

Research Paper IX

Advancing Workers' Rights under SDGs

Policy and Situational Analysis of
Decent Work in Nepal

Jeevan Baniya

with

Sunita Basnet, Himalaya Kharel and Rajita Dhungana



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ACRONYMS

ADB	Asian Development Bank
ANTUF	All Nepal Trade Union Federations
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BS	Bikram Sambat
CBS	Central Bureau of Statistics
COBP	Country Operations Business Plan for Nepal
CPSD	Country Private Sector Diagnostic
CSO	Civil Society Organisation
DFID	Department for International Development
FGD	Focus Group Discussion
ENSSURE	Enhanced Skills for Sustainable and Rewarding Employment
FY	Fiscal Year
GEFONT	General Federation of Nepalese Trade Unions
GoN	Government of Nepal
HLPF	High-level Political Forum
ILO	International Labour Organization
JTUCC	Joint Trade Union Coordination Centre
KII	Key Informant Interview
MDGs	Millennium Development Goals
MoFA	Ministry of Foreign Affairs
MoLESS	Ministry of Labour Employment and Social Security
NLC	Nepal Law Commission
NNSM	National Network for Safe Migration
NTUC	Nepal Trade Union Congress

NPC	National Planning Commission
NPR	Nepali Rupee
OSH	Occupational Safety and Health
REA	Right to Employment Act
SAARC	South Asian Association for Regional Cooperation
SAFTA	South Asian Free Trade Area
SAPTA	SAARC Preferential Trading Arrangement
SARTUC	South Asian Regional Trade Union Council
SATIS	SAARC Agreement on Trade in Services
SDGs	Sustainable Development Goals
SEZ	Special Economic Zone
SEZA	Special Economic Zone Act
SSA	(Contribution-based) Social Security Act
UN	United Nations
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Program
USAID	United States Agency for International Development
USD	United States Dollar
VNR	Voluntary National Review

EXECUTIVE SUMMARY

This study seeks to review and analyse Nepal's legal and policy provisions as they relate to the country's commitment to and recent progress toward achieving Sustainable Development Goal (SDG) 8, particularly the decent work agenda. The analysis looks at whether and if existing laws and policies are in compliance with decent work and core labour standards, which are instrumental for protecting and promoting worker rights. The study also explores whether and how the Government of Nepal (GoN) engages stakeholders (mainly trade unions), reviews, and implements labour rights-related policies and plans, and integrates feedback from unions. Additionally, it sheds light on synergies or gaps between policies and enforcement.

The study, based on a mixed-method design that included a review of relevant literature, stakeholders' consultations, and key informant interviews, found:

The constitutional and legal framework, particularly the new labour act and contributory Social Security Act, are to a great extent in alignment with worker rights and labour standards. They have explicit commitments for collective bargaining and freedom of association; gender equality; minimum wage; social security for the overall well-being of workers in the formal, informal and unorganised (for example, farmers and the self-employed) sectors; abolishment of child labour; women's and girls' empowerment; and an end to all forms of discrimination at the workplace through: the Constitution of Nepal 2015, Labour Act 2017, Labour Rules 2018, Contribution-Based Social Security Act (SSA) 2018, Social Security Rules 2018, Social Security Schemes Operational Directives 2018, Employment Guarantee Act 2018 (2075 BS), and Right to Employment Act (REA) 2018 (2075 BS), as well as ratification of 11 different International Labour Organization (ILO) conventions. Although the government introduced the Foreign Investment Policy 2014 (2071 BS), Youth Enterprise Program Operation Guidelines 2073 BS, National Youth Policy 2015

(2072 BS), and the First Amendment of Youth Skills and Leadership Development Program Operation Guidelines 2017 (2073 BS) with the objectives of promoting job opportunities for all citizens in Nepal, as well as of meeting the SDGs by 2030, only two subsequent policies and guidelines have incorporated limited aspects of the decent work agenda.

While economic development and job creation have gained great importance at the federal and subnational levels, worker rights issues such as social dialogue, collective bargaining, and safety and welfare at work have been undermined, largely through poor or zero funding for plans and programmes, and a lack of concrete measures to promote decent work in the respective constituencies. The federal government has allocated funding for SDGs, including SDG 8 and SDG 5 (gender equality); however, funding for decent work-related plans and programmes is very limited. For example, the FY 2017–18 allocation was only 0.73 per cent of the 1.14 billion rupees allocated for overall labour-sector programmes (and 0.16 per cent for SDG 5) and across sectors, e.g., agriculture, education, health, and infrastructure. However, achieving decent work for workers in these sectors is not mentioned. Meanwhile, trade unions have little meaningful engagement and participation in policymaking, implementation, monitoring, and review of programmes (especially at the subnational level of government), with the exception of their engagement with Ministry of Labour, Employment and Social Security (MoLESS), where trade unions have played instrumental roles, especially in the introduction of the new Labour Act 2017 and Contribution-based Social Security Act 2017.

Local government plans and programmes do mention upgrading workers' skills, providing vocational and technical training, increasing access to finance, and targeting programmes for marginalised and impoverished people. However, neither the plans nor programmes explicitly define the measures or core instruments of decent work, nor have they allocated funding to enhance the decent work agenda.

Policies, programmes, and budget preparation during the state-restructuring process, following the promulgation of the new constitution in 2015, were guided by a sample template provided by the federal government. Thus, most subnational governments have common and generic priorities, which indicate the need for alignment and adjustment with the SDGs. Additionally, there is a lack of recognition at the provincial and local government levels about responsibility and the importance of formulating policies and programmes that align with the SDGs and decent work. In short, the country has yet to adopt specific actions, mechanisms, or strategies to

implement decent work. Local municipal governments are closer to the people and are acquainted with the realities of delivering services, but they lack the capacity, resources, and proper understanding of the decent work agenda. Similarly, there is also a huge gap in terms of effective and vertical coordination and communication among the three tiers of governments, inter-ministries, and political leaders. This is further weakened by a lack of knowledge, weak institutional capacity, and limited engagement of trade unions at the subnational level in policy formulation and implementation.

Many employers undermine and violate worker rights, and workers are unlikely to get justice through the legal system. Employers are generally more able to work the system and have bureaucracy on their side.

Achieving decent work and labour standards, especially in terms of abolishing forced and compulsory labour in the construction, entertainment, and domestic work sectors, is a notable challenge, despite the prohibition of forced labour in the constitution and labour law. Although informal employment is significant in Nepal's labour market, it is rife with exploitation, abuse, discrimination, and denial of fundamental worker rights. Likewise, effective enforcement of recently enacted labour-related laws and policies, which is critical to achieving decent work, seems to be especially challenging. Effective enforcement is contingent on ensuring that reluctant employers adhere to the law and on having the capacity and political will to enforce and monitor. This is directly related to the lack of resources in labour offices, both human (particularly labour inspectors) and financial.

A strong, independent, and efficient judiciary is required to advance and ensure worker rights, in compliance with labour legislation and regulations.

Steps should be taken to ensure that Nepal's national trade policies and bilateral agreements address worker rights and foster decent work. Agreements need to hold investors accountable for respect for worker rights and decent work, per UN and ILO principles, as well as those reflected in Agenda 2030.

Although some international agreements with donors reference workers, they do not lay out steps to promote the decent work agenda. Project agreements and partnership frameworks between the GoN and donors only broadly mention the SDGs, but they lack specific strategies to achieve worker rights and institutional mechanisms for implementation and enforcement.

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BACKGROUND

The Federal Democratic Republic of Nepal had an estimated population of 29.6 million people in 2018, with slightly more than half (51.5 per cent) of them women.¹ Nepal experienced estimated economic growth of 6.3 per cent in fiscal year FY 2017–2018.² In FY 2017–18, the unemployment³ rate of Nepal was 11.4 per cent.⁴ It was higher among females (13.1 per cent) than males (10.3 per cent). The prevalence of unemployment is much higher in urban areas than in the rural, with 70.5 per cent of the total unemployed being urban dwellers. Of the total job-seeking population (908,000), 69.1 per cent were young people between the ages of 15 and 34 years. Nepal has 20.7 million people of working age (15 years and older), of whom more than 40 per cent are 15–34 years old, and 55.6 per cent of them are female. The overall labour force participation⁵ in Nepal in 2017–18 was 38.5 per cent, with the participation of females at 26.3 per cent compared to 53.8 per cent for males. For every 100 employed males there were only 59 employed females, whose average wage was NPR 13,630 (approximately USD 122) per month compared to NPR 17,809 (approximately USD 160), indicating gender inequalities and discrimination in the labour market. According to a study, among the total population involved in employment, 67 per cent of male employees were involved

1 Worldometers n.d.

2 Nepal Rastra Bank 2018; World Bank Group 2019.

3 The unemployment rate is measured based on the proportion of the labour force seeking work (CBS 2019).

4 CEIC n.d.

5 ‘The labour force participation rate is a measure of the proportion of a country’s working age population that engages actively in the labour market, either by working or looking for work; it provides an indication of the relative size of the supply of labour available to engage in the production of goods and services, relative to the population at working age’ (ILO 2015, cited in CBS 2019).

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in vulnerable employment compared to 89 per cent of females.⁶

Globally, the informal sector is the predominant source of employment, which is precarious, especially for women and particularly in lower-middle income countries.⁷ The labour market in Nepal is also characterised by informality, with 62.2 per cent of economically active Nepalis participating in the informal sector.⁸ According to the Report on the Labour Force Survey 2017/18, 84.6 per cent of those in employment were informally employed. The informal non-agriculture sector accounts for 41 per cent of all jobs while the formal non-agriculture sector accounts for 36.5 per cent and informal agriculture accounts for 20.2 per cent of total employment respectively. Informal employment is found to be highest among youth ages 15–24 years, at 94.4 per cent, accounting for more females (90.5 per cent) than males (81.1 per cent). The survey also indicates that women are more likely to get involved in unpaid work for their own use. Additionally, 19.2 per cent of workers are home-based, which is estimated to be three times higher for women compared to their male counterparts. This suggests a precarious situation of youths and females in the employment sector.

With rapidly changing patterns of employment and a growing informal economy have come a concerning decline in rights protections, leaving workers vulnerable to exploitation and exposed to dangerous work situations, poor treatment, discrimination, and low wages. Informal workers also lack access to social security. According to the new Labour Force Survey, Nepali workers face longer hours, sometimes excessively so (up to 54 hours per week), for those working as plant and machine operators and assemblers, and those working in transportation and storage industry.⁹ Forced¹⁰ and bonded labour exist, as does child labour.¹¹

Following the conclusion of the Millennium Development Goals (MDGs) timeframe, the United Nations introduced the Sustainable Development Goals (SDGs) in January 2016¹² as an ‘action plan for peace, planet and prosperity’.¹³ It is

6 Food and Agriculture Organization of the United Nations 2019.

7 ILO 2018a.

8 CBS 2019; World Bank Group 2019.

9 CBS 2019.

10 Nepal with the support of the ILO Nepal measured the forced labour, becoming one of the first countries to do so in a national survey (CBS 2019).

