

# Defending Labor Rights in Nepal

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## **1. Introductions and Methodology**

- 1.1 Swatantrata Abhiyan is a Nepali Non Government Organization (NGO) working with theme “for a larger freedom” with it’s major focus on Freedom from Slavery, Freedom from Fear, Freedom from Deprivation and Freedom from Discrimination. Under the theme of Freedom from Slavery, Swatantrata Abhiyan is working on labor agenda in Nepal mainly in the area of domestic workers, migrant workers and child labor since last three years. The organization is human rights based organization actively engaged on movement building research and policy influence. With the presence of scholars and practitioners having more than decade experience on the field of Freedom, Swatantrata Abhiyan is well recognized in Human Rights Movement in Nepal. For more details on Swatantrata Abhiyan, please visit [www.swatantrataabhiyan.org](http://www.swatantrataabhiyan.org).
- 1.2 Recognizing the opportunity to have alternative voice from workers sector, who are often forgotten in human rights actions both by civil society and even state, Swatantrata Abhiyan made this submission specifically to expose the situation of informal sector workers, domestic workers, migrant workers, child labor and sexual exploitation of entertainment sector workers.
- 1.3 The submission is based on the consultation and interview with organizations working on entertainment sectors of Nepal, with the informal sector workers, domestic workers and returnee migrant workers. Swatantrata Abhiyan Consulted with 31 workers representing trade unions and informal associations, reviewed 19 documents that includes: Interim Constitution, labor research and survey reports by non governmental organizations and central bureau of statistics, international labor office and other international organizations.

## **2. Key Areas of Concern**

### **Overall Country Situation and Situation of Workers**

- 2.1 Nepal ranks on 145<sup>th</sup> position among the countries based on Human Development Index (HDI), with a HDI value of 0.540<sup>1</sup> and population of 27 million and annual growth rate of 1.35% <sup>2</sup>. Nepal has about 33 percent of its people below the age of 15, and 57 percent between the productive ages of 15-59<sup>3</sup>. Among the total Nepalese

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<sup>1</sup> UN Human Development Report 2014.

<sup>2</sup> National Population Census Report 2011, Central Bureau of Statistics, Government of Nepal.

<sup>3</sup> National Population Census Report 2011, Central Bureau of Statistics, Government of Nepal.

population one fourth is living below the line of poverty<sup>4</sup>. Among the total population economically active population is 54.2% (62.5% among male and 46.8% among female population). The employment rate is also different between male and female with higher focus of male in the formal sector employment and lesser women in informal sector employment. The labor migration has become a major sector of youth employment (mostly unskilled) and a significant contributor of national economy. 7.3% of total population of Nepalese youth have been to abroad as migrant workers and the remittance have been sharing 24 percent of national economy<sup>5</sup>. Each day 1500 to 1800 youths are migrating abroad for work. The Global Slavery Index (2014) estimates that 228,700 Nepalese are enslaved with 40% enslaved abroad as migrant workers. Nepal is party to the seven out of nine human rights conventions and some of their protocols<sup>6</sup>. Nepal is also party to 11 ILO conventions<sup>7</sup>. It is not party to ILO fundamental convention of Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). Nepal is party to ILO convention on minimum age for employment (138) and convention on eliminating worst form of child labor (182). As per the Nepal Treaty Act 2047 (1990) article 9 has provisioned that the treaty provisions to which Nepal is party is enforceable as good as laws and state shall void contradicting provisions and should make necessary arrangements for enforcement.

2.2 The political transition of country is prolonging and new constitution promulgation is still delayed with confusion and uncertainty<sup>8</sup>. At the moment, the constitution drafting process has been halted due to the differences among the political parties on the issues of federal structure, governing system, judiciary system, citizenship and other issues.

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<sup>4</sup> National Living Standard Survey Report 2011, Central Bureau of Statistics, Government of Nepal.

<sup>5</sup> Labor Migration for Employment A status Report of Nepal 2013/14, Government of Nepal, Ministry of Labor and Employment, Department of Foreign Employment.

<sup>6</sup> Nepal is not party to International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (2003), International Convention for the Protection of all Persons from Enforced Disappearance (2010), Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2013) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2006) and Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2013)

<sup>7</sup> 7 fundamental conventions, 1 governance conventions and 3 technical conventions

<sup>8</sup> With the success of Peoples Movement in 2006 for reinstating democracy and parliament, Nepal entered into peace process ending a 12 years long armed conflict waged by Communist Party of Nepal (Maoist). After the failure of constitution assembly to promulgate new constitution in 2012, another new constitution assembly election happened in 19, November 2013. In the current constitution assembly political parties have agreed to promulgate new constitution by 22 January 2015 have been already crossed.

2.3 Currently Nepal has Interim constitution promulgated in (2007, Eight Amendment 2010), which have ensured number of human rights provisions to the people and citizens of Nepal under fundamental rights section part 3, which are entitled to all people and citizens of Nepal. The Interim constitution also has specific fundamental rights such as to be protected from exploitation, slavery and forced labor as well as right to work and decent employment.

