

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN NEPAL

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF NEPAL (Geneva, 1 and 3 February, 2012)**

EXECUTIVE SUMMARY

Nepal has ratified seven core ILO labour Conventions. In view of restrictions on the trade union rights of workers, discrimination, child labour, and forced labour, determined measures are needed to comply with the commitments Nepal accepted at its accession to the WTO, at the ILO's Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

Nepal has not ratified Convention 87, one of the two main ILO conventions on trade union rights. The law provides for the rights to organise, bargain collectively and strike, but these are restricted. In practice, members of democratic unions have not been protected from attacks by Maoist groups. Rights are not respected in "essential services" sectors or ones the authorities consider essential for national economic development, which even includes hotels and banking. The Special Economic Zone Bill currently before the parliament for approval would deny trade union representation to workers in export processing zones.

The law provides some, albeit insufficient protection from discrimination. However in practice, women, Dalits and other categories face discrimination in various aspects of employment.

Some laws do not comply with ILO Conventions 138 and 182 and the scope of the law does not cover self-employed workers. 1.6 million children are engaged in child labour, the majority of them girls. While the country is making some progress in eliminating child labour, it remains a serious problem including in its worst forms.

The law prohibits forced labour and trafficking, but forced labour is a problem. Although the traditional Kamaiya system of forced labour has been abolished, similar types of forced labour such as Haliya continue to take place. Many Nepalese workers fall victim to deceptive and fraudulent practices by labour brokers, recruiters and traffickers. Trafficking-related complicity by state officials is also reported.

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Introduction

This report on the respect of internationally recognised core labour standards in Nepal is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

The ITUC affiliates in Nepal are the Nepal Trade Union Congress-Independent (NTUC-I) and the General Federation of Nepalese Trade Unions (GEFONT) which have a combined membership of 680,000 persons covering various areas of employment in Nepal.

I. Freedom of Association and the Right to Collective Bargaining

Nepal ratified Convention No. 98 (1949) on the Right to Organise and Collective Bargaining in 1996, but has not yet ratified ILO Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise.

The interim constitution, the Labour Act and the Trade Union Act provide for freedom of assembly and the right to organise. The law protects union members from anti-union discrimination but it does not provide protection from other forms of interference by employers.

However, in some cases enterprises ignore court rulings over reinstatement of union members who had been unfairly dismissed. Further to this, the government has been ineffective in enforcing the provisions on anti-union discrimination. In a recent observation, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has reminded the government of Nepal that "*legislation prohibiting acts of discrimination is inadequate if it is not coupled with effective, expeditious procedures and sufficiently dissuasive sanctions to ensure their application*".

Furthermore several restrictions apply. The thresholds for union creation are excessively high and the government's refusal to recognise some unions weakens workers' bargaining power. Foreign nationals may not be elected as trade union officials.

Members of the police and high level government employees are not permitted to unionise.

The Labour Act provides for the right to collective bargaining. However collective bargaining is weak and rare. Less than 10 per cent of formal workers, who constitute in turn about 10 per cent of the total workforce, are covered by collective bargaining.

However, the right to strike is limited. A 60 per cent majority of workers and a 30-day notice are required in order to call a strike. The government may stop a strike or suspend union activities if a strike is deemed to adversely affect national interests. Security personnel and workers in 'essential services' do not enjoy the right to strike – yet the government's 'essential services' definition goes beyond the ILO definition which stipulates that these are services the interruption of which would endanger the life, health or personal safety of the whole or part of the population. The Nepalese definition includes banking and hotels as 'essential services'. In these sectors as well as in sectors that the authorities consider strategic for economic development, the state holds the power to compulsorily arbitrate disputes.

The government has indicated that preparation of new labour legislation is underway, and a tripartite task force has been working on it.

In practice, democratic trade unions are insufficiently protected from threats and attacks including from the Maoist All Nepal Federation of Trade Unions (ANFTU) and the Young Communist League, a branch of the Maoist party. In several cases, the victims of the attacks had to be hospitalised. In April 2010, Singh Lama, president of a textile union was attacked by Maoist unionists for refusing to take part in a Maoist party activity. In another incident in the same month, some Maoist union members vandalised the office of the Nepal Independent Chemical Iron Workers' Union (NICIWU) and in May armed Maoists stormed the offices of the Independent Transport Workers' Association in Gorkha. In November 2010, the management at the Hyatt Kathmandu hotel dismissed two workers after the manager came under pressure from the Maoist union. The two had previously refused to join the Maoist union. Likewise, the presidents of the unions at the Hyatt Kathmandu and Radisson hotels were forced to become members of the Maoist union or lose their jobs.

