of workers' empowerment and gender consciousness, and follows a participatory framework.

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Labour Law and Practices in Nepal

By Gopal Siwakoti 'Chintan'

Introduction

Nepal was cut off from the mainstream of societal development for centuries due to its diverse geographical make-up. The country was divided into small kingdoms until the latter half of the 18th century, when it was unified by Prithvi Narayan Shah of Gorkha to become the Kingdom of Nepal.

Due to Nepal's chaotic political development in the first half of the 19th century, the economic needs of the people were ignored. The people began to break away from complete dependence on agriculture and traditional ways of economic livelihood only in the twentieth century.

During the Rana period, little attention was paid to the systematic development of the country's resources. The palace-led revolution of 1950-1951 and the subsequent overthrow of the Rana regime marked the beginning of Nepal's emergence into the modern world, but its economy was still rooted in the medieval past (Karan and Ishii 1996).¹



Nepal briefly experienced a multi-party system in 1958 but it lasted only for 18 months. King Mahendra abolished the first elected Parliament and the government in 1960 and imposed a partyless Panchayati dictatorship. Nepal restored parliamentary democracy in 1990 and introduced a more liberal Constitution with the guarantee of minimum civil and political rights and adopted a free-market economic policy.

The overall economic development of Nepal is primarily dependent on agriculture and forestry but the development of the industrial sector also enters the scale of priorities. The Rana regime, during the first third of the 20th century, did little to regulate and promote industrial activities. The first step towards encouraging industry occurred in 1935 with the establishment of *Udyog Parishad* (Development Board). Subsequently, the first joint stock company, the Biratnagar Jute Mills, was incorporated by Indian entrepreneurs.

Overview of the economy

Nepal is one of the least developed countries with per capita income of little over US\$200, which is one of the lowest in South Asia. Over 42 percent of the population lives in absolute poverty. Half of the labour force is either underemployed or unemployed, and the distribution of income and wealth is highly uneven. Statistics show that 10 percent of the total households take 53 percent of national income and six percent of households occupy 33 percent of the agricultural land. The unemployment situation is equally alarming (GEFONT Proceedings 1999). Currently, the labour force is growing at the rate of nearly three percent per year and yet current output growth can create job opportunities for not more than half of the labour force. The unemployment rate is around 14 percent. The existing employment elasticity of output growth is very low, somewhere around 4 percent. This implies that a 5 percent growth of the economy can only create a 2 percent increase in job opportunity for the labour force. The situation is alarming. At present Nepal is witnessing the lowest economic growth in a decade, with the economy growing at 0.8 percent in the fiscal year 2001-2002. (*Spotlight*, 12 July 2002). More than 80 percent of the population earns a living from agriculture, which contributes 40 percent to national income.

Globalisation and labour relations²

Nepal's economy is primarily informal and rural, and the concept of a competitive market economy is still new. The history of globalisation in the country can be traced back to initiation of the first Structural Adjustment Programme (SAP) in 1985 under the imposition of International Monetary Fund (IMF) and the World Bank. As a result, the first democratically elected government in 1991 adopted the policy of an open, liberal, and private sector-led economy. Trade, investment, foreign exchange, and financial and industrial sectors were subsequently deregulated, deliquesced, and privatised having severe negative effects on the domestic economy. One example is the burden of foreign debt swelling up to 56 percent in 1998 from 37 percent in 1990 (Sharma, Uprety, and Dahal 1998).

Historically, Nepal's economy has been defined as mixed but it is changing fast due to the effects of globalisation. It is moving more towards a trade-oriented economy through the export of raw materials rather than finished industrial products. Nepal also faces a serious market problem unless it pleases India, which has always been a difficult task. The private sector is mainly organised in a form of family groups or small business houses. The control and management of tourism and carpets, the main source of Nepal's foreign currency, are just two examples dominated by certain high-caste ethnic groups.

Labour

The total labour population of Nepal is 10.3 millions, that is 75 percent of the total population. The total male labour force is 4.9 million, 52 percent of total working population; the female labour force consists of 5.4 million, 48 percent of total working population. 78 percent of the labour force is employed in the organised and unorganised sectors and 22 percent are self-employed. Statistics suggest that there is an increase in the labour force by 0.3 million every year. The unemployment rate is explosive. In the male labour force, the unemployment rate is 5.6 percent and among women the unemployment rate is 4.9 percent. But seasonal unemployment is 47 percent.³ Although, there is a lack of more scientific and regularly updated data on the labour force, both in the

formal and informal sectors, these statistics provide, at least, some reflection of the current labour scenario.

Various studies have indicated that landless households are about half a million. About one million landless labourers can be estimated to be working as waged farm workers. The number of landless labourers is similar to the number of waged workers.⁴

Information on the incidence of non-farming employment of the farming population is difficult to obtain. The economically active farming population seeks various non-farm jobs, including construction, petty trade, teaching, pottery, and seasonal migration within and outside Nepal.

Apart from the above statistics, there are about 2.6 million children who are employed in different informal sectors. This is one quarter of the total labour population. There are around 40,000 bonded child labourers in Nepal, and around 25,762 Kamaiyas (bonded labourers) in Nepal (Shramik Khabar 1990).