11 CBS 2019; ILO 2017.

12 The UN introduced Millennium Development Goals in 2000 to address the issues of poverty worldwide, and poverty reduction was the main aim of the MDGs.

13 United Nations Department of Economic and Social Affairs n.d.

also called Agenda 2030 due to the timeline set by the UN to achieve the 17 targeted goals.¹⁴ Its inception took place during the United Nations Conference on Sustainable Development in Rio de Janeiro, Brazil, in 2012 with the slogan, ‘No one left behind.’¹⁵ The conference set global goals to address the emerging environmental, political, and economic challenges that hinder peace, prosperity, and justice.¹⁶ The UN has provided guidelines for all member countries to effectively adopt and implement the SDGs through national policy, development plans, and activities.¹⁷ It also emphasises partnership and collaborations between the government, private sector, civil society, and citizens.

Undeniably, the GoN has the primary role to improve the country’s labour market and working conditions to ensure the rights enshrined in the constitution, conventions, laws, policies, and commitments are realised in practice. This will require effective enforcement of laws and policies, workplace cooperation, collective bargaining, and tripartite social dialogue (between employers, workers and government), as well as partnerships with trade unions, related civil society, and employers.

Nepal, a UN member state and a party to the SDGs, has committed to work toward achieving the goals by adopting and implementing national policies and plans in coordination and partnership with various stakeholders. The government, in alignment with the global targets, also plans to promote productive employment and decent work for all women and men, including for young people and persons with disabilities; equal pay for work of equal value; protection of labour rights; and promotion of safe and secure working environments for all workers, including migrant workers, women migrants in particular, and those in precarious employment situations, among many others.¹⁸ In one of the key documents related to the SDGs, the government states that Nepal aspires to ‘sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all’.¹⁹

Decent work, which is the target of SDG 8 (along with economic growth), is a theme in other goals, particularly SDG 1 (no poverty) and SDG 5 (gender equality). It is defined by the ILO as productive work that provides ‘a fair income, security in the

14 United Nations Development Programme n.d.a.

15 United Nations Development Programme n.d.b.

16 United Nations Development Programme n.d.b.

17 United Nations Development Programme n.d.b.

18 NPC 2017c.

19 NPC 2015.

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workplace and social protection for families, better prospects for personal development and social integration, and freedom for people to express their concerns, organise and participate in decisions that impact their lives, and equality of opportunity and treatment for all women and men'.²⁰ In this context, this study seeks to identify, in general, where Nepal stands and to what extent it has made progress in implementing labour-related SDGs, in particular SDG 8, over the past few years. To this end, the paper will answer some of the following questions: What laws and policies has Nepal introduced with regards to labour rights? Whether and to what extent do they comply with decent work and core labour standards?²¹ To what extent do existing laws protect worker rights? What is the status of implementation of worker rights goals and targets, especially as reflected in SDG 8? How much resources have been allocated to enhance decent work and to address labour-rights issues? To what extent does the government engage with trade unions and civil society on formulation, implementation, and review of worker rights and decent work policy? Whether and to what extent does the government incorporate feedback from unions and civil society? Whether and to what extent are national development policies, trade policies, and donors' policies coherent? Whether and to what extent are the existing laws governing labour rights enforced? What are the gaps between laws and enforcement in practice?

This report is based on a comprehensive review of constitutional, legal and policy documents, plans, budgets and other relevant literature, as well as group discussions, stakeholder consultations and key informant interviews²² conducted at federal, provincial, and local levels. The group discussions were held among the province-level trade union leaders in Biratnagar, Morang, Province 1, on 30 November 2018, and in Butwal, Rupandehi, Province 5, on 3 December 2018. Six participants in the former and seven in the latter, representing various trade unions, participated in the discussion. Two national-level consultations were held in Kathmandu, the first among varied stakeholders who included national-level trade union leaders, ILO Nepal and civil society representatives, journalists, donors, and researchers on 15 March 2019.²³

20 ILO n.d.

21 The core standards include freedom of association, collective bargaining, non-discrimination, and no child or forced labour.

22 Nine KIIs were carried out for this study, with eight at federal and one at local level of government. The informants included federal (central)-level trade union leaders, ILO representatives, labour expert and economist, and civil society leaders.

23 Twenty-four participants were present in the consultation.

The second was held on 28 March 2019 among more junior level representatives of various trade union organisations.²⁴ Additionally, information was collected through participation in decent work agenda and informal work events conducted by other organisations.²⁵

Resource Allocation by Nepal's Government for the Decent Work Agenda and SDGs

The Nepal government has given attention to particular aspects of decent work such as employment creation and economic growth, skills development, promotion of entrepreneurship, and expanding social security coverage. All of these have been prioritised by all tiers of government (federal, provincial, and local) as will be discussed in subsequent sections of this report. However, in order to realise them in practice, the government needs to allocate adequate resources.

The review and analysis of the government's budget for the two fiscal years following the adoption of the SDGs show some policy-level commitments as well as budgetary allocations for SDGs, including SDG 8. For example, the budgets for FYs 2018–19,²⁶ 2017–18,²⁷ and 2016–17²⁸ clearly use the term 'sustainable goals'. However, the FY 2016–17 budget allocated only 1.03 per cent of the nearly NPR 1.05 trillion budget for the decent work and economic growth-related goal and just 0.21 per cent for gender equality. In addition, there is no disaggregation or specification as to how the 1.03 per cent allocated for SDG 8 was to be spent, whether on enforcement or implementation of decent work programmes. Regardless, the budget outlined plans to make arrangements to implement a contribution-based social security programme for the welfare of workers in the following fiscal year. It also pointed to the possibility

24 Twenty-three participants attended the consultation.

25 Author's participation particularly on 'National Consultation and Launch of the Campaign for the Ratification of ILO C189 on Domestic Work', organised by Migrant Forum in Asia (MFA) and the National Network for Safe Migration (NNSM) on 20 March 2019 in Kathmandu and on Future of Work: Social Dialogue on Sustainable Development Goals organised by SARTUC on 3 and 4 April 2019 in Biratnagar. In both the events, participants included representatives from state agencies (Social Development Minister, representatives of local municipality of Province 1 in Biratnagar), civil society, migrant workers' networks, trade unions, and representatives from donor organisations.

26 Ministry of Finance 2018.

27 Ministry of Finance 2017.

28 Ministry of Finance 2016.

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of establishing a social security fund for farmers, after a feasibility study. The budget also had a provision to implement workplace accident insurance, maternity protection, and a sickness and medical treatment plan. However, it did not mention whether such insurance would cover workers in the informal economy.

Similarly, the finance minister's parliamentary budget speech of FY 2017–18 stressed that the budget was structured so that Nepal would be able to achieve the SDGs by 2030. It also aimed at generating employment, improving labour relations, abolishing child labour, and promoting the capacity of women entrepreneurs and rural women. This budget allocated NPR 1.14 billion to conduct labour-sector programmes, and of that total, 0.73 per cent was allocated to SDG 8-related activities and 0.16 per cent for SDG 5.

Likewise, the budget speech of FY 2018–19 introduced the Prime Minister Employment Programme,²⁹ designed to create 500,000 new job opportunities in Nepal and discourage labour migration by gradually developing commercial agriculture, irrigation, potable water, river control, forestry, tourism, transport infrastructure, and other public construction projects at all three tiers of government. The government allocated NPR 3.1 billion for those programmes. Furthermore, the budget also emphasised the need for the Employment Guarantee Act in public works which was later introduced as the Right to Employment Act 2018 (2075 BS). However, the budget does not specify plans to enhance worker rights although it claims to ensure equal pay for equal work and to review the minimum wage of workers. Although implementation is yet to begin, the budget for the first time promisingly states that people involved in unorganised sectors like farmers, labourers, and the self-employed will be considered for social security eligibility.

Budgets of the past three fiscal years also allocated funding to complete the rehabilitation of freed *kamaiya* (bonded labourers) and *haliya* (ploughmen); however, such programmes have provided little respite to such workers in exploitative conditions.³⁰

Meanwhile, subnational-level budgets tend to allocate funding in sectors such as agriculture, education, health, and infrastructure, mostly without reference to the SDGs. According to participants in group discussions and social dialogue, issues related to worker rights and welfare barely register with planners and implementers,

29 Ministry of Finance 2018.

30 Kamat 2018.

partly because the planners do not consider the issues to be priorities, partly because leaders are unaware of their responsibility to improve worker rights, and lastly because trade union engagement and influence in the planning process, especially at the subnational level, is weak.

GOVERNMENT ENGAGEMENT WITH UNIONS/ CSOS ON LABOUR RIGHTS IN SDGS

Nepal has introduced two important legal measures, the new Labour Act (2017) and the Contribution-based Social Security Act (2018), both of which are widely considered as crucial for the protection and welfare of workers. As many informants and participants in the consultations confirmed, the role of trade unions was instrumental to the introduction of these acts as well as in ensuring inclusion of the provisions to protect worker rights. Some trade unions call this development a historic success. Union leaders attribute the success to joint efforts under the common platform, Joint Trade Union Coordination Centre (JTUCC), the political opportunity created by the majority government of the left alliance, and to the role of trade unions.³¹

To implement the SDGs and provide policy guidelines, the government established a six-member high-level steering committee chaired by the prime minister and including the vice-chairperson of the National Planning Commission (NPC) (serving as vice-chair of this committee), the finance minister, foreign minister, chief secretary of the government, and secretary of the NPC. An additional central-level committee is the SDGs Coordination and Implementation Committee chaired by the NPC vice-chair. An NPC member who oversees macroeconomic affairs acts as joint coordinator, and other members include the secretaries of the Ministry of Finance and the Ministry of Foreign Affairs, chairperson of the Federation of the Nepalese Chamber of Commerce and Industry, chairperson of the Nepal Chamber of Commerce, chairperson of the Confederation of Nepalese Industries, with the joint-secretary of the NPC Economic Management Division acting

31 Based on interviews with three trade union leaders involved in the process of preparing the acts as well as views shared on consultations.

as the member secretary. The committee provides guidance to line ministries for mainstreaming the SDGs into national, provincial, and local plans. It is responsible for making arrangements for the financial, human, and technical resources for SDG implementation; for coordination with the public and private sectors, civil society organisations (CSOs), and development partners; and for monitoring and evaluating the progress of SDG implementation on an annual basis. It reports to the steering committee and prepares the national report on SDGs.³² However, the government has yet to set up an institutional structure and mechanism at the subnational level, including for monitoring and reporting. It is unclear what methodological tools and indicators would be used to measure progress on decent work.

