

Decent Civil Works in Nepal and Thailand: From Research to Action Planning



David Tajgman



International Labour Organization
Regional Office for Asia and the Pacific

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Foreword

The International Labour Organisation's primary goal is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity. Decent work encapsulates and focuses on the four strategic objectives of the ILO; the promotion of rights at work; employment; social protection; and social dialogue.

In response to this goal the ILO's programme, Advisory Support, Information Services and Training for the Asia Pacific region (ASIST-AP) undertook a two country study to examine the decent work opportunities, practices and deficits in the civil construction industry in Thailand and Nepal.

The study addressed decent work issues in the following areas: policies for productive employment; labour policies and practices; recruitment policy and practice; job security; remuneration and wage payment; gender issues and child labour; working time and rest and occupational safety and health; the right to organise; social dialogue and consultation and finally the freedom to leave work.

The conclusion drawn has been that the challenges for decent work in civil works in the two countries, though different in the way they have arisen, are in many ways similar. In at least two areas improvements could be made in order to grasp the potential for systematically creating productive jobs in the civil works sector. The first is the current method of contracting, including contract documentation. By making this friendlier to labour based implementation a stronger culture of using labour based methods could be fostered, linked to this is the second issue concerning training for efficient labour based methods and execution. Unfortunately, in many cases the outcomes of labour based works are often thought of as inferior in quality to construction built from modern equipment based methods. However, training of local engineers and those responsible for contracting has been shown to be effective in altering the perception of the quality of works, showing these groups that labour based methods are suitable, efficient and professional.

Construction work as practiced in Thailand and Nepal is hard and often dangerous work. While construction practices in these countries are hardly the least mechanised in the world, labour-based methods are nevertheless widely used. In such a context, there is room to pursue more decent work.



Mr S Hasegawa
Regional Director for Asia and the Pacific

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Abbreviations

CAN	Contractor's Association of Nepal
CAWUN	Construction and Allied Workers Union
CBS	Central Bureau of Statistic
CUPPEC	The Central Union of Painters, Plumbers, Electro and Construction Workers-Nepal
DDC	District Development Council
DECONT	Democratic Confederation of Nepalese Trade Unions
DHPP	Department of Housing and Physical Planning
DOH	Department of Highways
DOI	Department of Irrigation
DOLIDAR	Department of Local Infrastructure Development and Agriculture Road
DOR	Department of Roads
DSC	Department of Soil Conservation
DWSS	Department of Water Supply and Sewerage
FCAN	Federation of Contractor's Association of Nepal
GDP	Gross Domestic Product
GEFONT	General Federation of Nepalese Trade Unions
GNP	Gross National Product
HMGN	His Majesty's Government of Nepal
IFBWW	International Federation of Building and Wood Workers
ILO	International Labour Organisation
LA	Labour Act of Nepal
LFS	Labour Force Survey
LPA	Labour Protection Act of Thailand
LRA	Labour Relations Act of Thailand
MLD	Ministry of Local Development

MOL	Ministry of Labour
MOPPW	Ministry of Physical Planning and Works
MOWR	Ministry of Water Resources
NBCWA	Nepal Building and Construction Workers Association
NEA	Nepal Electricity Authority
NEWA	Nepal Electrical Workers Association
NGO	Non Governmental Organisation
NICE	National Institute for the Improvement of Working Conditions and Environment
NLFS	Nepal Labour Force Survey
NRs.	Nepalese Rupees
NTUC	Nepal Trade Union Congress
NWSC	Nepal Water Supply Corporation
NWWA	Nepal Wood Workers' Association
OSH	occupational safety and health
PWD	Public Works Directives
PuWoD	Public Works Department
RAP	Rural Access Programme
RCIW	Rural Community Infrastructure Works Programme
RID	Royal Irrigation Department
RID	Royal Irrigation Department
RIP	Rural Infrastructure Project
SSA	Social Security Act of Thailand
SSO	Social Security Office
VDC	Village Development Committee
WB	World Bank
WCF	Workers' Compensation Fund of Thailand
WFP	World Food Programme

Executive Summary:

Promoting decent work is the mandate of the International Labour Organisation (ILO). In the construction sector this means improving rights at work, increasing employment, providing social protection, and enhancing social dialogue. This study is about decent work in civil works in Nepal and Thailand. It aims to provide trade unions, workers' and employers' organisations and the Governments of the two countries information about labour practices and the needs of workers, employers, investors in infrastructure and facilitating government institutions. Its ultimate purpose is to inform decision-making and action taking that will result in more decent work in the infrastructure sectors of these countries.

Despite some variation, after agriculture, the construction sector provides a significant proportion of employment in both Nepal and Thailand. In Nepal, after agriculture, and including the public sector, construction is the third largest sector by employment (15%) after manufacturing (24%), and wholesale and retail trade (18%). In Thailand, after agriculture and not including public sector employment, construction provides 5% of employment after manufacturing, commerce, and services, each generating somewhat fewer than 30% of jobs. Development of employment opportunities is an element of policy in both countries, but labour-based technologies in construction have received explicit reference in Nepalese policy as a strategy for productive employment creation.