Women workers are identified as the major work force in Nepal. They are mainly involved in taking care of reproduction, household, and employment in a three-fold responsibility. Existing data shows that 77 percent of working women belong to the active labour force. Working women are mainly agriculture-based. However, they are also contributing to family subsistence as unpaid family workers, self-employed workers, wage earners, and domestic workers. The unemployment rate of working women is 4.1 percent and the under-employment rate is much higher than for male labourers.⁵

There is little data available regarding the sexual harassment of working women in the work place, but it is common in the workplace in particular, and in society in general. According to a survey, *A Decade of Trade Union Movement in Nepal 2000*, harassment such as sexual abuse, unwelcome verbal conduct, physical contact, and advances and verbal conduct of a sexual nature has declined by 59 percent to 24 percent, 23 percent, and 16 percent respectively compared to 1991 (Rimal 2000). Nepal has a series of laws against sexual harassment and gender-based discrimination but the lack of appropriate and efficient mechanisms, the absence of clear legal and administrative procedures and inadequate remedies for victims still make the female workers vulnerable. As a closed, feudal and traditional society, women are also

very reluctant to publicly voice their grievances and bring the culprits to justice.

There seems to be a good response over the implementation of minimum wage regulation. A comparative study conducted on trade union rights explains that while asking about the implementation of the new wage regulation in 1990, 75 percent of the workers replied that the minimum wage had been implemented in their enterprise, and this had increased to 83 percent by 1999. However, this system is limited only to formal sector workers, thus disparities exist among the informal sector workers (Rimal 2001).⁶

In formal sectors, issues related to terms and conditions of work, working hours, lunch break, and insurance have been improved. The employment in organised industries is done with the issue of letters of appointment. The types of employment are also various, including permanent, temporary, contract, piece-rate, and casual labourer. The trend of sub-contracting as contract and casual labour has increased as an effect of globalisation and free-market economy (Pande 2001).

The demand for eight hours of work, eight hours of rest, and eight hours of recreation is now a much-antiquated demand in the current labour movement. Normally, workers are required to work for long hours and sometimes without additional pay. Likewise, working conditions and workers' safety measures are also poor and unhealthy. The facilities in the work place are inadequate and unregulated. Managers pay little or no attention to childcare, rest-room facilities, recreation centres, and the learning environment. There is even a decline in health care services. Data indicates that respiratory diseases have increased by 76 percent and disease related to nerves has increased by 116 percent during this decade. (Rimal 2000).

Emergence of a labour movement

Trade unions (see Appendix 2)

The trade union movement in Nepal began in 1937 from Raghupati Jute Mill in Biratnagar, under the leadership of late Prime Minister Man Mohan Adhikari, named the All Nepal Trade Union Congress. At the time, it was limited to Raghupati Jute Mill, the sugar mill, and the match factory of that area, but it did not survive for

long due to the political turmoil. The late King Mahendra banned the union in 1960, together with all the political parties, so it went underground. It was only after the student's movement of 1979 that the Nepal Sawatantra Majadur Union (Nepal Independent Labour Union) came into existence. At the same time, Nepal Yatayat Majadur Sangathan (Nepal Transportation Labour Organisation), Nepal Sawatantra Hotel Majadur Union (Nepal Independent Hotel Workers Union), and Nepal Trekking Majadur Sangh (Nepal Trekking Labour Association) were also established. In 1989 the Nepal Trade Union Association was formed to function collectively for the welfare of the workers of different sectors. It included the Nepal Yatayat Majadur Sangathan, Nepal Sawatantra Hotel Majadur Union, Nepal Trekking Majadur Sangh, along with Nepal Sawatantra Majadur Union. It was only after the restoration of the multi-party system in 1990 that the welfare of workers became one of the main issues on the government's agenda, leading to the Trade Union Act and the subsequent Regulations in 1992.

The registration of trade unions at enterprise-level started in 1992. By the end of 1993/94, the number of such trade unions affiliated with the General Federation of Nepalese Trade Unions (GEFONT) was 420. Similarly the number of trade unions affiliated with the Nepal Trade Union Congress (NTUC) was 239 and others 52. By 1999, the number of trade unions affiliated to GEFONT, NTUC, and others in total had increased to 867, 651, and 322 respectively. Within this period, GEFONT registered 447 unions whereas NTUC and others registered 412 and 270 unions respectively. The campaign for the registration of national-level unions and associations started in 1994. The first national-level trade union registered was the Nepal Independent Workers Union (NIWU). By the end of 1999, 71 such federations had become registered.

Among the federations, 18 are affiliated to GEFONT, 22 to NTUC, 11 to DECONT, and the remaining 20 federations are on their own. Among the 18 GEFONT affiliates, three of them have merged with NATU and CUUPEC-Nepal. Among the 22 NTUC affiliates, five have lost registration status for not fulfilling the legal prerequisites. Among the 20 independent federations, 14 have lost their registration status and only six are in operation at the moment.

Among the registered federations, GEFONT's Federation of Agriculture Workers Nepal (FAWN) is the largest with 35,387 members. There are six GEFONT affiliates with at least 500 members. Four GEFONT federations have over 5,000 members each.

According to the Department of Labour, among the 17 NTUC affiliates, there are four associations launched by 651 enterprise-level unions. However, the federation related to the garment sector, having 70 local unions, has lost its registration due to the non-existence of the local unions now. NTUC has four Federations having individual membership of 5,000 members. The ten federations formed through individual membership range from 298 to 772. The Department's records show that NTUC now has 29,034 individual members and 336 active local level unions.

There is no record of enterprise-level unions affiliated to DECONT. The Department's records show that DECONT is based on individual membership and has four associations with 500 members.

In all of these federations, one factor is obvious, that they are affiliated to or influenced by one of the political parties of Nepal. But there is no question about the achievements that have been made so far. Although, they actively play a dual role both in political and trade union fronts, they have done their best to protect the rights of the workers and their general welfare. Sometimes, given the country's unstable political climate, they are overburdened by political work but at the same time they also have established themselves as a strong partner in the Nepali social movement in general, and trade union movement in particular.