In the preparation of the SDGs Voluntary National Review (VNR) of Nepal 2017, the NPC invited 30 umbrella CSOs, 23 of whom participated in the consultation meeting and provided suggestions and feedback on SDG targets and indicators for Nepal.³³ Most trade union leaders, however, reported that their input was not included in the VNR, nor was it considered while formulating the plans and budget. Trade union leaders also said they did not know what was presented at the UN High-Level Political Forum (HLPF) on Sustainable Development in general and specifically in regard to decent work. Similarly, according to trade union leadership, although sometimes they are invited to UN civil society consultations in Nepal, their participation is merely symbolic and their input is not taken seriously. Many participants in the group discussions and consultations emphasised the need for meaningful engagement of trade unions in these processes, including at the subnational level. The VNR submitted by the government at the 2017 HLPF did not report on decent work-rights principles under SDG 8.³⁴ A commission member noted that the NPC lacks specific understanding about how the national indicators should be reported on, and consequently it has to rely mostly on outside technical support for this task.³⁵

The government envisioned collaboration and partnership among multi-stakeholders, including trade unions and youth organisations, in policy formulation, implementation, and monitoring of the SDGs.³⁶ Yet this study found variations in trade

32 NPC 2017a.

33 NPC 2017b.

34 NPC 2017b. During the fieldwork for this study, it was learned that NPC was in the process of developing decent work monitoring and reporting mechanism and tools.

35 Based on informal conversation with the relevant NPC member.

36 NPC 2017b.

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unions' and civil society's awareness of and engagement in the process, particularly on SDG 8, at different levels of government. It was learned through the interviews, group discussions, and consultations that while trade union leaders at the national level are quite informed, union leaders outside the capital are less so. Nevertheless, trade unions have gradually begun to focus on providing trainings and orientations with affiliates on their roles and strategies to increase engagement in the planning and implementation process at other levels of government.

Interviews with local representatives from Provinces 1 and 5 suggest that the decent-work agenda is not a priority of local and provincial governments although elected representatives are aware of it. Most trade union representatives said local governments have not reached out to them nor has there been any discussion of decent work.³⁷ Although limitedly, the unions did raise issues related to the SDGs and even requested funding for trainings and worker welfare (including government-issued identity cards for those working in the informal sector) from local government, but those requests went unheeded.³⁸ Some union representatives even expressed dissatisfaction with local and provincial government representatives for their lack of cooperation when presented with a written request that the local government address worker issues and address the registration of labour unions.³⁹

Union representatives reported that local authorities simply dismissed their requests, arguing that the jurisdiction for SDGs lies with federal and provincial governments and that they had received neither communication nor directives from the federal government on the SDGs.⁴⁰ Some even said that issues such as the SDGs, worker rights, trade unions, and tripartite social dialogues have not been priorities because the local governments lacked human and technical capacity.⁴¹ Some were also of the view that the decent work agenda would be translated into action through implementation of the new social and labour acts. Nevertheless, though not specific to decent work, some local governments have initiated programmes to benefit workers such as

37 KII with Arjun Thapaliya, Chief of Administration, Biratnagar Metropolitan City, Biratnagar, Morang, Province 1, 29 December 2018; FGD, 30 November 2018, Biratnagar, Morang, Province 1.

38 FGD, 3 December 2018, Butwal, Rupandehi, Province 5; FGD, 30 November 2018, Biratnagar, Morang, Province 1.

39 FGD, 3 December 2018, Butwal, Rupandehi, Province 5.

40 KII with Ramesh Badal, 23 December 2017; KII with Anantamani Marasaini, Chief of Administration, Suddodhan Rural Municipality, Rupandehi, Province 5, 4 December 2018.

41 KII with Arjun Thapaliya, Chief of Administration, Biratnagar Metropolitan City, Biratnagar, Morang, Province 1, 29 December 2018.

registering informal economy workers, establishing labour desks to support workers, providing child-care centres for workers with small children, building rest stations for transportation workers, offering skills development training for unemployed people, and promoting women's entrepreneurship programmes.⁴²

Most trade union members at provincial and local levels are not familiar with the SDGs, including SDG 8. Like local governments, trade unions, a key protector of worker rights, have not been able to prioritise the decent work agenda as they are more invested in organising and expanding their membership.⁴³ According to trade union representatives, their lack of effective influence on the formulation and enforcement of policies, as well as inability to ensure workers' rights and welfare at the subnational level, comes down to inadequate resources, the perception that trade unions are members of political parties rather than representatives of workers,⁴⁴ and the challenges of restructuring of their organisations to align with the new federal republican system of governance in the country.⁴⁵ As shared by many stakeholders in the consultations, while the ongoing state restructuring process as per the federal system of governance has created immense opportunities for the trade unions to engage in the formulation and implementation of laws, policies and programmes at all levels of government, the lack of capacity within trade unions inhibits their participation and also makes it likely that labour rights will remain unenforced.

Nevertheless, trade unions seem to recognise the need to enforce worker-rights laws and guarantee rights such as collective bargaining, non-discrimination, and the overall welfare of workers at the subnational level.⁴⁶ They also stressed that labour offices at local levels must have the capacity to handle cases related to labour-rights violations,⁴⁷ and local governments should be held responsible for enforcing labour and social security laws to ensure workers' benefits, safety, security, and well-being.⁴⁸

Trade union representatives at the national level are more acquainted with the SDGs and have included the decent work agenda as one of their key priorities in their plans

42 KII with Guma Devi Acharya, Deputy Mayor, Butwal Sub-Metropolitan City, Rupandehi, Province 5, 3 December 2018.

43 KII with Dutta Prasad Dahal, Secretary, Budiganga Rural Municipality, Ward 2, Morang, Province 1, 30 November 2018; FGD, Butwal, Rupandehi, Province 5, 3 December 2018.

44 FGD, 30 November 2018, Biratnagar, Morang, Province 1.

45 KII with Puskar Acharya, President, NTUC, 19 December 2018.

46 FGD, 30 November 2018, Biratnagar, Morang, Province 1.

47 FGD, 3 December 2018, Butwal, Rupandehi, Province 5.

48 Ganesh Regmi, President, ANTUF, 21 December 2018.

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and programmes. They are aware of the fact that the Ministry of Labour Employment and Social Security (MoLESS) is the key contact ministry, and have been engaged with the ministry through JTUCC on issues like employment creation, promotion of social dialogue, decent wages, and social security.⁴⁹ They did report, however, that the ministry and the NPC do not seem to have adequate institutional capacity, and that they, too, should seek to engage with trade unions and other relevant stakeholders.⁵⁰

49 KII with Ramesh Badal, Secretary, GEFONT, 23 December 2017.

50 KII with Puskar Acharya, President, NTUC, 19 December 2018; KII with Ganesh Regmi, President, ANTUF, 21 December 2018.

LEGAL COMPLIANCE WITH DECENT WORK AND CORE LABOUR STANDARDS

Legal Compliance with Decent Work Standards

Decent work has four pillars: rights at work, employment creation, social protection, and social dialogue. The ILO core labour standards include freedom of association, collective bargaining, non-discrimination, and the abolition of child and forced labour.

The Fundamental Rights and Duties of The Constitution of Nepal 2015 includes key worker rights. Under the right to employment, it states: ‘Every citizen shall have the right to employment’.⁵¹ The constitution guarantees the rights, for most workers, to choose employment, earn an adequate wage, receive social security, form trade unions, and organise for collective bargaining. It also prohibits discrimination, human trafficking, and forced and bonded labour. In addition, the constitution prohibits gender discrimination in remuneration for equal work and provides for social security. Any discrimination in the workplace is punishable by law as a serious crime, and victims have the right to compensation. Indeed, the preamble of the constitution states that it is promulgated to end all forms of discrimination, including gender-based discrimination. The new labour act, however, permits a separate minimum wage for domestic workers though it makes the government responsible for the protection of domestic workers’ basic rights and to provide them social security, health services, and safe workplaces.⁵²

As per the principle of social justice and positive discrimination, the constitution also states that there should be special opportunities and provisions for the poor, people with disabilities, children, and endangered communities in the spheres of

51 GoN 2015a.

52 GoN 2017a, Section 13(88).

14 ADVANCING WORKER RIGHTS

education, employment, health and social security.⁵³ In regard to trade union rights, the Trade Union Act 1992 (2049 BS) recognises the importance of trade unions and acknowledges that their purpose is to provide recommendations to the government to formulate labour policy, improve working conditions, and contribute to workers' economic and social well-being.⁵⁴ However, some of the provisions in the act contradict fundamental principles and rights at work and the new Labour Act 2017 (2074 BS),⁵⁵ and trade unions are advocating to amend it.⁵⁶ Similarly, the Essential Services Operation Act 1957 curtails union rights and violates the ILO freedom of association principles related to 'essential services'.⁵⁷ Moreover, it is not in conformity with the constitutional rights of workers to form and join trade unions, including the legitimate right to strike, to peaceful assembly, or to engage in collective bargaining.⁵⁸ Further, it does not comply with the principles of ILO Conventions 87 and 98, which protect the rights to freedom of association and collective bargaining.

According to trade union representatives, the GoN has curtailed the rights of the workers by misusing this act. In its notice, the government listed 17 'essential' services, namely the postal service; all types of broadcasting and print media; telecommunication and mass media services; transportation, including road, air and marine; work related to civil aviation and the maintenance of aircraft and security; services related to railway stations and government storage; mint and government print services; manufacturing of defence equipment; electricity and drinking water supply services; hotel, motel, restaurant, resort and other tourism-related services; import and distribution of petroleum goods; hospital, health centres, manufacturing of medicines, and the establishment of distributive services; banking services; garbage collection, transfer and recycling services; insurance services; and import, export, storage and distribution of daily consumer goods⁵⁹ (foodstuff, lentils, rice, salt, edible oil). The trade unions pointed out the inappropriate classification of hotel, motel,

53 GoN 2015a, Part 3.

54 GoN 1992.

55 KII with two officials at ILO Country Office Nepal; KII with representative of GEFONT.

56 KIIs with representatives of JTUCC.

57 'Essential services' are defined as services '...the interruption of which would endanger the life, health or personal safety of the whole or part of the population'. See <https://www.ilo.org/legacy/english/dialogue/ifpdial/llg/ch5/ex4.htm>.

Also see <http://www.lawcommission.gov.np/en/archives/12475>.

58 KII with former leader of the JTUCC.

59 GoN 1957.

restaurant, and tourist accommodations as essential services, and of prohibiting strikes in these sectors and noted that they were not consulted when the government defined Nepal's essential services.

The Labour Act 2017 (2074 BS) replaced Labour Act 1992 (2048 BS) requiring the Council of Ministers to enact Labour Rules 2018 (2075 BS). Compared to previous labour laws and policy instruments, the recently enacted Labour Act, Labour Rules, and Contribution-based Social Security Act 2017 (2074 BS) are progressive and pro-worker as they seek to protect various rights, including those related to decent work. And these new institutional provisions are equally important for employers and the government.