In September 2008, two trade union members were shot by police in an incident after workers from factories in the Bara District had joined a protest. Also in 2008, the police arrested and detained 80 trade union members during a peaceful protest in Kathmandu.

Many irregularities have been reported in the election of collective bargaining agents and in other bargaining procedures in the private sector, yet the state labour agencies have not taken action to ensure respect of legal procedures.

There are no export processing zones. However, the government has recently tabled a Special Economic Zone Bill before parliament for approval. The bill contains various anti-union provisions including non-application of labour legislation including the Trade Union Act, denying the right to unionise and collective bargaining to workers in the SEZs. Social security benefits, wages and other terms and conditions will be fixed by the SEZ authority without participation of any workers' representative. The provisions have been opposed by Nepali trade unions, but have not been changed.

Summary

Nepal has not ratified Convention 87, one of the two main ILO conventions on trade union rights, even though the government has repeatedly asserted to ILO officials and ILO missions that there is no obstacle to ratification. The law provides for the rights to organise, bargain collectively and strike, but these are restricted. In practice, members of democratic unions have not been protected from attacks by Maoist groups. Rights are not respected in "essential services" sectors or ones the authorities consider essential for national development, which even includes hotels and banking. The Special Economic Zone Bill currently before Parliament for approval would deny trade union representation to workers in export processing zones.

II. Discrimination and Equal Remuneration

Nepal ratified ILO Convention No. 100 (1951) on Equal Remuneration in 1976 and ILO Convention No. 111 (1958) on Discrimination (Employment and Occupation) in 1974.

The law stipulates that men and women must receive equal remuneration for similar jobs. The CEACR has asked the government to amend the legislation in order to give full expression to the principle of 'equal remuneration for work of equal value'.

The Civil Service Act of 2007 reserves 45 per cent of posts for women, the Madhesi ethnic group, indigenous people, Dalits and disabled persons and establishes quotas of posts for women and other disenfranchised groups in the police.

In practice, women rarely receive the same educational and employment opportunities as men and face discrimination in many areas. According to 2010 data, women receive 61 per cent of male income for work of equal value and only 14 per cent of women occupy senior and managerial positions. The government has failed to ensure equal remuneration even in the public sector. It has made no effort to set or facilitate the establishment of objective job evaluation criteria and provide statistical information disaggregated by sex. The 2008 Labour Force Survey found that the female literacy rate was 43 per cent and men's 71 per cent.

The law prohibits sexual harassment but not explicitly at the workplace and stipulates a penalty of one year imprisonment and a fine. However government enforcement of the provisions against sexual harassment is weak and sexual harassment, including at the workplace, is a problem. Most of the incidents remain unreported.

Nepal abolished caste-based discrimination and in 2009 agreed to the UN guidelines on its elimination. However, the Bill on Caste-based Discrimination and Untouchability is still waiting for approval by the parliament. In practice, the society remains segregated along caste lines. Lower castes are discriminated against in employment opportunities in the private and the public sector. Dalits, the lowest caste, live in extreme poverty and frequently fall victim to exploitation, forced labour and violence. Only 15 per cent of Dalit men and 3.2 per cent of Dalit women are literate.

Various ethnic groups face discrimination in various aspects of life including employment. The ILO's CEACR has stated that "The Committee notes that according to the United Nations High Commissioner for Human Rights, Mashesis, Dalits, Janajatis and other marginalised groups continue to be severely underrepresented in most state and civil service structures, including courts, law enforcement agencies and local authorities A/HRC/7/68, 18 February 2008, paragraph 50)."

In response Nepal recently adopted a New National Employment Policy and employment generation programmes with a special focus on women, Dalits, indigenous people and other minorities. The Policy is reported to be helping to gradually increase the employment of these groups in government services, where there is an agreed formula to allocate 45% of positions to them.

The laws do not effectively protect persons with disabilities from discrimination. The state has introduced quota requirements and legal provisions that mandate access to buildings, employment and services. However, it appears that the government has failed to effectively enforce and implement these provisions, and persons with disabilities continue to face discrimination in employment and other aspects of life.

The law does not prohibit discrimination on grounds of sexual orientation and reports show that lesbian, gay, bisexual, transgendered (LGBT) persons face harassment by government and society. In 2007 and 2008 the Supreme Court ordered the amendment of all sexually discriminatory laws. However, in May 2010, the Supreme Court dismissed an appeal by a former military academy instructor who was fired by the Nepal Army in 2007 for being a lesbian.