However, the expansion of membership and organisational works in organised sectors has not been very encouraging in recent years. Some of the reasons for this include the decreased number of workforce in textile industries, industrial sickness, liquidation and the unpopular use of contract labourers in the rolling mills and industries. The process of gradual privatisation and the casualisation of the labour force have also threatened the membership and the strength of trade unions and federations. However, the possibility to form unions by agricultural labourers, as granted now by the amended Trade Union Act, is providing a new opportunity for a strong trade union movement. But still the limited number of trade unions and federations is a matter of grave uncer-

tainty when the country is suffering heavily from political conflicts and ideological diversity.

There is also another federation of pro-Maoist unions called the All Nepal Trade Union Congress (ANTUC). It is emerging as one of the most militant mass organisations in terms of public protests and actions. The ANTUC takes a more radical and 'revolutionary' position on labour rights, social security, and privatisation issues. It is reported that the ANTUC is engaged more on pro-Maoist political activities rather than specific issues. Furthermore, its membership and organisational strength is also not very clear since it is an illegal organisation since the declaration that the Communist Party of Nepal (Maoist) is a terrorist organisation. As a result, all activities of the ANTUC have been banned and many of its leaders and workers have been the victims of the government crackdown – both for their union, as well as political, activities.

To summarise, there are only three officially recognised federations and co-operation among them has been very cordial and friendly in recent years. The driving force behind such progress has been the realisation of common issues on labour fronts, due to both the national political crisis as well as the negative effects of globalisation. Among all these federations, GEFONT is considered the most organised and active.

Labour issues

One of the main labour issues in Nepal is whether to reform existing labour laws towards free market and make them more employer-friendly, or make them even more rigid in defending the rights and the welfare of workers. In general terms, according to the provision of the Nepal Factory and Factory Workers Act 1959, the issues could be categorised as minimum wage issues and issues related to unfair labour practices. The relevance of four categories of minimum wages – unskilled, semi-skilled, skilled, and highly skilled has become outdated. This needs to be assessed according to the demands of the time. Another pertinent issue is related to unfair labour practices.

There is a need to establish a national minimum wage schedule. In addition, trade unions are in favour of sectoral minimum wages above the national minimum. Thus, the present enforcement mechanism of the minimum wage is not satisfactory. Exploitative working

hours, unhealthy workplaces, occupational diseases, negligence in safety measures, sexual harassment in the workplace, nominal level of pay and facilities, and lack of incentives are some of the main issues in formal sector enterprises. The situation in informal sectors is even worse. Lack of awareness and fear of loss of job have restrained workers from organising and asserting their rights. Trade unions are still in an early phase of awareness-building. Nepal needs to focus more on the implementation of existing laws and monitoring labour-related activities and programmes.

Unfair labour practices have been quite visible mainly in the form of women workers, bonded labourers, and child workers. Before 1990, the worker and employer relationship was understood as one of slaves and masters. The private sector practice was traditional and feudalistic. Issues were raised and resolved or unresolved with a more confrontational approach. However, there has been big shift in recent years. A new rights- and welfare-based approach has begun. There has been an institutionalisation of more cordial and peaceful labour relations. Trade unions have also taken on the role of making factories and industries more participatory, genuine, and efficient. However, a new type of confrontation has also begun due to the forces of globalisation, privatisation, and the free-market.

So on the issue of reforms in existing labour laws, significant progress was made in December 2002. All three major federations and the representatives of the FNCCI-Employment Council agreed on both labour and industry-related law reforms through mutual agreement and have agreed not to proceed with law amendment until the basic issues are discussed and approved by a joint national convention. These issues are mainly related to social security, labour flexibility, gender, labour administration, informal sector, trade union, collective bargaining, and exit policy. Sectoral bilateral discussions will also be held when necessary, and further the practice of bilateral co-operation in the future to resolve labour issues through dialogue rather than confrontation.

Labour disputes and the role of trade unions

With the popular movement for democracy in 1990, labour disputes also surfaced. In the course of struggle, GEFONT presented a number of collective demands ranging from three to 83 points. A total of 127 struggles

took place from 1990 to 1999. The duration of the labour strikes ranged from one day to 220 days. During this decade, GEFONT alone filed 179 cases in the Labour Court. Among these cases, the Court gave verdicts in favour in 46 percent of the cases and 12 percent against. 18 percent of the Court cases are still pending and 24 percent are in the process of legal settlement. The trend of individual demands is on the decline. It has been found that the enterprises executing the Regulations are 33 percent, those executing the Trade Union Act are 36 percent, and those following the Court verdicts are 12 percent. This indicates that the achievements made through collective bargaining and/or from Court settlement are encouraging.

Legislation

Following the establishment of some industries in the mid-1930s, there has been some consideration about industrial and labour policy. Due to adverse effects of labour law and the absence of adequate benefits, a major strike took place in 1947 in Biratnagar Jute Mill. This strike is considered as the beginning of the labour movement. However, Nepal did not have any labour laws defining rights and responsibilities, except a few provisions in *Muluki Ain* (National Code), until 1959.

Trade unions have done much to protect the rights of the workers, but this is only apparent in formal sectors. With respect to informal sectors, there is still much to be done to safeguard workers' rights and guarantee minimum welfare. The trade unions have formed forums for the emancipation of agricultural labourers. They have been continuously raising their voices to end the exploitation in the field of contract labour. They take initiatives to prevent and control the practice and the exploitation of child labourers. On social security issues, they are building up new platforms to pressurise the government for their rights to social security. They are also engaged in advocacy against the discrimination of women labourers.

In 1959, the Nepal Factory and Factory Workers Act were introduced followed by the adoption of labour regulations in 1962. These provisions addressed issues like workers' safety, working hours, working conditions, employment conditions of women and children, minimum wage, gratuity, compensation for injuries, paid

leave and public holidays, as well as social security and social welfare-related measures (Karki 2000, p. 41).