The Labour Act includes some important social protection and worker rights provisions. The act, to some extent, ensures access to social protection and benefits for workers in every entity, including the informal sector, and to domestic workers. There is, however, no provision for home-based workers. Specific social protection and benefits include the right to basic health care, minimum remuneration, public and weekly holidays, mourning (bereavement) leave, sick leave, maternity and paternity leave, festival expenses, death and disability compensation, medical insurance, accident insurance, and severance compensation.

Another important feature of the Labour Act is that it specifically addresses sexual harassment, making it punishable by law. It also requires that the Sexual Harassment at the Workplace (Control) Act 2014 must be strictly implemented to make the working environment safer for every worker.

The Labour Act aims to protect rights including wages, benefits, and workplace safety in various sectors. It also applies to all entities regardless of the number of workers/employees. The act makes it mandatory that every employer provide an appointment letter and employment agreement (which specifies the position, job responsibilities, remuneration, effective date and other conditions of a job⁶⁰) before the worker starts, and open a social security account for the employee,⁶¹ as also is required under the Contribution-based Social Security Act.⁶²

60 GoN 2018a, Section 4.

61 GoN 2017a.

62 GoN 2017b.

Hours, Wages, Safety, and Benefits

As per Section 28 of the Labour Act, the worker shall be deployed at work for eight hours a day, and 48 hours a week. The fact that the Labour Rules allow the employer to determine work hours based on the nature of the work and of the entity⁶³ not only obscures the Labour Act provision but may also encourage the employer to force employees to work extended hours. According to the act, after five hours of continuous work, the employee is entitled to half an hour of rest. In cases where women workers are employed in services either before sunrise or after sunset, the employer is responsible for their transportation.⁶⁴ The act also provides a half hour of additional time for female employees, especially those who have a child under 3 years of age, for breastfeeding.⁶⁵ The act also underscores that pregnant women and physically disabled employees should be given special priorities,⁶⁶ and that overtime wages should be paid at one and half times the ordinary rate.⁶⁷

In alignment with the constitutional provisions discussed above, Clause 7 of the Labour Act has also enshrined equal pay for the equal value of work,⁶⁸ in both the public and private sectors, barring discrimination based on gender.⁶⁹ In addition, it also ensures equal opportunity for both men and women at work.⁷⁰ The employer is fined up to NPR 100,000 if found guilty of discrimination.⁷¹

One of the key features of the Labour Act is that it sets minimum standard wages. Although not enough to support a family, the monthly wage is NPR 13,450 (approximately USD 120),⁷² the daily minimum wage is NPR 517 (about USD 5).⁷³ Under Clause 170 of the Labour Act, piece-rate workers have a separate minimum

63 GoN 2018a, Section 4.1.1, Rule 16.

64 GoN 2017a.

65 GoN 2018a.

66 GoN 2017a.

67 GoN 2017a.

68 Equal value of work is determined based on the nature of work, the skill required, production, consumption of time, etc.

69 GoN 2017a, Clause 7.

70 GoN 2017a, Clause 6.

71 GoN 2018a.

72 The actual cost of living rate is unavailable and depends on whether one lives in cities and rural areas. Also see, <https://www.expatistan.com/cost-of-living/country/ranking>. However, an estimate suggests minimum amount of money per person in Nepal is NPR 10,752 (approx. \$100) for the food for survival. Poudel 2018.

73 Poudel 2018.

wage. The law also establishes that an employee who has worked for at least one year is entitled to a half-day wage increment every year.⁷⁴ The act also made it mandatory for employers to deposit 11 per cent of basic remuneration every month in the Social Security Fund for the employee. It can be deposited in the Citizen Investment Trust, approved retirement fund, or a separate bank account maintained by the employer until the Social Security Fund is established.⁷⁵

The Labour Act also contemplates occupational safety and health (OSH). Employers are required to take appropriate safety and health measures to minimise the risk of workplace accidents, including precautions for operating mechanical devices and machinery and for handling chemical substances. Employers must disseminate necessary safety notices and information and provide health and safety training.⁷⁶ In addition, the Labour Rules 2018 require that every entity with 20 or more workers form a safety and health committee, which should convene at least four times a year.⁷⁷ Equally important, for any entity with at least 10 workers, a collective-bargaining committee must be formed, and its members must be nominated by representative trade unions.⁷⁸

The Labour Act also calls for the elimination of all forms of forced labour,⁷⁹ including child labour which aligns with provisions in the Constitution of Nepal 2015. Clause 164 of the act establishes that an employer engaged in forced labour may be punished by the Labour Court with imprisonment of up to two years or a fine up to NPR 500,000 or both. Bonded labour may also be indemnified with an amount double of remuneration, allowance, and other facilities.⁸⁰ The government has also recently drafted a second National Master Plan for Elimination of all Forms of Child Labour (2018–2028), which has been endorsed by the Council of Ministers. However, the fact that an OSH directive for the brick industry vaguely mentions a minimum age of 16 years to work

74 GoN 2017a.

75 GoN 2017a.

76 GoN 2017a.

77 GoN 2018a.

78 Labour Act 2074, Section 116. In case of no elected trade union representatives, the trade unions can nominate the group based on their consensus. In addition, if there is no presence of trade union, the workers in the workplace can nominate the representatives with the support of 60 per cent support.

79 According to the act, forced labour is defined as ‘Any work or service performed by any worker against his/her will as a result of a threat of taking any action having a financial, physical or mental impact if he/she does not perform such work’.

80 GoN 2017a.

in the sector while also outlining safety and health precautions for using child labour contradicts these constitutional and legal provisions, and requires clarification.⁸¹

The act contains a provision for termination on health grounds: An employer may terminate an employee upon the recommendation of a medical practitioner if the employee is physically or mentally disabled or injured, unable to work, or requires a long period of medical treatment.⁸² Employers must provide notice of termination. However, employers cannot terminate the contract for a year if the worker is undergoing treatment, including staying at home due to work-related disease or injuries. Rather, employers are required to pay wages during the treatment period. If the worker receives disbursements from the Social Security Fund, the employers is not required to pay salary. The act also includes some provisions about retrenchment. If entities have been through harsh economic conditions or due to a merger and other conditions, notice specifying the reasons for retrenchment, possible date of retrenchment, and the likely number of employees to be retrenched should be provided to Labour Office and trade union of the entity, if any.⁸³

The act provides for paid vacation. Every employee can accumulate up to 90 days of annual leave and up to 45 days of sick leave, which can be cashed out at the time of discontinuation of service or at the end of each year.⁸⁴ Employees who have worked for at least one year are entitled to one month's basic remuneration once a year; those who have worked less than a year are entitled to festival expenses on a proportional basis.⁸⁵ The act establishes one day off per week, 13 public holidays (including May Day), and one additional public holiday for women workers: International Women's Day. Another provision establishes annual leave as one day for every 20 days worked. Further, every worker is entitled to celebrate festivals as per their culture, religion, and tradition.

Employees who have worked for at least one year are entitled to 12 days of annual sick leave, and those who have worked less than a year are entitled to sick leave on a proportional basis. In cases where an employee requires three or more days of sick leave, the employee must submit a certified doctor's prescription.⁸⁶ Likewise, in cases of death of immediate family members, each employee is entitled to 13 days of mourning leave.

81 GoN 2018d.

82 GoN 2017a, Section 143 and Section 147.

83 GoN 2017a, Section 145.

84 GoN 2017a, Section 49.

85 GoN 2017a.

86 GoN 2017a.

In case of sickness or accident at the workplace, the employer is responsible for taking the employee to the hospital or health centre as well as informing the Labour Office, to fulfil its obligations to employees in terms of occupational safety and health.⁸⁷ The compensation for workplace injuries should be provided by insurance. Every worker is entitled to medical insurance worth at least NPR 100,000 (about USD 895) per year and at least NPR 700,000 (about USD 6365) in accident insurance.⁸⁸ Employers and workers each contribute half for medical insurance while employers are entitled to pay accident insurance fees. There is also a provision on disability compensation, which is to be paid to the employee from insurance based on the degree of disability.⁸⁹ If a worker dies from an accident, her or his closest relative or designee is entitled to the accident insurance pay-out.⁹⁰

The act also introduced the provision that guarantees 98 days of maternity leave for women workers. The employee must submit the birth registration certificate to the employer within three months of end of maternity leave or a birth certificate issued by the relevant hospital or health post.⁹¹ However, only 60 of the 98 days will be paid leave. In case of miscarriage in the seventh or later, the employee is entitled to full maternity leave provided that the employee turns in a medical report issued by a health institute confirming miscarriage.⁹² Male workers are granted 15 days of paid paternity leave. Meanwhile, if a mother dies within 60 days of delivery of a baby, the father is entitled to the maternity leave balance, from his employer, to take care of the child.⁹³

Social Security

Following the Contribution-based Social Security Act 2017, which was passed by the parliament on 24 July 2017,⁹⁴ the Social Security Fund was established. The act comprises provisions designed to improve the welfare of employees,⁹⁵ including specific programmes for health and medical, maternity protection, accident protection, old-age

87 GoN 2018a.

88 GoN 2018a.

89 GoN 2017a, Section 10(55).

90 GoN 2017a.

91 GoN 2018a, Rule 4.3.1.

92 GoN 2017a.

93 GoN 2017a.

94 GoN 2017b.

95 GoN 2017b.

protection, dependent-family protection, and unemployment protection.⁹⁶ Notably, the act states that these provisions include workers in the informal sector and the self-employed. The act also draws on the Labour Act, which makes it mandatory for both the employer and employee be registered with the Social Security Fund in order to be the part of the programme.⁹⁷ Only those who have contributed to the Social Security Fund are entitled to benefit from it.⁹⁸

As per the act, all workers must contribute 11 per cent of their salary while employers contribute 20 per cent of the employees' salary to the fund. However, those who are self-employed or employed in the informal sector must contribute 31 per cent of their basic salary every month to the fund to benefit from the programme. The employer has to deposit a maximum of 33 per cent of their wages, remuneration, or other facilities if employees are not paid for any reason (e.g., bankruptcy and bad intentions).⁹⁹ If the worker is no longer employed, the employer has to inform the Social Security Fund about it within a month.¹⁰⁰ The act has provisions for survivor benefits if the contributor dies. If the self-employed or informal-sector worker dies, her/his survivor must inform the fund within a month.¹⁰¹ In addition, if the relationship between employer and employee no longer exists and the employee does not receive the benefit because the employer did not fulfil his obligations to deposit funds, the Social Security Fund can issue an ultimatum to the employer with three months to pay the employee and issue a deposit to the fund.¹⁰²

Other Acts

With the objective of enhancing exports,¹⁰³ the GoN enacted the Special Economic Zone (SEZ) Act 2016 (2073 BS) as per the Section 293(1) of the constitution 'to attract foreign and national investors to invest and establish industrial and business units'. The government identified 14 places, Bhairahawa, Biratnagar, Dhangadi, Dhanusha, Gorkha, Jhapa, Jumla, Kapilvastu, Nuwakot, Nepalgunj, Panchkhal, Rautahat, Simara,