There is no prohibition of discrimination against persons who live with HIV/AIDS and societal discrimination made it difficult for such individuals to become employed. Trade unions have partnered with the ILO in the HIV/AIDS Workplace Education Programme which has greatly helped train union members to provide information about HIV/AIDS transmission, prevention and workplace programmes.

Summary

The law provides some, albeit insufficient protection from discrimination. However in practice, women, Dalits and several other categories face discrimination in various aspects of employment.

III. Child Labour

Nepal ratified ILO Convention No. 138 (1973) on the Minimum Age in 1997 and Convention No. 182 (1999) on the Worst Forms of Child Labour in 2002.

The minimum age for admission to employment is 16 for labourers. However, the Child Labour Act does not adequately define the terms 'employment' or 'labourers'. The 1993 Labour Rules prohibit the employment of persons younger than 16 years of age in hazardous work as does the Child Labour Act, with different wording. The CEACR has observed that in Nepal persons between 16 and 18 are allowed by law to perform hazardous work except night work. In Convention No. 138, hazardous work is allowed for persons younger than 16 only under strict conditions and is not clear whether these are observed in Nepal. The government has indicated to the CEACR that trade unions, employers and government are updating the list. The law stipulates that employers must maintain records of all workers younger than 16 years of age and establishes penalties for offenders.

The Nepal Army New Recruitment Rules fix a minimum age of 18 years for recruitment in the army. However, the 1971 Young Boys Rules establishes the minimum age of 15 for recruitment. The government claims to make no use of the law and has promised the CEACR that the law will be amended as soon as possible.

Self-employed workers are not included under the purview of the law. The government has indicated its intention to amend various articles of the law, including the use, procurement or offering of a child for prostitution, begging and illicit activities.

Formal employment agreements account for only 10 per cent of all employment relationships and so the Child Labour Act is not enforced for 90% of employment arrangements.

Child labour is a problem. Children are found performing mainly in informal economic activity in quarries and mines, domestic servitude, agriculture and portering. Many children work in cramped place for long hours, night shifts, deal with chemicals and pesticides, operate dangerous machinery, carry heavy loads and are exposed to various other hazards and dangers, including sexual harassment. Child labour and forced child labour is found in brick kilns, quarries and the textile industry.

One ILO report estimates that 1.6 million out of 7.7 million children (aged 5-17) constitute child labourers according to international legal standards. The report finds this figure is, however, one million fewer than in 1999. The report also finds that more girls (24 per cent) than boys (17.5 per cent) are labourers and also that girls are 50 per cent more likely to be involved in hazardous work. Most of the children (87.7 per cent) work in agriculture. Forced child labour is also a problem.

Inspection and law enforcement is poor because of lack of resources, including inadequate knowledge of child labour. There are only 12 factory inspectors and to date no labour inspectors have been appointed. Factory inspectors carried out some 600 inspections in 2010; however there was no general system for labour inspection. The Central Children Welfare Committee (CCWC) of the Ministry of Women, Children and Social Welfare recorded a total of 22,981 cases of the worst forms of child labour in 59 districts. The Labour Department has organised five workshops to strengthen the capacity of labour officers and inspectors on child labour.

The second phase of ILO-IPEC's project rescued 5,554 children (2,887 girls and 2,667 boys) from bonded labour and provided educational support. Another 1,232 children (798 girls and 434 boys) were withdrawn from bonded labour.

Summary

Some laws do not comply with ILO Conventions 138 and 182 and the scope of the law does not cover self-employed workers. 1.6 million children are engaged in child labour, the majority of them girls. While the country is making some progress in eliminating child labour, it remains a serious problem including in its worst forms.

IV. Forced Labour

Nepal ratified Convention No. 29 (1930) on Forced Labour in 2002 and Convention No. 105 (1957) on the Abolition of Forced Labour in 2007.

The Kamaiya Labour Prohibition Act prohibits debt bondage but not other forms of forced labour, nor does it provide for sufficient penalties against offenders. The Human Trafficking (Control) Act of 2007 outlaws human trafficking and establishes a penalty of 10 to 20 years' imprisonment. However the Interim Constitution of 2007, similar to the old Constitution, allows the exaction of compulsory public service. A decision to carry out such compulsory work is taken by local government bodies or community committees.

The 2007 Foreign Employment Act penalises fraudulent recruitment practices. The Act requires all workers to leave for overseas work via Kathmandu airport where the Foreign Employment Promotion Board collects a small amount of money for a welfare fund and registers them. However, many employment agencies forced workers to travel via a land route or to use Indian airports in order to avoid insurance coverage or a proper

documentation system, in order to pre-empt future obligations to pay workers their entitlements. These workers are not entitled to the benefits of the fund.