In 1972 the Bonus Act was introduced but it was only applicable to the formal manufacturing sector. Workers engaged on tea estates, agriculture, and other unorganised sectors were not covered under this law. It was only after the restoration of the multi-party system in Nepal in 1990 that a new era of industrial activities began and labour laws were strengthened and introduced in a more comprehensive manner. Labour became one of the main issues on the agendas of all the emerging political parties and governments. Nepal also began to ratify various international treaties of the United Nations and International Labour Organisation guaranteeing labour and welfare rights. The combination of domestic constitutional and legal provisions as well as the international treaty obligations has dramatically changed the status of labourers in Nepal, regarding labour administration, participation in trade union activities, tripartite consultations, and administrative and judicial measures against unfair labour practices.

Article 26(6) of the 1990 Constitution of the Kingdom of Nepal provided that 'the State shall peruse a policy of increasing the participation of the labour force, the chief socio-economic force of the country, in the management of enterprises by gradually securing employment opportunities to it, ensuring the right to work, and thus protecting its rights and interests'.

The only problem with this policy is that it is not enforceable by any court of law unless it is translated into a law. However, the Supreme Court, in different judgements, has declared that it is the fundamental responsibility of the government to adopt necessary laws towards the implementation of directive principles and policies of the state in a gradual manner, but not to violate them in any circumstances.

Labour rights provisions

For the first time, in the history of Nepal, article 20 of the 1990 Constitution has provided for fundamental rights against exploitation of labour and child workers. Under the Constitution 'traffic in human beings, slavery, serfdom, or forced labour in any form is prohibited' and 'no minor shall be employed to work in any factory or mine, or be engaged in any other hazardous work'. The violation of any of these provisions is punishable by law.

Civil Rights Act 1955

The Act, the first labour legislation in Nepal, provides various rights of the citizens under one law. It also has specific provisions relating to labour rights. Section 13 of the Act 'prohibits anyone to engage a person in any work against his will except in accordance with law'. Likewise, under Section 14, it also imposes restriction upon 'anyone to employ a minor below 14 years of age as a labourer in a factory or mine or in any hazardous work'. In case of violation of these provisions, a civil law suit can be brought before the Appellate Court and relief sought by asking for an order of injunction against the perpetrators or compensation to the victims.

Muluki Ain 1962

The chapter on Wage (*Jyala Majuriko*) in Muluki Ain 1962 prohibits forced and free labour without the consent of the labourer. It provides that there must be an arrangement for wages to be paid or remuneration through mutual agreement between the employers and the employees concerned. In the absence of any such agreement, the prevailing local rate of wage/remuneration is to be made applicable. Furthermore, the workers are also prohibited from leaving the work incomplete. It lays down fines at different rates against those who are engaged in the practice of forced labour and those who do not pay fair wages. Those who leave work before completion are required to pay money for the loss incurred. However, such fines and compensation can only be obtained through proper legal action. This general provision of Muluki Ain also coincides with the general provisions of the Contract Act, 1967 that governs contractual relations between the employers and workers engaged in non-formal or informal sectors.

Labour Act 1992

The Labour Act 1992 is Nepal's most comprehensive labour law to date. It was the prerequisite for the subsequent adoption of Labour Regulations 1993, Tea Estate Regulations 1993, and Labour Court (Procedures) Regulations 1995. The main provisions of these laws and regulations is summarised below:

i) Employment and Security of Services

The Act mainly focuses on job security of workers and employees. It provides for the compulsory letter of appointment once he or she is selected through an open

and public competition process. A permanent letter of appointment is to be issued upon the completion of a one-year probation period. The letter of appointment includes all the terms and conditions of the job, amount of remuneration, and other benefits. A contracted worker automatically receives permanent status upon providing service for 240 days.

The Act prohibits the employment of child labourers in any enterprise. A minor above the age of 14 and a female with proper security and safety arrangements may be allowed to work at anytime. However, a minor below the age of 16 must not be employed to work for more than six hours a day and 36 hours a week. The Act also provides for job security.

The Act also bars employers from firing permanent workers unless it is done in accordance with the law. Similarly, employers are prohibited from cutting the number of labourers without permission from the government. When doing so, employers must provide sufficient reasons for such measures, e.g. the closure of the enterprise for more than three months under special circumstances.

ii) Working Hours

The working hours are fixed at eight hours a day or 48 hours a week with a one-day weekend holiday. Workers are also eligible for half an hour break for refreshment every five hours. In case of overtime, they are to be paid at the rate of one and a half times more than their regular wage.

iii) Remuneration

Every worker must be paid a minimum wage as prescribed in the letter of appointment. Such allowance and related facilities may vary in different geographical regions. A permanent worker is entitled to receive an annual grade and salary-increase. Payments may be made on a weekly, fortnightly, or monthly basis except in the case of a daily wage contract. The employers are also prohibited from reducing the fixed wage, unless the law authorises it. Complaints can be made before the Labour Office in case of violations of these provisions within six months of the date of the violation. In the case of falsity of the allegation, the employees will be required to pay up to Rs 1,000 (US\$14). In the case of the loss of a job for some legally valid reason, the employees are awarded compensation and they cannot take the case to court. It is considered a mutual agreement.

iv) Health and safety

The Act has made provisions for the health, safety, and welfare of workers and employees. They include regular cleaning of the workplace, proper facilities for sewage, supply of drinking and washing water, fresh air, proper lighting system, appropriate temperature, adequate working space, pollution-free working atmosphere, separate toilets for men and women, no-smoking zones, and compulsory health check-ups on an annual basis. Proper arrangements for the safety of eyes, protection from chemical substances, and safety measures against fire and guards on hazardous machines, are specified in the Act. There are also limits for lifting heavy weights and working in hazardous plants.

v) Welfare provisions

An enterprise is required to create a welfare fund for its workers, which can be used to provide compensation for the families of the diseased and for the workers wounded during work. There is also a provision for gratuity, a provident fund, and medical care under the Labour Regulation 1993. It also describes provisions relating to government holidays, special leave, and paid or unpaid leave, includes recommendations for quarters, leisure rooms, canteens, and childcare facilities. However, the absence of a welfare system as well as the lack of effective implementation of enterprise-based welfare benefits always makes the life of the workers and their families difficult and vulnerable.