96 GoN 2017b.

97 GoN 2017b.

98 GoN 2017b.

99 GoN 2018b; GoN 2018.

100 GoN 2017b.

101 GoN 2018b.

102 GoN 2018b.

103 Special Economic Zone Authority n.d.

and Siraha, for the establishment and operation of SEZs.¹⁰⁴ However, they are yet to be realised.¹⁰⁵ In order to establish a total commercial hub, these zones benefit from relief on customs and excise duties, other levies, and declared tax exemptions.¹⁰⁶ The act has mandatory provisions and guidelines about selling products in the domestic market and for export, as well as tax and benefit incentives for industries.¹⁰⁷ The act outlines that workplace, wages and other details, working hours, obligations, leave, health and medical treatment, bonuses, insurance, safety and security, and other welfare provisions, shall be ‘as per the contract’ between the employer and employee.¹⁰⁸ It also allows employers to hire employees for irregular work and for specified periods. Notably, the act states that the ‘facilities and welfare benefits’ of SEZ workers must not be ‘less than’ those guaranteed by existing laws.¹⁰⁹ Additionally, it is also stated that SEZ authority can establish a separate minimum wage that must not be lower than the national minimum wage,¹¹⁰ and that workers can enjoy other core labour rights guaranteed by law. Since some of the provisions in the act contradict the fundamental principles and rights at work and the new Labour Act 2017 (2074 BS), trade unions have been advocating to amend it.¹¹¹

Very recently, the government introduced the Right to Employment Act 2018 (2075 BS), which is a very important instrument for ensuring the employment of the citizens of Nepal and the protection of their rights as workers or as unemployed. According to the act, every Nepali citizen is entitled to engage, leave, or change a job as per his or her desire and within the legal framework, and no one can force him/her to remain in the job without his or her consent.¹¹² It also states that there will be an ‘Employment Service Centre’, which will run a local unemployment support programme to provide employment services to job seekers, keep records of job vacancies, disseminate information about job opportunities and provide training and skills development.¹¹³ According to a provision in the act, unemployed citizens are

104 Pioneer Law Associates 2017.

105 Dhakal 2017; Karobar 2017.

106 GoN 2017c.

107 GoN 2016a, Section 13.

108 GoN 2016a, Section 40.

109 GoN 2016a, Section 39.

110 GoN 2016a.

111 KII with official at ILO Country Office Nepal; KII with representative of GEFONT.

112 GoN 2018c, Section 4.

113 GoN 2018c, Section 10.

entitled to receive unemployment support; unemployed family members of martyrs and family of missing people will be prioritised. Those job seekers, if unable to find a job after enrolling in the programme, can receive an allowance valued at 50 per cent of the minimum wage for 100 days of the fiscal year. However, if the job seeker does not want to take a job allocated by the programme, s/he will be removed from the unemployment list and will not receive any support.¹¹⁴

ILO Conventions

Globally, ILO Conventions have been instrumental in the protection and promotion of the rights of workers, including migrant workers. Nepal, as a member of the ILO, has ratified a number of conventions related to eradicating discrimination in the labour market. Nepal also is one of the top origin countries for migrant workers, and the country's collaboration with ILO has been critical in raising worker rights issues within and outside the country.

Nepal has ratified 11 of 190 ILO conventions. Those ratified include the Forced Labour Convention, 1930 (No. 29); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Abolition of Forced Labour Convention, 1957 (No. 105); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); the Worst Forms of Child Labour Convention, 1999 (No. 182); and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), among others.

By ratifying conventions, countries commit to work toward fulfilment of the convention and the betterment of workers. However, Nepal has lagged behind in several cases. For instance, ratification of the Forced Labour Convention and Abolition of Forced Labour Convention requires the nation to stop using forced or compulsory labour in all its forms. As reported, many workers in the construction, entertainment, and domestic sectors are coerced into working.¹¹⁵ Similarly, the Equal Remuneration Convention promotes equal wages for the same work without any discrimination based on gender. The Discrimination Convention rejects any discrepancy 'based on race,

114 GoN 2018c, Section 21 and 22.

115 Anti-Slavery International 2009; Anti-Slavery International 2015; ILO 2013; NHRC 2017; Stallard 2013.

color, sex, religion, political opinion, national extraction or social origin...which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation'. The Convention on Right to Organise and Collective Bargaining ensures the rights of the workers to organise and raise their voice collectively in respect to their employment. Despite ratification, there are many instances of discrimination and violation of rights still prevailing in the Nepali labour market.¹¹⁶

Moreover, Nepal has not yet ratified some highly important conventions including one of the core labour standards. Although the Constitution of Nepal 2015 and the Labour Act 2017 have guaranteed freedom of association and the right to organise, the government has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Moreover, other significant conventions that have not been ratified include: the Labour Inspection Convention, 1947 (No. 81); Protection of Wages Convention, 1949 (No. 95); Migration for Employment Convention (Revised), 1949 (No. 97); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Occupational Safety and Health Convention, 1981 (No. 155); Private Employment Agencies Convention, 1997 (No. 181); and Domestic Workers Convention, 2011 (No. 189). Although the constitution does not discriminate against any work or workers, the government has not yet ratified Convention 189, which recognises domestic work. Civil society groups and trade unions have been carrying out consultations and campaigns over some years for ratification of these conventions.¹¹⁷ Failure to ratify such conventions might have negative implications for workers as well as for Nepal's pursuit to achieve the SDGs by 2030. In order to achieve the goals related to decent work and gender equality, ratification of the core labour standards related to decent work is crucial.

Enforcement and Practice

Although the political leadership asserts that employers who fail to pay the minimum wage to workers will be penalised¹¹⁸ and business leaders assure that the

116 NPC 2017c.

117 Based on interviews and participation in the consultation organised by the MFA and NNSM on 20 March 2019.

118 The Kathmandu Post 2018a; Karki 2018.

requirements of the Social Security Programme will be duly followed,¹¹⁹ there are issues around discrimination and other irregularities in the Nepali labour market, and effective enforcement of relevant laws still lies in the future. Evidence shows that many workers are unable to enjoy their fundamental rights, or to work in a safe and secure environment. As elucidated in the subsequent sections, the cases of non-payment of the minimum wage, denial of services and benefits as per the Labour Act, and employer non-contribution to the Social Security Fund were some of the major problems making the headlines in top newspapers in the country, despite the government setting a new minimum wage for FY 2018–19 and the new labour law and Social Security Act requiring strict enforcement of worker rights.

Most employees have chosen not to register in the contribution-based social security scheme. Of more than 900,000 companies/enterprises in the country, not more than 4500 companies and 35,000 workers had registered as of the end of August 2019.¹²⁰

Illustrative examples of practice/enforcement issues include the following: In Jhapa and Ilam districts of Nepal, workers who organised under various trade union groups were forced to stage sit-in protests because they were not paid the minimum wage nor were they benefiting from other services and programmes ensured by the Labour Act.¹²¹ The government set a minimum wage for tea estate workers at NPR 385 a day, up from the previous NPR 287. But plantation owners' noncompliance resulted in disputes between owners and workers.¹²² Such conflicts are common in the sector,¹²³ which employs nearly 40,000 workers.¹²⁴ The sector also features gender-based discrimination of workers. For example, a news source reported that women tea estate workers from Ilam and Panchthar districts formed a union to demand equal rights and payment as enjoyed by their male co-workers; while male workers from tea factories in Ilam and Panchthar districts earned NPR 400 per day, the women were only paid NPR 300 per day for the same work.¹²⁵ Union leaders have been calling on the government to address these issues.¹²⁶

119 Sharma 2018a.

120 Karki 2019.

121 Chapagain 2018.

122 Naya Patrika 2018.

123 Portel 2018.

124 Subedi 2018.

125 The Kathmandu Post 2018b.

126 GEFONT n.d.a.; GEFONT n.d.b.

Despite the fact that there are various challenges in the effective implementation of the workers' rights, these examples also point to the fact that where the workers are united, their potential to mobilise can put their issues in the political agenda. In another case, security guards organised a hunger strike claiming that they did not receive minimum wage, benefits, and social security as guaranteed by the government.¹²⁷ Despite the minimum wage increasing to NPR 13,450 at the beginning of fiscal year in July 2018, the workers were paid only NPR 9700 per day.¹²⁸ Their protest hinted at a larger problem of underpayment of wages in the security sector, which employs 150,000 people, as other workers at security companies around the country ratcheted up pressure on the government and stakeholders to enforce the minimum wage. According to the law, the minimum wage for workers who put in 12 hours a day is NPR 21,742. However, the majority of the security companies pay NPR 15,000 per month to their workers.

The practice of denying proper wages and benefits is not only an issue for security guards of private companies, but also for those working in organisations and banks affiliated with the government, such as Krishi Bikas Bank, Nepal Telecom, and Rastriya Banijya Bank, and¹²⁹ on government-owned projects. For example, Nepali workers at the Melamchi drinking water project went unpaid for two months, leaving them unable to return home.¹³⁰ Similarly, workers from Nepal Hydro and Electric Limited staged a protest stating that they had no wage increase in two years and that the company was trying to curtail access to benefits and programmes, rather than increasing it.¹³¹

Meanwhile in Nepalgunj, staff of a three-star hotel staged protests to highlight the employer's lack of compliance with the law, including paying the minimum wage and denying workers an agreement, uniform, and even leave during festivals.¹³² Indeed, workers crushing stones for infrastructure projects,¹³³ agricultural workers in Nepalgunj,¹³⁴ and those who work in garment, carpet, and textile factories have all

127 Sharma 2018b.

128 Saud 2018.

129 Ratopati 2018.

130 Dangal 2018.

131 Gyawali 2018.

132 Gorkhapatra 2018a.

133 Gorkhapatra 2018b.

134 Gorkhapatra 2018c.

reported being denied the legal minimum wage.¹³⁵ Even workers in a multinational company and other companies have protested for wage increases and access to economic and health-related programmes in alignment with the government's decisions,¹³⁶ and in consideration of long years of services.¹³⁷ However, these conflicts remain unresolved.