2.4 Nepal had received 135 recommendations including 5 recommendations focused on labor rights and one included workers access to food security and safety at the 10<sup>th</sup> session in first cycle of Universal Periodic Review (UPR) in 2011. The Government of Nepal accepted all recommendations related to workers' rights. The Government adopted a plan of action to implement the accepted recommendations. The Government of Nepal presented a vague and confusing timeline mentioning the term "Due Course of Time" in the plan of action. Such terms allowed the Government to delay on realising the recommendations and skip accountability. Furthermore, the Government of Nepal did not submit mid term report on the status of recommendations from first cycle. As per the Mid Term Status Report from UPR Info only one recommendation is partially implemented related to child labor, but remaining were not implemented.

**Recommendations:**

- *The Government of Nepal express a specific timeline on its plan of action to implement the recommendations from first and second cycle of UPR as well as concluding observations from treaty bodies identifying specific role of concerned ministries and designated follow up and monitoring mechanism.*
- *The Government of Nepal must prepare a mid-term review report and share publicly so that people can seek state accountability on its commitment of implementing the recommendations.*

**Labor Legislation and Institutional Mechanism**

2.5 Nepalese labor system is mainly governed by the constitutional provision, Labor Act (1992) and it's by laws, General Code Provisions, Child Labor Prohibition and Regulation Act (2000). Tea Plant Workers Act, Prohibiting Bonded Labor and Rehabilitation of Freed Kamaiyas Act are other acts related to labor issues in Nepal. The Supreme Court Directives (2008) to regulate entertainment sector is also a

guiding document for managing workers rights in night entertainment industries. In addition the Parliament of Nepal recently passed the Prohibiting and Punishing Sexual Harassment at Work Place Act (2014).

2.6 Ministry of Labor and Employment (MoLE) is the designated ministry for the labor regulation. However Ministry of Women, Children and Social Welfare (MoWCSW), Ministry of Health and Population (MoHP) and Ministry of Education (MoE) are directly related with labor conditions. With the labor migration context Ministry for Foreign Affairs and Ministry for Home Affairs are also responsible to deal with labor related issues mainly abroad and when trafficked and enslaved. The government has specific designated department: Department of Labor to deal with workers issues inside the territory of Nepal; and Department of Foreign Employment to manage workers working in foreign land. Along with there is provision of Foreign Employment Tribunal, Foreign Employment Promotion Board, and Foreign Employment Victim Relief Fund for the victim of fraudulent, slavery and trafficking practices in foreign employment process. The Government of Nepal has deployed Labor Attaché in five countries to deal with migrant labor issues.

2.7 Yet, the labor code is only focused on formal sector employers; whereas informal sector and self-employed workers are denied of rights. The foreign employment act, tribunals and the foreign employment promotion board are not able to perform well for addressing the issues of migrant workers properly and are not effectively functioning to control, prosecute and punish fraudulent, slavery and trafficking practices. The child labor acts are not implemented properly in practice. There are only 10 labor offices with only 11 factory inspectors who are mandated for labor inspection and prosecution all over the country. The newspapers have been reporting misuse of funds of foreign employment victim.

### **Recommendations**

- *The Nepal government should have comprehensive review it's all labor related laws and should formulate a new labor law in compliance to ILO conventions addressing concerns of informal sectors, child labor and designating clear mandates of mechanisms to act at local level.*

- *The Nepal government should act on to review it's foreign employment act and current mechanism and process consulting with trade unions, civil society organizations and victims.*
- *The Nepal government should initiate to form a national labor council having representation of employers, governments, trade unions and NGOs working in the area.*
- *The Nepal government must establish a labor data bank to regularly record, update and provide updated information on both formal and informal as well as local and migrant workers.*

### **Migrant Workers and Slavery**

2.8 Nepal Labor Migration report (2014) informs the registered migrant workers are more than 500 thousand in the year, there are other thousand who take the route of India and proceed undocumented way. The data does not record more than 700 thousand workers in India and other south Asian countries. Migrant workers are often victimized of fraudulent activities including trafficking and slavery practices. Though government has prosecuted 22 agencies previous year (2013/14), only 3 were convicted and many other such agencies are left without any actions. The recruitment agencies charge significantly higher fee with workers; there is absence of wage standard in receiving countries and the workers are often suggested to have fake documents with them. The information registered in department of foreign employment, produced in Disembarkation point in Nepal is often different from the document produced in Immigration and actual work practice in the destination. The National Human Rights Commission, Office of National Rapporteur on Trafficking of Women and Children reported foreign employment practices in Nepal depict the trafficking and slavery practices.