Specific provisions under labour law for sectoral enterprises

The Labour Act 1992 has made specific provisions for some industrial sectors. For example, the government has assumed the authority of constituting a committee to render necessary advice on promotion, policy formation, and other related matters in respect to the tea estates. In construction businesses, the employers are required to supply construction tools, provide labour quarters, food, drinking water, accident insurance, and adequate safety arrangements at construction sites.

Similarly, in the transportation sector, on a long route public bus service, the employers must have a provision for two drivers for alternate driving. Likewise, a driver transporting animals and goods is to be allowed frequent rest. They should be paid for overtime after eight hours of work at the rate of one and half times the normal sal-

ary or a trip allowance, food allowance, or any other allowance, whichever is higher and more beneficial. The workers are also eligible for adequate compensation in case of the termination of their jobs due to the transfer of ownership. In the hotel, travel, trekking, adventure, rafting, jungle, and safari businesses, there has to be special arrangements for the employment of female workers, for their proper safety and security, depending on the nature of work.

The employer is authorised to punish any employee on the grounds of misdemeanour. The measures of such punishment include reprimand, effects on annual grade increments, suspension, and discharge from service depending on the nature and the seriousness of the offence. The employee has a right to respond to the action taken. In the case of the misuse of authority or violation of the law by the employers or managers, the Department of Labour can take action against them and quash any illegal decisions made by them.

The Act has provided procedures on personal claims and complaints against the employer relating to service. In case of such claims and complaints, the employer has a duty to settle the matter within 15 days. The Act has also laid down procedures in case of claims of collective disputes that arise out of collective interests or rights etc. Such a claim must be signed by at least 51 percent of the workers/employees of the enterprise and be submitted to the employer for settlement through a bilateral agreement. The Labour Office plays an administrative role in settling the disputes. The Act renders the legal stamp to the collective agreement and makes it legally binding for both the parties. Such agreements have to be registered at the Labour Office. The government is also empowered to constitute a committee to finally settle any outstanding or possible labour disputes. Hence, the government is conferred immense power by the Labour Act to settle industrial disputes. The government, upon consultation with the Central Labour Advisory Board, may exempt any enterprise from application of any provision of this Act for a specific period of time. It can also prescribe minimum remuneration and certain privileges in accordance with the provisions in the Act where less than 10 employees are engaged.

The Act has made special provision with regards to non-enterprise workers. Accordingly, the payment of remuneration for work has to be made by the employer in

accordance with the contract agreement, if it exists. In the absence of such an agreement, payment has to be made within seven days of the date of work performed. In the case of non-payment, the District Labour Officer, or in her/his absence the Chief District Officer, is authorised to ensure such payment upon the request of the aggravated parties.

Labour court and dispute settlement process

The Labour Court is required to adopt its own rules of procedure as laid down under the Summary Trial Proceeding Act 1960. The Labour Court Regulation 1996 governs other procedural aspects of the Court. The jurisdiction of the Court covers only rights-related disputes or grievance disputes but not interest-related disputes or disputes of an economic nature which are not provided in the labour law. Thereupon, the Labour Office repeats the same procedure as above in settling the disputes. The failure of the settlement will invite the Chief Officer of the Labour Office to decide the matter within seven days from the date of reference. An appeal against the decision can be filed with the Labour Court within 35 days of the notice of the decision. The dispute could also be settled through bilateral negotiation in the presence of a Labour Officer. If this process fails then the case may be referred to the mediator appointed with mutual consent of both the parties. If such a mediator is not agreed upon then a tripartite committee are formed with the agreement of the parties, having equal representation of employers and employees as well as the government. Such mediators or committees must make a decision on a case within 15 days. An appeal against the decision may be filed before the government within 35 days of the notice of the decision. If the government does not decide the matter within 60 days from the date of appeal then the workers may put pressure on the management by staging pre-informed strikes. The employer may declare a lock out with the approval of the government as a last resort to settle the dispute collectively. Strikes are prohibited in certain enterprises, e.g. security institutions and daily public utilities. The same demands cannot be raised for another two years after the date of the settlement of the dispute. The government is empowered to call off any strike and end a lockout at any time in extraordinary situations.

Gender-related labour laws

According to the law, women have the equal right to work in any enterprise. They are also eligible for extra benefits than their male-counterparts. An employer is not allowed to employ a female worker at night. She is also allowed to give proper care to her child and take necessary breaks for breast-feeding. There is also a provision for day care centres in the workplace.

Nevertheless, existing law and policies do not address the issue of gender equality in the employment sector. To incorporate gender equality issues in all sectors of work, the Federation of Nepalese Chambers of Commerce (FNCCI), and the representatives of the Democratic Confederation of Nepalese Trade Unions (DECONT), GEFONT, and the NTUC signed an agreement on 27 November 2002 to start a process of social dialogue. The same has already been highlighted in the Poverty Reduction Strategy Paper in April 2002 that advocates 'Decent Work for Poverty Reduction'. To give final shape to this initiative, the Ministry of Labour, the FNCCI, and the three major federations have further agreed to establish a joint sub-committee on Promoting Gender Equality in the World of Work within the framework of the Central Labour Advisory Committee. Its main objective is to review and promote measures to achieve gender equality at work. These three federations also have set up a Trade Union Committee for Gender Equality and Promotion to ensure follow-up and effective implementation.