In addition to these issues, thousands of Nepalis experience forced labour, bonded labour, and human trafficking, and child labour is prevalent. Forced and bonded labour is common in several economic sectors, but most predominantly in mining, brick kilns, carpet weaving, the entertainment sector¹³⁸ (especially of female workers), quarries, tea farming, and garment production. Studies show that workers are at risk of forced labour and exploitation due to the lack of legal protection, and the low-skill, and seasonal nature of work.¹³⁹

Child labour in Nepal occurs in domestic work, transportation, construction, brick kilns, garment and textile manufacturing, and service sectors, including hotels, tea shops, and restaurants.¹⁴⁰ According to the Labour Force Survey 2017/18, a significant portion of the children ages 5–17 years were involved in some kind of work. Approximately 29.6 per cent of 7 million children are estimated to have been involved in at least one activity related to producing goods, and 36.3 per cent of children were involved in at least one activity related to providing a service. Many of the children were engaged (33 per cent) in housework activities. In a recent notable case, local authorities formed a task force in an attempt to rescue child labourers from the home of a Member of Parliament, resulting in the transfer of the Chief District Officer of Bhaktapur district, who led the effort.¹⁴¹

Challenges in Enforcing Laws

Some private-sector representatives of employers have openly expressed dissatisfaction with the new minimum wage and even demanded for it to be amended, claiming that

135 Desh Paradesh n.d.

136 Dahal 2018.

137 Gorkhapatra 2018d.

138 NHRC 2019.

139 CBS 2019; Refworld n.d.

140 Gorkhapatra 2018e.

141 Khajju 2018.

it threatens the industrial sector.¹⁴² The Nepal Tea Production Union, the tea farming employers' organisation, recently announced its unwillingness to participate in the Social Security Programme citing various complications, such as the high cost of tea production.¹⁴³ These cases suggest that the formulation of laws and policies alone is not sufficient to improve worker well-being, and that enforcing worker rights laws and policies seem to be a huge challenge in Nepal. Many cast doubt on the effective implementation of laws and policies as it becomes more challenging to compel compliance from private-sector factories and industries that, on one hand, ignore or even resist laws and policies¹⁴⁴ and, on the other hand, have more influence to manipulate political leaders and rights/law enforcers to make decisions in their favour because of their economic and political capital. Nepal's trade unions are calling for the creation of a constitutional body, a 'labour commission' to expedite the settlement of labour disputes and to enhance labour law compliance.¹⁴⁵ This could be one potential way of strengthening workers' representation in policymaking mechanism and bodies.

At the same time, more than 30,000 temporary schoolteachers are engaged in precarious work. Even after serving at schools for many years, they are paid poorly and denied permanent positions. And they have found the new teacher recruitment policy discriminatory to them. The teachers formed the Temporary Contract Teachers Struggle Committee to protest the unfair policy.¹⁴⁶ Likewise, there are more than 52,000 female community health volunteers actively working in municipalities across the country. They play important roles in the community and support public health services such as neonatal, maternal, and child health; immunisation programmes; nutrition and infant and child feeding; family planning and referral services.¹⁴⁷ However, as unpaid volunteers, they are not even covered by social security provisions. There is not much difference on the case of those working in the sector of travel and tourism, hospitality, construction, and care sector.¹⁴⁸ Their rights and issues have gone unnoticed by the state and need to be defended by trade unions and supported by civil society.

142 Dosh Paradesh 2018.

143 Onlinekhabar 2018.

144 Sharma 2018a.

145 Interviews with trade union leaders.

146 The Kathmandu Post 2017; Ghimire 2018; The Himalayan Times 2018.

147 Ministry of Health and Population 2015.

148 Based on author's informational conversations with stakeholders and experts.

POLICY COHERENCE AND DECENT WORK

Achieving the SDGs requires synergy and coherence among national government policies related to development, trade, donor assistance, investments, and other relevant policies. The review and analysis of the government's policy and programmes following the adoption of the SDGs is elucidated below. It suggests that despite the fact that periodic plans and programmes broadly mention designing policy that focuses on the SDGs and improves the labour market, they have had little effect, and lack a concrete plan of action aimed at achieving the SDGs. Rather, they are more focused on economic growth.

To illustrate some concrete examples, the policy and programmes of FY 2017–18¹⁴⁹ emphasised on creating employment opportunities, promoting self-employment, and increasing income-generating opportunities for youths by providing trainings and enhancing their capacity. Similarly, the policy and programmes of FY 2018–19¹⁵⁰ plans to make the economy productive, self-sufficient, and export-oriented, such that it promotes employment and enhances economic growth. It also claims that the programme will be designed in such a manner that the SDGs will be achieved ahead of time. It states that labour laws will be implemented effectively in order to make the labour market decent and respectable. It also plans to implement integrated social security programmes for both formal- and informal-economy workers and provide them with contribution-based social security.

In order to create employment opportunities within the country and to promote economic growth, the government has encouraged industrial development as well as foreign investment. The government introduced Foreign Investment Policy 2015

149 GoN 2017f.

150 GoN 2018e.

(2071 BS), which serves as guidelines for investors willing to set up a business in Nepal. The policy includes some important decent work-related issues, including the formation of a tripartite mechanism of government, workers, and employers to resolve problems and develop cordial industrial relations. Similarly, the policy states that the social security of workers will be ensured based on tripartite agreement.

More than 40 per cent of Nepal's population falls within the age bracket of 16–40 years and are considered 'youth', according to the definition of National Youth Policy 2015 (2072 BS).¹⁵¹ Lack of employment opportunities is a major concern for Nepal's young people today. Job scarcity is forcing them to leave the country for foreign employment.

Many migrant workers find themselves in unsafe and undignified working conditions. Some are cheated or indebted during the recruitment process. Women migrants, due to the nature of the jobs they find abroad, often are in vulnerable situations once working in destination countries. The National Youth Policy 2015 raises the issue of decent work and safety for female migrants. The policy also contemplates a programme for returnee migrants to help them become self-employed. Likewise, it discusses guaranteeing safe, healthy, and decent work to ensure the rights of workers. In alignment with constitutional provisions, it also provides equal pay for equal work as well as the eradication of physical and mental exploitation, sexual violence, and all forms of discrimination at the workplace. The Youth Skill and Leadership Development Program Operation Guideline 2073 (first amendment, 2074¹⁵²) has recognised different sectors of skills trainings for youths, in carpentry, masonry, electrical, plumbing, tailoring, beautician, welding, carpentry, mobile repairing, computer, agriculture, livestock, and tourism to name a few and has also sought to help the workers in improving their access to benefits. Likewise, national discussions and policy narratives on employment creation, skills development, and stopping forced/involuntary migration for foreign employment are centred on the past experiences and present context; however, priorities and policies still fail to address the need for understanding how labour markets and employment situations are changing in the future, mainly due to technological innovations.¹⁵³ This certainly has implications on the mismatch between the skills needed and the demands of employment in the labour market, both at home and abroad.

151 GoN 2015b.

152 GoN 2017d.

153 ILO 2019.

Nepal's labour law provides workers with the right to organise strikes without limitation (after completing notification and voting procedures). However, the Industrial Enterprise Act 2016 (2073 BS)¹⁵⁴ restricts strikes that may affect the operation of an industry and its production. These two acts are contradictory, and the provision restricting strikes is also in opposition to the Constitution of Nepal 2015.¹⁵⁵

Decent Work in Policy and Plans of Subnational Governments

Provincial governments have developed policies and programmes that include labour and employment as part of their agenda. The review and analysis of the policies and programmes of some representative provincial and local-level governments show that (self-)employment generation, skills, and entrepreneurship development for youth, vocational education, economic growth through establishment of industries (including small and cottage enterprises), and poverty alleviation are priorities but lack recognition of the SDGs in general. Those policies and programmes that reference the SDGs equate achievement with economic development. They have allocated funding for job creation and gender equality; however, there is no mention or prioritisation of worker rights.

For example, the government of Province 5 plans to end poverty by creating employment opportunities and promoting youth self-employment programmes. It also plans to provide skills training¹⁵⁶ and guarantee their wage rate. Similarly, the government of Province 2 emphasises ensuring the rights of agricultural workers as well as creating a suitable environment to attract young people who currently migrate for employment.¹⁵⁷ Additionally, it plans to formulate policies to increase access of migrant workers' family members to social security, health, and education. As per the Policy and Programme of Province 4 for FY 2018–19,¹⁵⁸ the government plans to create employment for 50,000 workers and self-employment for 100,000 people, and to achieve the SDGs by expanding economic activities at central, provincial and local levels. It plans to implement the 'Chief Minister Environment-Friendly Agricultural Programme', which encompasses the youth self-employment programme for

154 GoN 2016b.

155 KII with official at ILO Country Office Nepal.

156 Province 5 2017.

157 Province 2 2017.

158 Province 4 2018.

impoverished and marginalised communities, employment opportunities for persons with disabilities, youth and women entrepreneurship programme through a youth-targeted challenge fund, gender-friendly technologies, grants and skill-development trainings to promote establishment of enterprises and industries, establishment of cottage industries to create jobs, establishment of an employment bank to keep records of job openings and trained workers, and increased production and alleviation of poverty. It is, however, yet to be seen whether and to what extent workers, including migrant workers (especially in Nepal from India and China), will be able to exercise their rights, including access to social security, health services, and pension.

The federal government, as a part of enhancing decent work, plans to enforce equal wage for equal work as ensured by the Labour Act 2017 and the Constitution of Nepal 2015 and seeks to systematise labour audits and inspections. Karnali Province's Policy and Programme for FY 2018–19¹⁵⁹ states that it plans to provide people from marginalised communities and areas with '100 days of employment' as per a 'one household, one employment' policy. It seeks to ensure easy access to commercial loans to encourage self-employment and enterprises, especially for women and those from marginalised communities, and to support workers facing difficulties abroad. Surprisingly, the plans seek to ensure daily wages for labourers based on their work and output. Likewise, the Policy and Programme of Province 7 for FY 2018–19¹⁶⁰ seeks to encourage and promote employment and self-employment through technical and vocational education, skill-development trainings for youths, and by attracting national and international investment. The plan also includes targeted income-generating opportunities for marginalised groups, landless people, and farmers. Aligning with the constitutional provision and the new labour law, the plan states it will ensure social security for labourers and farmers, and equal wages for equal work, irrespective of gender.

Nevertheless, the policy and programmes of all provincial governments lack concrete plans to create jobs as well as to retain human resources within the country. They have also failed to include components of the SDGs, not to mention decent-work-specific plans.

The Policy and Programme of Gadhi Rural Municipality (Sunsari district,

159 Karnali Province 2018.

160 Province 7 2018.

Province 1) for FY 2018–2019 (2075–76 BS)¹⁶¹ intends to promote entrepreneurship, skills development of and income-generation for women, Dalits, indigenous, and marginalised communities; employment and self-employment opportunities for youths; and safer foreign employment and awareness about safe and beneficial labour migration among people. In terms of achieving the SDGs, it only mentions that health services will be expanded to contribute to that goal. In the Budget Policy and Programme of Letang Municipality (Morang district, Province 1) for FY 2018–19 (2075–76 BS),¹⁶² emphasis is placed on job creation (more priority for targeted groups such as youths, women, Dalits, differently abled, and other marginalised communities), alleviation of poverty, and skill-development training. Infrastructure, and social and economic development will contribute to the achievement of the SDGs. Nonetheless, the document does not specify anything about decent work.