The Public Offences Act prescribes the penalty of two years' imprisonment, which may be substituted by an obligation to perform community work, for strikers in essential services.

In Nepal, forced labour and trafficking in human beings for the purpose of forced labour and sexual exploitation is a serious problem. Reports show that such practices are particularly prevalent in brick kilns, farms and domestic servitude as well as in the food and textile industries. Nepal abolished the Kamaiya system, a traditional form of slavery, with a Parliamentary declaration in 2000 and the Kamaiya Labour Prohibition Act in 2002. However, evidence shows that the system persists in particular areas where the law is not effectively enforced. More than 22,000 of a total 28,000 slaves have been freed; nonetheless, many problems have been reported in the rehabilitation of the victims. In its correspondence with the CEACR the government has indicated that, according to several studies in different economic sectors, a total of 17,152 children are working as bonded labourers.

The "Paying back in sweat and tear" report, coordinated by GEFONT, Anti-Slavery International and civil society organisations, finds that *"poverty, landlessness and illiteracy force people to sell their labour in exchange of a nominal wage and in lieu of a loan taken by themselves or by their ancestors."* The study underlines that, contrary to the Kamaiya system, other forms of bonded labour have not received much attention. Such is the case of brick kilns which hire seasonal labourers who have received an advance and are not free to leave work before the season is over. Usually a whole family, including children, is bonded in seasonal labour. The study also highlights forced child labour in domestic servitude and finds that children are preferred because they are *"physically weak and are easy to dominate and manipulate at the cost of love and care they require"*.

Due to poverty and lack of opportunities, many Nepalese look for employment abroad. It is reported that traffickers appear to poor and uneducated individuals as recruiters. With false promises of better paid work abroad, the victims accept to become indebted with a large amount of money required for travel costs and recruitment services. They are not allowed to leave the job they receive upon arrival at the host country even though the job may be in another country than the one promised, the wage lower than the expected and the working conditions bad. Other practices include the withholding of passports and wages, restrictions on movement, threats and violence.

Labour brokers and manpower agencies are also reported to make use of fraudulent practices and to deceive recruits about the quality and conditions of work. They are even reported to engage in preparing false passports and travel documents, which is all too often a licence for easy exploitation of overseas workers.

Trafficked women and girls are often sexually exploited or forced into domestic servitude in India and Middle East countries. Trafficked men and boys often end up forced into beggary, mines, construction, farms and factories in the Middle East and Asia. Boys in particular are reported to be forced to work in brick making, domestic servitude and textiles.

The police and law enforcers do not have standardised procedures to recognise victims of trafficking and consequently raids in brothels resulted in arrests but not in identified victims. In this way, many victims, even children, are punished like criminals and their traffickers pay their bail to “release” them back into forced labour and prostitution. The bail money is then added to the heavy financial burden accumulated by the victims.

Reports demonstrate examples of complicity of government agents with traffickers. Traffickers and officials from police, local authorities, customs and other agencies sometimes partner in businesses that use forced labour and sexual exploitation. Other officials are reported to forge travel and identification documents to protect offenders from being prosecuted or investigated. The security forces adopted a rule to prohibit their personnel running businesses without approval but there is no information with regards to its application in practice. There have been no court cases for trafficking related complicity.

In 2010, 119 trafficking cases were prosecuted and tried and resulted in 174 individuals’ convictions. Despite these convictions, the courts do not provide disaggregated data. Therefore, the nature of the convicted crimes is not clear. Reports show that law enforcement is not homogenous in the entirety of the territory and, hence, there are areas where there are no controls. Moreover, no complaint has been filed in a court of law concerning the use of Kamaiya bonded labour. This indicates the lack of rights awareness of individuals working in Kamaiya.

The government has established Committees on Controlling Human Trafficking in all districts and runs campaigns to raise awareness. The National Human Trafficking Task Force takes action to fund rescue operations. For child victims of trafficking and forced labour, the government implements the ILO-IPEC project for “Sustainable elimination of (child) bonded labour in Nepal”.

Summary

The law prohibits forced labour and trafficking, but forced labour is a problem. Although the traditional Kamaiya system of forced labour has been abolished, similar types of forced labour such as Haliya are reported. Many Nepalese workers fall victim to deceptive and fraudulent practices by labour brokers, recruiters and traffickers. Trafficking-related complicity by state officials is also reported.