2.9 The Foreign Employment Promotion Board and a Foreign Employment Tribunal oversees the welfare and protection of migrants and to provide access to justice. Using insurance funds that all officially registered migrant labourers are required to pay, the government is mandated to give financial assistance to workers returning with disabilities or injuries or to families of workers who die overseas. So far up to the middle of 2014, it has provided assistance to 802 families of workers who died overseas, and to 414 families to bring the bodies of their family members back to

Nepal. It has assisted 91 workers injured overseas and has supported 36 workers to return to Nepal. Much of the fund remains unspent, with a surplus in 2014 of more than USD 14 million,<sup>9</sup> a huge amount by comparison with funds spent through government departments. It can be difficult for injured or disabled returnees to access financial assistance because they must show documentation of their work overseas, and many of those who are most in need of support have had their papers confiscated.

### **Recommendations**

- *Nepal government should legally prohibit from charging recruitment fees by manpower agencies.*
- *Nepal government should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (2003), ILO Convention on Domestic Work (C189) and should review its labor supply agreements with receiving countries on minimum wage and basic work standards.*
- *The current foreign employment act shall be reviewed and the foreign employment tribunal shall be mainstreamed into regular court system as special bench with provision of free legal facilities and making crime on foreign employment as crime against state.*
- *The government of Nepal should include returnee migrants and migrant workers under the social security programs and therefore must adopt social security act to address the inclusion of migrant workers.*

### **Informal Sector Workers and Slavery**

2.10 Despite the fact of having majority of workers (80%) working in informal sector employment mainly in agriculture, domestic work, brick factory workers, porters and in other many small enterprises, the government of Nepal has made no law to govern these workers, to set the minimum wage standards and defend their social security. Neither the informal sector workers have been properly assisted with labor inspection. The local governments are not responsible for documenting and

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<sup>9</sup> Nepal's crackdown on migrant worker exploitation: more no go than pogo?  
<http://www.theguardian.com/global-development/2014/may/01/nepal-clampdown-migrant-worker-exploitation-operation-de-pogo>

recording informal sector workers. There is deep poverty among the informal sector workers. The recent tabled civil code bill has not recognized the workers status for domestic workers and their standby hours, defining domestic workers are person designated to available for work 24 hours at workplace.

2.11 National Human Development Report 2014, mentioned Average national labor productivity stands at US\$ 1181.077 US\$/year. The workers outside of Kathmandu valley earn significantly less than this. Out of 75 districts, 56 are below the national average; only 19 are above or equal to it. Kathmandu, with the highest ranking. The same report mentions, the primary (informal) sector, mainly agriculture, has an average labour productivity of US \$ 685.628/year, which is about 58 percent of overall national average productivity; this is substantially lower than the average in the secondary sector (Formal Sector), encompassing manufacturing, construction and electricity, gas and water, where the average is US\$ 1984.862/year.

### **Recommendations**

- *Nepal government should review it's current civil code bill and must make necessary amendments to recognize domestic workers as workers and also should provide the minimum labor standard.*
- *Nepal government should make the local government responsible to register, issue identity and confirm the minimum wage for informal sector workers, establish labor desk and include workers agenda in local governance and community development program.*

### **Sexual Exploitation of Entertainment Sector Workers**

2.12 The NGOs report revealed that around 25,000 women and girls working in the entertainment business in Nepal are forced to serve clients with sexual overtones and almost 20 thousand of them are minors<sup>10</sup>. It is estimated that 16-33% of female sex workers are children (under 18 years)<sup>11</sup>.

### **Recommendations**

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<sup>10</sup> *Trafficking in Person Especially Women and Children in Nepal National Report (2012-13); National Human Rights Commission, Office of Special Rapporteur on Trafficking in Women and Children, Nepal.*

<sup>11</sup> *ECPAT International facts sheet (2013) on sexual exploitation of children*



- *Nepal government should recognize workers in entertainment industry as workers and the industry shall bring into regular monitoring and inspection system of labor office.*
- *The Monitoring and Action Committee (formed based on the Supreme Court Directives) should be formed and made functional with adequate resource allocation and reporting system.*

### **Child Labor**

2.13 Child labor is significantly high in Nepal with 20 % of 5-17 year old being economically active, and 8% of the total population of children involved in hazardous forms of child labor. The Child Labor Prohibition and Regulation Act (2000) has not been fully implemented in that there has been a lack of efforts to strengthen and mobilize labor offices for inspection, monitoring, investigation and prosecution. There are only 10 labor offices all over Nepal with provision of just 90 employees with no provision of a labor inspector but just 11 staff as factory inspectors to perform the assigned duty; They have no proper guidelines and adequate resource to take actions. The draft master plan to eliminate child labor by 2020 has not been endorsed by government of Nepal.

### **Recommendations**

- *The Government of Nepal should start amending the existing Child Labour (Prohibition and Regulation) Act to include child labour in the informal sector within the purview of the law and ensure the local availability of monitoring, inspection, investigation authorities*
- *The government of Nepal should strengthen the implementation of the Human Trafficking and Transportation Control Act to prevent and respond to trafficking of workers, women and children*
- *The government of Nepal must train the police personnel on investigating and prosecuting trafficking in foreign employment.*