Likewise, the Policy and Programme of Katari Municipality (Udayapur district, Province 1) for FY 2018–19 (2075–76 BS)¹⁶³ and that of Chulachuli Rural Municipality (Ilam district, Province 1) for FY 2018–19 (2075/76 BS)¹⁶⁴ are very similar to those of Gadhi and Letang municipalities. The plans and programmes of Katari Municipality reference the SDGs in the education and agriculture sections, but they do not discuss labour-market improvements or worker rights. The Budget Policy and Programme of Chulachuli Rural Municipality for FY 2018–19 (2075–76 BS) allocates funding for skill-development training for youth and marginalised/targeted groups, including women, Dalits, and differently abled people, with the objectives of income generation and economic independence. It also plans to provide support for migrant workers and returnees to get involved in agricultural activities and to implement the ‘one house, one employment’ policy. Although vague, it mentions that policy will be formulated for decent work in agriculture, animal husbandry, and factories. Like other municipalities in the province, Mechinagar Municipality (Jhapa district, Province 1) for FY 2018–19 (2075–76 BS)¹⁶⁵ emphasises self-employment programmes and skill-development trainings targeted to youth and information dissemination for migrant workers. Additionally, the municipality aims to initiate a registration process for transportation workers, tea farm workers, and

161 Gadhi Rural Municipality 2018.

162 Letang Municipality 2018.

163 Katari Municipality 2018.

164 Chulachuli Rural Municipality 2018.

165 Mechinagar Municipality 2018.

construction workers within the municipality. More importantly, and related to the decent work agenda, the plan aims to formulate policy to make the municipality free of child labour, initiate residential projects, and provide free health insurance to 50 families of tea estate workers and other marginalised groups.

The Policy Programme and Plan document of Bijayanagar Rural Municipality (Kapilvastu district, Province 5) for FY 2018–19 (2075-76 BS)¹⁶⁶ aims to boost employment through enterprises and factories and provide skills trainings for women, but it does not provide details on either programme. Likewise, reflecting the labour ministry's priority, the Policy and Programme of Lamahi Municipality (Dang district, Province 5), for FY 2018–19 (2075-76 BS),¹⁶⁷ plans to promote employment within the country instead of encouraging foreign employment by providing trainings and generating jobs for unskilled workers in construction, with wages similar to those paid in the Gulf countries. There is no mention of the SDGs or decent work. Similarly, the Policy and Programme of Omsatiya Rural Municipality (Rupandehi district, Province 5) for FY 2018–19 (2075-76)¹⁶⁸ outlines municipality plans to create employment opportunities by collaborating with the private sector. It also intends to introduce identity card systems to provide unemployed youths with allowances. However, the SDGs are not prioritised, nor is there any reference to training or employment. In the Budget Policy and Programme of Narainapur Rural Municipality (Banke district, Province 5) for FY 2018–2019,¹⁶⁹ the only provision for workers involves plans to prioritise self-employment and create jobs for youths by providing vocational and skill-development trainings. Its budget includes funding for skills development, job creation, and other income-generating activities for women, Dalits, elderly people, and differently abled people. Similarly, the Thakurbaba Municipality's (Bardiya district, Province 5) plan for FY 2018–2019 (2075/76 BS)¹⁷⁰ mentions the intention to promote youth self-employment and to provide women with training and a fund, on a rotational basis for their empowerment. It does not mention workers and their issues, nor does it have any provision for migrant workers.

166 Bijayanagar Rural Municipality 2018.

167 Lamahi Municipality 2018.

168 Omsatiya Rural Municipality 2018.

169 Narainapur Rural Municipality 2018.

170 Thakurbaba Municipality 2018.

National Trade Policy and Decent Work

This study also sought to identify whether Nepal's existing trade agreements have any provisions related to enforceable labour rights, including social dialogue, and if the agreements weaken or strengthen worker rights and benefits.

Major regional trade agreements such as South Asian Association for Regional Cooperation (SAARC) Preferential Trading Arrangement (SAPTA), SAARC¹⁷¹ Agreement on Implementation of Regional Standards 2011, SAARC Agreement on Trade in Services (SATIS), South Asian Free Trade Area (SAFTA), and Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), as well as bilateral trade treaties and agreements with major trading countries (namely China, Germany, India, Japan, and the United States) were reviewed. Most agreements do not address worker rights and issues, or decent work. Where workers are referenced, it is in a vague or limited sense.

The major objectives of SAPTA, signed by seven member states of SAARC, including Nepal, are geared toward the improvement and expansion of trade and economic cooperation through the exchange of concessions,¹⁷² greater employment opportunities, and the uplifting of living standards of member country's population.¹⁷³ There is, however, no further reference to the protection and improvement of worker rights. Likewise, SAFTA (signed in 2004),¹⁷⁴ and SATIS (signed in 2010) do not have any provisions or priorities for workers and their rights although the latter states that it seeks to improve the overall well-being of people.¹⁷⁵

The BIMSTEC (signed in 2004) has broadly incorporated limited worker rights and social benefits-related provisions. Member states have expressed their commitment to protect and promote the labour force by providing decent job opportunities through an increase in investment in services and the productive sectors of the national economy.¹⁷⁶ For this, they also agreed to strengthen the workforce by taking concrete measures.¹⁷⁷ The Sectoral Review of the Fourth BIMSTEC Summit Declaration has also expressed commitments, in line with SDG 1, to alleviate poverty in the Bay

171 SAARC was founded on 8 December 1985.

172 SAPTA 1993.

173 SAPTA 1993.

174 SAFTA 2004.

175 SATIS 2010.

176 BIMSTEC 2018b.

177 BIMSTEC 2018a.

of Bengal Region by 2030. However, no concrete action plans or steps have been formulated and implemented to this date.

In addition to the regional agreements outlined above, Nepal has also signed bilateral trade treaties with 17 countries, including Bangladesh, China, France, Germany, India, Pakistan, South Korea, United Kingdom, and the United States, as well as agreements related to trade and transit with Bangladesh, China, and India. Likewise, Nepal has signed a Bilateral Investment Promotion and Protection Agreement with six countries, including China, France, India, Korea, and the United Kingdom, and a double-taxation avoidance agreement with 10 countries, including China, India, and Korea.¹⁷⁸

Nepal has signed some treaties and agreements with India, a major trading partner, related to trade and transit that include the 1991 Cooperation to Control Unauthorized Trade, the 1999 Treaty of Transit and its Protocol, the 2004 Rail Services Agreement, and the 2009 Treaty of Trade and its Protocol.¹⁷⁹ The amended 2009 Indo-Nepal Treaty of Trade previously signed with India in 1996, which assists the expansion of trade between India and Nepal's territories and the collaboration in bilateral economic development, is the most important, in terms of trade volume.¹⁸⁰ However, neither this treaty nor the 2014 Power Trade Agreement (PTA) between Nepal and India¹⁸¹ mention anything about worker rights and benefits.

Nepal and China (Nepal's second largest trading partner) have signed the 1981 Agreement on Trade and Payment, the 1994 Agreement on Road Transportation, the 2002 Agreement on Trade and other Related Matters between the Tibet and Nepal, and the 2005 Agreement of Cooperation for Industrial Product Inspection.¹⁸² In 2016, China also proposed a free-trade agreement with Nepal, which is still under consideration.¹⁸³ A Belt and Road Initiative agreement was signed between Nepal and China in 2017. The project aims to enhance connectivity and cooperation between China and the rest of Asia, and beyond. Unfortunately, these agreements have not included anything related to the rights and welfare of workers.

The review of the agreements between Nepal and the United States, such as the

178 Tripathi 2016.

179 Department of Customs n.d.; GoN 2004; GoN n.d.

180 GoN 2009.

181 GoN 2014c.

182 Department of Customs n.d.; GoN n.d.

183 China FTA Network 2016.

1947 Friendship and Commerce Agreement, finds no reference to the rights of workers, except that it states, in Section 6, that employees in a consular officer who are Nepali nationals shall enjoy the fullest protection of the laws, and authorities of the country shall not be treated in any manner less favourable than the nationals of any third country.¹⁸⁴

The United Kingdom is among the top 10 trading partners of Nepal. The two countries have signed the 1993 Agreement on Promotion and Protection of Investment between Nepal and the UK, which is supported by the Nepal-Britain Chamber of Commerce and Industry.¹⁸⁵ The agreement is silent on worker rights, labour standards, and social benefits.

Nepal has several bilateral trade and investment agreements with Japan, which include the 1988 Air Service Agreement, the 2003 Agreement on Technical Agreement, the 2003 Japan International Training Cooperation Organization,¹⁸⁶ and the 2014 Framework Agreement for Grant Aid. Similarly, Nepal has agreements with Republic of Korea, namely the 1971 Trade Agreement, the 1992 Korean International Cooperation Agency Agreement, and the 1997 Economic Development Cooperation Fund, Air Service Agreement.¹⁸⁷ None of the agreements with Japan and Korea make any references to worker issues and rights.

Nepal and Bangladesh have signed the 1976 Agreement on Trade and Payments and its Protocol and the 1976 Transit Agreement and its Protocol,¹⁸⁸ both of which aim to promote and strengthen trade and economic development,¹⁸⁹ but neither mention worker rights.

The 1983 Reciprocal Promotion and Protection of Investment Agreement between Nepal and France comprises investment in hotels, restaurants, medicine, auto manufacturing, aluminium windows and doors, fibre-optic cable, and the hydroelectric sector.¹⁹⁰ The 1986 Encouragement and Reciprocal Protection of Investment agreement between Nepal and Germany allows Nepal to export carpets and textile products, resulting in Germany becoming the biggest export market for Nepali products in

184 GoN 2014b.

185 MoFA n.d.a

186 MoFA n.d.b.

187 Embassy of Nepal, Korea 2014.

188 GoN n.d.

189 GoN n.d.

190 GoN 1983.

Europe. As a part of the agreement, Nepal also imports machinery and industrial products, making Germany Nepal's third-largest trading partner.¹⁹¹ Regardless, there is no mention of worker rights and benefits in either bilateral investment agreement.

Since the reviewed agreements do not have enforceable provisions committing countries and investors to respect worker rights and decent-work principles, workers in Nepal have no direct recourse or ultimate access to justice when their rights are violated. The lack of such commitment makes it difficult for Nepal's government to govern the behaviour of multinational companies according to international rights principles. This in turn reinforces and helps perpetuate the weak accountability for worker-rights violations in the supply chain. Further, it delays achievement of rights-related goals and targets in the SDGs at a time when the world is calling on governments to strengthen them through Agenda 2030.