Common gender issues in the workplace:

- Maternity protection;
- Employment opportunity, security, and training;
- Working conditions;
- Equal remuneration and other benefits;
- Leave;
- Law against sexual harassment and violence;
- Occupational safety and health;
- Information on HIV/AIDS;
- Ratification of ILO Conventions Nos. 89, 183, 155, and 156;
- Formation of unions in informal sectors.

Trade Union Act and the Regulation 1992

Trade unions are the by-product of the multi-party system in Nepal. Article 12(2)(c) and (e) of the Constitution also provide for a framework, guidelines, and re-

restrictions relating to the formation of any organisation, union, or association.

The underlying objective of the Act is to make a provision for the registration and operation of trade union organisations, as well as to guarantee the rights and welfare of workers, whether they are permanent, temporary, or contract. Workers of any enterprise having at least 25 workers may form an enterprise-level trade union. Similarly a 50-member workforce may form an enterprise-level trade union. A 5,000-member workforce, composed of various enterprises of a similar nature, or at least a 250-member workforce, working outside an enterprise but engaged in various businesses and professions of a similar nature, may form a trade union. At least 10 trade unions, through agreements, may form a greater trade union association or a federation, but no one can be a member of more than one association. This Act has a provision for Authorised Trade Unions, by which the problem of multiplicity of trade unions is partially resolved. However, the law provides that no union can be formed in a newly established company until after an initial one year period, and it also requires employees to have worked the minimum service of 240 days to be elected to the union leadership.

Bonus Act 1971 and Bonus Regulation 1981

The labour law combines the Bonus Act 1971 and the Bonus Regulation 1981. The bonus law is aimed to manage the distribution of bonus to the workers in private sector enterprises. Each profit making enterprise is required to allocate 10 percent of its annual net income for distribution to its workers. Such enterprises are also required to submit annual balance sheets and income and expenditure reports to the Labour Office for the ascertainment of their income status. The bonus must be paid in cash every year, or in certain cases, it can be paid the following year, accumulated from both the years. 50 percent of the bonus can be paid in advance in certain circumstances. No bonus is paid for any period of absence from work, unless the period for absence is an exempted one, and no bonus is paid for any period of illegal strikes. From the total amount in surplus after paying the bonus, 70 percent is to be deposited in the welfare fund created under the Labour Act, and the remaining 30 percent is to be deposited in the national

welfare fund created by the government. The settlement of any bonus dispute between the employers and employees has to be done by the Labour Office. These cases can also be produced before the Labour Court for final settlement. The Bonus Act has made penal provisions against any violation of this law. It has been widely felt that there is need to increase the share of bonus for workers.

Industrial Trainees Training Act 1982

This Act was introduced to strengthen the professional skills of the workers. Its main objective is to maximise the engagement of workers for skills development. Such training may be provided by those enterprises as prescribed by the government.⁷

Privatisation Act 1994

After the adoption of the policy of economic liberalisation, privatisation has intensified. Although the privatisation of public corporations is still a controversial issue in Nepal, enactment of the Privatisation Act has resolved some of the issues of doubt. The law has given first priority to the sale of shares to the workers and then to private parties during privatisation. While selling the shares, it is mandatory for the government to review the economic status and the nature of the enterprise, and to increase the participation of workers as well as the general public.

At the time of transfer of ownership during privatisation, the government has a legal duty to ensure the continuation of the same services and benefits, e.g. remuneration and gratuity for the workers. If the continuity of the service cannot be maintained such employees have to be retrenched with reasonable compensation. Despite failure of the privatisation of some public corporations, both in economic and social terms, other corporations are still in the process of privatisation without learning lessons from the past. During the process of privatisation in the past, the public enterprises were undervalued by 29.28 percent leading to the loss of Rs. 250 million. Furthermore, a total amount of Rs. 162 million has yet to be collected from the buyers, out of which 50 percent is in interest and fines. Up to now, the government has acquired Rs. 721 million from the privatisation of 16 enterprises, but 51 percent of this amount has been spent on the process itself. (Proceedings 1999).

International instruments on labour standards (See Appendix 3)

Nepal has become a party to several International Labour Organisation (ILO) conventions. This includes only two of the core ILO conventions, (ILO Convention Nos. 111 on discrimination and No. 138 on child labour). Nepal has also ratified Convention Nos. 87 and 98 on the right to organise free trade unions and the right to collective bargaining. Nepal's ratification of several of the United Nations human rights instruments, including two covenants, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, which provide some guarantees on the rights and interests of the workers. However, the practical side of the compliance with these international treaty obligations has been a major subject of concern and criticism in the past decade.

Nevertheless, Nepal's existing labour law could be considered close to these international standards, but the main problem is in effective enforcement. The international community is also responsible on the larger scale for poor working conditions and the exploitation of workers. For example, the policies of the World Bank, IMF, and the Asian Development Bank are more and more labour-unfriendly. The donor countries and the transnational corporations are not complying with human rights and labour standards that they are committed to, both at home and before international forums. The practice of double standards is something that they need to abolish in order to assist the government and business enterprises operating in Nepal to be more humane, transparent, and welfare-oriented.

Labour law in a new perspective

The history of labour law in Nepal is very short. Therefore, it still needs to address many of the issues and problems that the workers face, particularly those engaged in informal sectors and in rural areas. More recently, labour laws have been formulated and enacted, however existing laws mainly address the organised sectors. Moreover, poor labour administration and inefficient government mechanisms are other problems that the labour sectors face. Even the Minimum Wage Fixation Committee has not been as effective as possible. The traditional wage system is still in practice in remote areas. There are also serious problems in enforcing the collec-

tive agreements and the decisions of the courts or other government bodies. Nepal needs to develop highly systematic, concrete and dynamic labour policy and laws to address the existing as well as future problems. To do this, Nepal needs to review the labour policy and law in line with international human rights and labour rights standards and obligations and make them more comprehensive, specific, and functional.