Recommendations

1. The government must urgently ratify ILO Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise.
2. The Special Economic Zone Act should be amended to bring it in line with ILO standards on labour rights.
3. The Trade Union Act must be amended in order to provide protection from all forms of interference by employers. New labour legislation to replace the Trade Union Act must be in line with ILO standards and should be brought into effect as rapidly as possible.
4. Foreign nationals should not be barred from being elected as trade union officials.
5. The provision granting the government power to stop a strike or suspend union activities if a strike is deemed to adversely affect national interests should be repealed.
6. The 'essential services' definition should conform with the ILO definition which stipulates that these are services "the interruption of which would endanger the life, health or personal safety of the whole or part of the population."
7. The government should take measures to protect trade unions from all forms of violence and intimidation, including from other trade unions and from political parties.
8. The police must not be allowed to use force against peacefully protesting unionists.
9. The government should take measures to promote collective bargaining as the main mechanism for setting wages, working conditions and other work-related arrangements in order to ensure good industrial relations. It needs to ensure that collective bargaining procedures are properly applied.
10. The government should issue clear instructions to law enforcers to ensure that court rulings over reinstatement of union members who had been unfairly dismissed are not ignored by employers, and in general to ensure that provisions against anti-union discrimination are implemented.
11. The law should be amended in order to give full expression to the principle of 'equal remuneration for work of equal value'.
12. The government should implement policies to improve women's participation in the workforce and women's access to high skilled and high paid jobs and to close the wage gap. Measures including training should be taken to empower disabled persons and other groups which face discrimination in employment.
13. The government should establish objective job evaluation criteria and then take action to ensure equal remuneration between men and women in the public sector.
14. The law should explicitly prohibit sexual harassment at the workplace and establish an easily accessed complaints procedure. The authorities should then build awareness to workers about this procedure.

15. The government should make available data on compliance with the Civil Service Act's reservation of 45 per cent of job positions for women and disadvantaged groups.
16. The government should enact the Bill on Caste-based Discrimination and Untouchability and effectively enforce it.
17. Special programmes with universal coverage should be taken to ensure that persons from all castes have equal opportunities. The government should pursue changes in education and social services as part of a series of measures to change societal norms on caste-based discrimination.
18. The government should take measures to ensure the proportional representation of different ethnic and indigenous groups in the public sector and the workforce, with complaints procedures to protect all groups and individuals that face discrimination in employment. The New National Employment Policy's outcomes should be made available for review.
19. The state should take measures to effectively enforce and implement provisions on preferential and customised access to employment, building accessibility and social services provision to persons with disabilities.
20. The law should explicitly prohibit discrimination on grounds of sexual orientation and measures to enforce it should be taken.
21. The government needs to ensure that persons admitted to hazardous work younger than 16 years of age need to comply with the strict conditions of Convention No. 138, which comprise special training and protection. The permission to persons 16 year old to perform hazardous work should not be generalised.
22. The 1971 Young Boys Rules' provision that establishes the minimum age of 15 for recruitment in army should be repealed.
23. The Child Labour Act's scope should be extended to cover all employment arrangements. Informal activity, which accounts for the majority of employment relationships, needs to be brought under the law through its effective application.
24. The government should step up its efforts to train law enforcement officials in recognising child labour and enforcing the laws that regulate child labour. Special attention and priority should be given to child workers in the worst forms of child labour and in forced child labour, especially in domestic servitude and brick making.
25. The Kamaiya Labour Prohibition Act should be amended to include all forms of forced labour system in the country. There should be provision of sufficient penalties against offenders.
26. The government should start investigations and prosecutions against labour brokers and recruitment agencies, law enforcers and state officials who are allegedly complicit in trafficking and forced labour.
27. The police and law enforcers should develop standardised procedures to recognise victims of trafficking and protect them from being prosecuted.

28. The government should step up its efforts to create understanding of trafficking and to build the capacity of judges, prosecutors, social service workers, and law enforcement officials in recognising trafficking victims and enforcing the anti-trafficking law.
29. The existing position of Factory Inspector is insufficient, and a provision for Labour Inspectors needs to be brought into effect. The Labour Inspectorate needs to be adequately funded and inspectors should be properly trained so as to ensure the application of the law, including in currently informal and unregistered economic activity.
30. In general, the government should build up its law enforcement and judicial capacities in order to monitor and enforce labour laws, including legislation on violations of trade union rights, discrimination, child labour, forced labour and trafficking, and start punishing those who commit such crimes.
31. The WTO should draw the attention of the Nepalese authorities to the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. It should request that the ILO intensify its work with the Government of Nepal in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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