Donor/Investor/Lender Policy: Decent Work Agenda in Development Cooperation and Investment Framework and Policies

Donors and investors are vital for Nepal to achieve the SDGs. The GoN's Development Cooperation Policy 2014¹⁹² recognises that development cooperation plays an important role in Nepal's goal of graduating from 'Least Developed Country' to 'Developing Country' status by 2022 through strengthened development cooperation and investments in priority areas such as infrastructure development (hydropower, roads, agricultural modernisation, tourism, industry, and trade) and social development. Donors have been a part of development projects across the country and have been working for a long time in partnership and coordination with the government, civil society, and the private sector. There have been agreements between Nepal and multilateral and bilateral donors, lenders like the Asian Development Bank (ADB) and World Bank, as well as with different governments and their international development initiatives such as the UK's Department for International Development (DFID), German Development Agency, Japan International Cooperation Agency, Korea International Cooperation Agency and the United States Agency for International Development (USAID) to name a few. The donors have been providing support, in the form of both loans and grants, to fund projects in various sectors

191 GoN 1986.

192 GoN 2014a.

including agriculture, education, energy, infrastructure development, post-earthquake reconstruction, social protection, and water supply. According to the Statement of Technical and Other Assistance for FYs 2016 to 2018,¹⁹³ several projects funded by donor agencies address gender equality and employment, including the skills and trainings that are linked with the promotion of decent work and gender equality in the labour market.

A close review of recent project agreements and partnership frameworks between the GoN and some key donors reveal that most of the framework and cooperation strategies reference the SDGs. However, with some exceptions, there are no specific agreements related to decent work (SDG 8) and gender equality (SDG 5). Loans and assistance are usually tailored toward infrastructure development and projects that are likely to produce tangible and immediate benefits.

For example,¹⁹⁴ an agreement between the GoN and DFID provided £29.5 million (about USD 33.4 million) to Nepal for the implementation of the Skills for Employment Programme (SEP) in July 2016. The overall objective of the programme was to support recovery efforts post 2015 earthquake, help Nepal ‘build back better’ and improve the skills of Nepali people, including women and disadvantaged groups. One of the programme outcomes is supposed to be an improved implementation of relevant laws and policies for addressing specific barriers to decent work for the most marginalised.¹⁹⁵ However, it does not explicitly state which aspects of decent work are involved and how the outcomes will be ensured.

According to an agreement with the Swiss government in January 2016, the latter pledged to provide CHF (Swiss francs) 28.14 million (USD 28.5 million) grant from the Swiss Agency for International Cooperation for the implementation of three projects in the agriculture and education sectors. The project, ‘Enhanced Skills for Sustainable and Rewarding Employment (ENSSURE),’ was designed to improve employability and the working environment of Nepali workers and enhance living standards through career guidance services to young workers, skills and specialised trainings, and enhanced occupational health and safety. The project relied on effective collaboration among training providers, partner companies, and industrial associations to enhance synergies in the field of technical trainings and vocational education.¹⁹⁶

193 GoN 2016c; GoN 2017e.

194 Agreements and partnership frameworks between the GoN and select but key donors were reviewed.

195 KII with official at ILO Country Office Nepal.

196 Helvetas n.d.

Similarly, the objectives of USAID’s Country Development Cooperation Strategy (FY 2014–FY 2018) prioritised, in line with some of the SDGs, partnership and cooperation with the government and civil society for enhancing more inclusive and effective governance; inclusive and sustainable employment focused on economic growth to reduce extreme poverty and increased human capital; the integration of women, youth, and marginalised groups in various employment-generating activities; safe migration, strengthened monitoring of labour-recruitment agencies, and the curbing of human trafficking.¹⁹⁷ Regardless, neither mention improving and ensuring the rights and welfare of Nepali workers.

The United Nations Development Assistance Framework Guidance (2017), which serves as a guideline for United Nations Development Assistance Frameworks (UNDAFs) by keeping the 2030 Agenda at their core, aims to support national initiatives, vision, development plans and strategies for achieving the SDGs through an integrated approach that brings government, civil society, and stakeholders together for an effective outcome.¹⁹⁸ The framework is based on the principle of ‘leaving no one behind,’ and aims to provide guidance for the effective role of the UN and countries for achieving the SDGs. It does not focus on specific goals. The United Nations Development Assistance Framework (UNDAF) 2018–2022 has set the objective of supporting Nepal to achieve the SDGs, become a middle-income country by 2030, and achieve four major outcomes, sustainable and inclusive economic growth, social development; resilience, disaster risk reduction and climate change mitigation; and governance, rule of law and human rights, in line with the government’s priorities as outlined in the 14th Plan.¹⁹⁹ The framework also mentions that the UN plans to support Nepal in achieving its vision for inclusive economic growth through technical assistance in formulating policy related to poverty eradication, including institutional capacity building and individual training.

It is clear from the review of the ADB’s Country Operations Business Plan for Nepal (COBP) for 2018–2020²⁰⁰ and for 2019–21²⁰¹ that the business plan is broadly in alignment with the government’s 14th Plan, which includes, as its priority, achieving socioeconomic transformation and reducing poverty through economic growth,

197 USAID 2014.

198 United Nations Country Team Nepal 2017.

199 NPC 2016.

200 ADB 2018.

201 ADB 2019.

productive employment, and distribution of income. In addition to other objectives, the plans seek to support gender equality and social inclusion, upgrade workforce skills, provide technical and vocational training, and increase educational attainment for both men and women, which are certainly related to achieving SDGs 8 and 5 in Nepal. However, the COBPs do not specifically mention any programme related to productive employment and decent work. In the same way, the World Bank has recently issued the Country Partnership Framework for Nepal (2019–23),²⁰² which has three focus areas: public institutions, private-sector-led jobs and growth, and inclusion and resilience. The priority for jobs and growth is certainly linked with SDGs 8 and 5, as they aim to improve the environment for more and better employment opportunities, promote opportunities for increased inclusion, and support women's economic empowerment by expanding job opportunities and improving technical and vocational skills. Nevertheless, while the prime focus is on employment-creation and economic growth, whether and how worker rights issues and rights will be addressed is missing in the framework.

The World Bank's report, Country Private Sector Diagnostic (CPSD),²⁰³ identifies key problems facing Nepal's private sector and highlights the role of the private sector in achieving the SDGs and making Nepal a middle-income country by 2030. The report acknowledges the negative impact created by the absence of skilled labour and problems facing the private sector due to high participation in Nepal's informal sector. However, the report does not address productive employment or the promotion of decent work for sustainable economic growth.

202 World Bank 2018.

203 World Bank Group 2018.

RECOMMENDATIONS

Based on the findings of this review and analysis, the enhancement of worker rights in Nepal and the country's achievement of the SDGs, especially SDGs 8 and 5, will require greater commitment and coordination among key stakeholders, including the government at all levels, trade unions, employers, donors, and workers. Specifically, attention is required in the following areas.

Government

Policy and Plans

- Establish a clear roadmap and mechanisms to implement and achieve the SDGs, including decent work. The government, with the NPC leading, should work to develop such a roadmap in collaboration and coordination with provincial and local governments, trade unions, civil society, private sector, development partners, and donors.
- Clarify mandates, roles, and responsibilities at the federal, provincial, and local government levels for planning, implementation, governing, and reviewing the SDGs, including issues of workers' rights. The NPC should coordinate with relevant ministries and local institutions.
- Ensure that policies of the government at all level supporting economic growth are tailored to enhance workers' skills and capabilities.
- Pursue economic growth that does not overlook or undermine worker rights, and prioritise effective enforcement of existing labour laws.
- Take concrete measures to guarantee worker rights at all governmental levels, including synergising the plans and programmes of federal and local governments.
- Include worker rights commitments in trade agreements and aid partnership frameworks.
- Thicken social dialogue with concerned stakeholders for improving existing policies and plans.

Governance, Enforcement and Implementation

- Effectively implement the Labour Act and the Contribution-based Social Security Act.
- Establish, institutionalise, localise, and conduct frequent social dialogues as well

as the tripartite convening (currently only held at the federal/central level).

- Involve trade unions in the planning, implementation, and evaluation of laws, development plans, and programmes at all level of government, so that they ensure workers' issues are on the political agenda.
- Ensure that all employers sign up to the contributory social security programme (government) and hold them accountable (trade unions/civil society).
- Although the new Labour Act 2017 does not differentiate between formal and informal sector workers, serious and proactive measures are required to bring workers in the informal sector into Social Security Scheme, the most practical approach to formalisation.
- Set an example by effectively planning and implementing the recently introduced Prime Minister's Employment Programme to enhance both employment-creation and worker rights and welfare.
- Through SDG-related committees, especially at NPC, ensure meaningful and substantive participation and engagement of trade unions in the preparation of plans and programmes, budget, and voluntary national report, as well as the implementation of plans and programmes at the provincial and local government levels.

Improved Awareness, Participation, and Capacity

- Improve information-sharing among political leaders and government officials about Nepal's SDG commitments, existing labour laws and policies, and the responsibility to align and implement plans and programmes to enhance and improve worker rights.
- Provide adequate resources (financial, human, and technical) to build capacity in labour departments around the country.
- Broaden inter-governmental (federal, provincial, local), inter-ministerial, and inter-stakeholder cooperation and coordination. Although there is national-level mechanism in place that considers whole-of-society approaches, similar institutional mechanisms and structures are needed at provincial and local governments.
- Labour audit needs to be effectively conducted in order to ensure workers' rights, for which, there should be a provision of robust inspection and capable and adequate labour inspectors all across the country.

Knowledge, Monitoring, and Reporting

- A comprehensive and empirical study is needed to understand whether and how the newly introduced laws and policies related to SDGs and decent work have been implemented and what are the major challenges facing effective enforcement in community and municipality level.
- There is a need to set up institutional structures, mechanisms, and processes at the federal, provincial and local levels of governments for monitoring and reporting on the implementation of the decent work agenda, as well as for reporting on the progress. It should be ensured that such mechanisms include the participation of related stakeholders, including trade unions. For effective monitoring and reporting, there is a need to develop standard decent-work-agenda-related tools and a methodology that can be adopted by all the agencies across the country.
- Considering the ever-changing nature and future of work, there is a need for comprehensive labour market studies in Nepal. Studies need to also focus on the use and impacts of technology on the nature of work as well as the rights of workers.
- Prior to formulating and implantation of any plans and strategies for formalisation, it is a precondition that studies are conducted to identify key present and future (potential) drivers of informality and associated problems and challenges.
- It is necessary that the government enumerate baseline information on the situation of labour rights; the data could be crucial for effective and objective monitoring, review, and reporting.

International/Multilateral Organisations

- UN organisations such as UNDP and ILO need to ensure that labour rights issues within the SDGs are well integrated in their own programmes and that they also work with trade unions to ensure their engagement and participation on the formulation, implementation, and review of the policy and programmes related to SDGs, particularly on the decent work agenda.
- It is important that trade unions and local civil society organisations and leadership are equipped with adequate capacities (technical, resources). Especially at the critical resources and capacity gaps at this juncture, development partners could provide this support to these institutions.

Trade Unions and Civil Society

- Increase awareness and understanding of worker rights among union membership and the general public, thus building support for the decent work agenda in Nepal.

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