Due to the increasing global demands of liberalisation, the interests of the employment securities are heavily endangered. The working class population is increasing. There is no guarantee of job security. Many economic and trade sectors are being informalised through subcontracting work and labour to further avoid legal and administrative monitoring of labour practices. A heavy burden is imposed on the workers in the name of gaining competitiveness, cost minimisation and comparative advantage in international trade. It is quite unfortunate that the government is facilitating this process of marketisation and the exploitation of the labour force, instead of playing their role as guardians. The carpet and garment industries, the major export sectors, are some of the worst examples of such prevailing scenarios.

The existing labour law does not address the actual social welfare and benefit of workers other than the provisions of some traditional labour rights. The only social security in Nepal is the provision of Rs. 100 (US\$ 1.5) per month to citizens above the age of 75 and widows over 65.

At a non-governmental level, GEFONT has started an emergency fund. Similarly, the Independent Transport Workers Union of Nepal is also operating an accident fund for its members.

Critical observation of governmental measures

Looking at the existing labour laws and policy of the country, particularly the Labour Act and Regulations of 1992 as well as the Trade Union Act of 1993, they have been criticised for not being comprehensive and progressive enough to address the current needs and problems. The over-politicisation of trade unions both by the government and the political parties has also been the issue of serious concern. In the case of the classification and the fixation of the minimum wage, there has been no

sufficient representation of experts from the related fields. The effectiveness of the Labour Court also has been found weak since it cannot take legal action against non-compliance as its content. The Appellate Court could be empowered with more wide and effective jurisdiction in disposing of the labour-related cases. On the other hand, the failure of recognising the labour–capital relations as co–partners in the promotion of industrial peace and development should also be subject to review in the future. The agricultural labourers, who are classified as seasonal, unorganised, and organised, also need the minimum comprehensive legal protection as in other sectors.

Efforts made by NGOs to safeguard the labour rights

The work of non-governmental organisations (NGO) on labour issues is mainly focused on research and advocacy in relation to unfair labour practices. Apart from this, they are also engaged in offering institutional services to child labourers for their rehabilitation. They are also active in rescue and relief work. They have been quite effective in the area of training, awareness raising and capacity building as well.

Workshops and seminars are also organised by NGOs, on a regular basis relating to the protection and promotion of labour rights and welfare, and they regularly participate in national and international marches and events. The Nepal Rugmark Foundation has been active in the rehabilitation of child workers from carpet factories. The National Labour Academy has been playing the role of training professionals on labour issues. The NGO Federation is also active in labour rights-related advocacy and monitoring work, and engaging in lobbying and pressure groups.

Conclusions

Nepal still remains largely a semi-feudal and agricultural country. Seven decades of industrialisation has been slow due to geographical factors as a land-locked country between China and India in which India has always been reluctant to provide free access to the outside world. Even after the introduction of a free market policy in Nepal and India, Nepal is still suffering from bilat-

eral misunderstanding and conflicts due to Indian economic and political interests.

Nepal is emerging more as an import-based consumer society than a local-resource-based industrial country. All public enterprises have been the victims of privatisation leading to significant amount of labour lay-off and deregulation measures. The flow of an unmanageable number of Indian migrant workers across the open Nepal-India border and the illegal employment of a large number of Bhutanese refugees in Nepal has made the Nepali labour market worse and more competitive.

Existing labour laws and policies adopted after the emergence of open democratisation that began in 1990 remained largely ineffective in terms of implementation and compliance by industry. The large number of labourers active in informal sectors has never been

In March 2001, the government imposed a ban on strike against the hotel workers under the Essential Services Act, 1957. The workers were demanding for the introduction of 10 percent service charge for their benefit. The workers won their case of the right to strike from the Appellate Court in which the government appealed. The case is still pending in the Supreme Court. However, on the other hand, the ILO Committee of Experts on the Application of Conventions and Recommendations, on the complaint filed by Nepal Hotel Independent Workers' Union (NIHWU-GEFONT) and the Nepal Tourism and Hotel Workers' Union (NT & HWU-NTUC), concluded that the right to strike is one of the essential means for workers to promote and defend their economic and social interests, and that the hotel services do not fall within the term of essential services in the strict term. The Committee further urged the government to repeal its notification of declaring hotel, motel, restaurant and tourist accommodation as falling within the scope of essential services and thus prohibiting strikers. The government remained completely silent throughout the complaint process and declined to respond even the Committee's urgent appeal.

brought within the framework of labour laws that apply to the organised sector. The labour-related constitutional, legal as well as human rights and labour conventions-based provisions also lacked sufficient mechanisms and remedial procedures. The use of the courts and ILO procedures on labour disputes became effective but again the monitoring and compliance part proved relatively weak and unsatisfactory.

There is a clear indication of differences of approach in effectively implementing existing labour laws and regulations, which are considered more as rights- and welfare-based than free market-oriented. However, the forces of globalisation, active through the policies of international financial institutions, bilateral 'donors' and transnational corporations are also creating enormous pressure on the government for a radical shift to the free market and to abolish any state welfare subsidies and benefits. As a result, there has been no significant progress towards the realisation of labour-friendly state principles and policies as provided in the Constitution as well as Nepal's international human rights and labour rights obligations. The 1991 Nepal Treaty Act provides for supreme status to international treaties and agreements in relation to domestic laws but the actual practice has been either opposite or contradictory.

With regards to the harmonisation of labour-related domestic legal provisions, Nepal needs to act in accordance with its constitutional spirit and international human rights and labour rights framework that it has agreed upon. However, over a decade of political instability and recent Maoist conflict has virtually paralysed Parliament for any desirable change through legislation. There is also a danger of moving in a more anti-labour direction but recent understanding and agreements reached with the Ministry of Labour, FNCCI, DECONT, GEFONT, and NTUC for the inclusion of gender equality and other labour law-related issues could be considered a healthy sign. If it goes well then Nepal can set an example on how the domestic tripartite process could lead to an agreeable solution to on-going labour- and industry-related laws and policies with appropriate accommodation of labour rights and welfare as well as the survival and growth of Nepal's sick industries. In any case, future amendments can only be achieved once Nepal settles political, economic, and social problems with the rising Maoist force and develops a consensus-based

labour law approach both in the interest of employers and employees as well as the whole nation. If it fails to do so it will not only affect the labour sector but the whole country in the long run as happened in the last 12 years of multi-party democratic exercise –inconsistency in theory and practice in law and in reality!

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Appendix 1

Chronology of Major Events in 2000-2002 in the Labour Sector

Thousands of workers are being laid-off from state-owned corporations due to the government's economic reform measures. Many factories have declared bankruptcy without paying workers' wages, allowances, lay-off payments, or pensions. Public protests and sectoral demonstrations have become routine for the workers all over Nepal and are on the increase. The situation has gone from bad to worse due to the rapid privatisation of public corporations free-market policies, the collapse of industries and enterprises due to unfair competition, and the lack of anti-dumping policies at bilateral and multi-lateral levels. Nepal's eagerness to join the World Trade Organisation and the South Asian Free Trade Agreement is also making the situation more disastrous. These issues have become the subjects of primary concerns not only for trade unions and their members but also for concerned citizens and their groups.

The scale of such increasing unrest in the labour sector can be observed from the following documentation of some of the events that have taken place since 2000.

January 2000 - Workshop on Migrant Workers, GEFONT, New Delhi, India.

Minimum wage fixed for agricultural workers.

February 2000 - The enactment of Bonus Regulation (amended). Formation of National Welfare Fund.

April 2000 - Revision of Minimum Wages.

May 2000 - Inauguration of GEFONT Health Co-operative.

June 2000 - Declaration of Emancipation of Kamaiyas (Bonded Labourers).

March 2001 - Black Day observed by Dalit Mukti Morcha Nepal, Sirha.

June 2001 - Workshop on Labour Law: Principles and Practices, National Labour Academy and IRF.

August 2001 - Seminar on Child Labour in South Asia.

Inauguration of an Educational Centre for Children of the Carpet Factory Workers.

January 2002 - Seminar on Industrial Security and Health.

May 2002 - Joint celebration of Labour Day.

Appendix 2

Labour federations and members

GEFONT Affiliated Unions

Nepal Independent Workers Union (NIWU)
Independent Textile Garment Workers Union of Nepal (ITGWUN)
Independent Transport Workers Association of Nepal (ITWAN)
Nepal Independent Carpet Workers Union (NICWU)
Nepal Independent Hotel Workers Union (NIHWU)
Union of Trekking–Travel–Rafting Workers Nepal (UNITRAV)
Independent Tea Plantation Workers Union of Nepal (ITPWUN)
Independent Press Union of Nepal (IPWUN)
Nepal Auto–Machines Trade Union of Nepal (NATU)
Central Union of Painters, Plumbers, Electro, and Construction Workers Nepal (CUPPEC)
Independent Garbage Cleaners Union of Nepal (IGCUN)
Nepal Rickshaw Pullers Union (NRPU)
Nepal Independent Food and Beverage Workers Union (NIFBWU)
Nepal Independent Chemical-Iron Workers Union (NICIWU)
Federation of Agricultural Workers Nepal (FAWN)
Nepal Independent Painters Union (merged with CUPPEC)
Nepal Independent Plumbers Union (merged with CUPPEC)
Nepal Independent Auto Mechanics Union (merged with CUPPEC)
@Subhead B NTUC Affiliated Unions
Nepal Factory Workers Congress
Nepal Carpet Workers Association
Nepal Tourism and Hotel Workers Association
Nepal Transportation Workers Association

Financial Employees Union of Nepal
Nepal Tea Plantation Workers Association
Nepal Press union
Nepal Inter-Corporation Employees Association
Nepal Wood Workers Union
Nepal National Barbers Association
Nepal Tannery and Shoe Workers union
Nepal Electrical Workers Union
Nepal Shop Workers Union
Nepal Small Hotel Workers Union
Nepal Building Construction Workers Union
Nepal Rickshaw Pullers Associations
Nepal Embroidery Workers Union

DECONT Affiliated Unions

Nepal Building Construction Workers Union
Nepal Emigration and Airport Employees Association
Nepal Film Hall Workers Union
Nepal carpet Workers Union
Nepal Painter, Plumber and Wiring Workers Association
Nepal Transport Workers Association
Nepal Garment Workers Association
Nepal Hotel Workers Association
Construction and Allied Workers Union of Nepal
Nepal Agricultural Workers Association
Nepal Barbers Association
Unions without national affiliations
Inter–Corporation Banking Employees Association
Inter–Corporation Employees Association
All Nepal Construction Workers Union
All Nepal Rickshaw Pullers Association
All Nepal Thanka Painting Workers Union
Nepal Taxi Drivers Union

Appendix 3

ILO conventions ratified by Nepal

Convention No. 100 on Equal Pay for Equal Work;
Convention No. 131 on Minimum Wage;
Convention Nos. 87 and 98 on the Right to Form and
Participate in Trade Union;
Convention No. 111 against Discrimination in Em-
ployment and Work;

Convention No. 138 on the Prohibition of Child La-
bour;
Convention Nos. 29 and 105 on the Elimination of the
Worst Forms of Child Labour (1999), and on the
Prohibition of Forced Labour.