The study looks at a dozen areas of labour policies and practice in assessing decent work in these two countries, drawing conclusions and making numerous specific suggestions in both cases about what might be done to create more decent work in the sector. It compares and contrasts industrial characteristics and elements of decent work in these two very different countries in an exercise useful for drawing out what is needed to promote decent work in each. The study finds that the construction contracting industries in both countries have many enterprises, but procurement of civil works in Nepal relies on community development initiatives - and the use of labour there under - in addition to contracting directly with private sector firms. Labour sub-contracting and intra- and international migration plays a significant role in the industries in both countries, posing part of the challenge for decent work in the industry. The basic protective labour laws in Nepal and Thailand take a different tack where it comes to their intended coverage, that in Thailand being written in a significantly more inclusive way. The rights to organize

and collectively bargain exist in the law in both countries, but their actual practice is limited in both and markedly so in Thailand. And while mechanisms for social protection in both countries are at very different levels of development, coverage for workers in the construction industry, for different reasons, is limited in practice.

The study concludes that developments in both countries provide opportunities for creating more decent work. Contracting methods and standards are mentioned, along with numerous legal and practical measures that could be taken in each case, including some that could be taken up in the context of initiatives already in progress.

1

INTRODUCTION: THE ILO, ASIST AND DECENT WORK IN CONSTRUCTION

The ILO's Mandate is Decent Work

The mandate of the International Labour Organisation (ILO), from its founding in 1919 and as expressed in its Declaration of Philadelphia in 1944, has been to promote lasting peace on the foundations of social justice, recognizing that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, or economic security and equal opportunity." The ILO's mission has since the beginning been to improve the situation of human beings in the world of work. Today, the ILO's mission finds resonance in the preoccupation of people everywhere to find sustainable opportunities to obtain decent and productive work, in conditions of freedom, equity, security and human dignity. Thus, the primary goal of the ILO today is to help women and men find these opportunities - to promote decent work.

The Organisation is today using all its means of action to promote decent work by striving towards four strategic objectives: improving rights at work; increasing employment; providing social protection; and enhancing social dialogue. Decent work is the converging focus of these objectives.

Promoting rights at work

All those who work have rights at work. The ILO Constitution calls for the improvement of "conditions of labour", whether organized or not, and wherever work might occur, whether in the formal or the informal economy, whether at home, in the community or in the voluntary sector. *This applies to workers in the construction sector as it does to workers elsewhere.*

Promoting opportunities for work

Employment promotion is a central objective. The defence of rights at work necessarily involves the obligation to promote the possibilities of work itself. The ILO seeks to enlarge the world of work. It is as much concerned with the unemployed, and with policies to overcome unemployment and underemployment,

as it is with the promotion of rights at work. *Increasing the number and productivity of jobs in the infrastructure sector has been an integral part of ILO employment promotion over the last 30 years.*

Protection against vulnerabilities in work

Protection against vulnerability and contingency. As it is concerned with the human condition of work, the ILO has the responsibility to address the vulnerabilities and contingencies which take people out of work, whether these arise from unemployment, loss of livelihood, sickness or old age. *The nature of their employment and work methods makes construction workers among the most vulnerable.*

Social dialogue as a means and an end

The promotion of social dialogue. Social dialogue requires participation and freedom of association, and is therefore an end in itself in democratic societies. It is also a means of ensuring conflict resolution, social equity and effective policy implementation. It is the means by which rights are defended, employment promoted and work secured. It is a source of stability at all levels, from the enterprise to society at large. *These goals are as valid for work in infrastructure development as they are in other kinds of work around the world.*



Decent Work is the Goal of ASIST-AP

The ILO's Advisory Support Information Services and Training for Asia and the Pacific (ASIST-AP) programme promotes decent work in the infrastructure sector. ASIST-AP does this with activities targeted to affect policies and practices for infrastructure provision by government agencies, contractors, and financiers. Its activities promote decent work by demonstrating how the ILO's specific focus on the problems of the working poor can be integrated within infrastructure development policies. ASIST-AP currently uses five main approaches to do this.

Integrated rural accessibility planning (IRAP) is a tool which helps local government administrations in rural environments to identify and prioritize infrastructure projects. Resulting plans show the amounts and types of infrastructure that will have the greatest impact on reducing rural under and unemployment, thus increasing economic development and decent work.

Labour-based, equipment-supported approaches (LBES) to infrastructure construction are proven cost-effective, employment generating technologies. ASIST-AP promotes these approaches where they are financially feasible and responsive to technical requirements. The resulting employment is typically many times greater than would otherwise have been achieved. Training in work methods ensures productive and decent work.

Much infrastructure maintenance can only be achieved using LBES approaches. ASIST-AP promotes and provides support for infrastructure maintenance systems that adopt LBES methods, helping to ensure productive work and quality results through supervisor and worker training.

Small and medium-scale contractors are being used to build and maintain infrastructure. Experience shows that such things as contractual mechanisms tailored to small and medium enterprises and technical training are often needed if a policy favouring small and medium scale contractors is to take root. ASIST-AP has tools and methodologies to help develop and support a thriving local contracting industry.

Contractor compliance with national labour laws helps ensure they remain in the formal sector, that workers' benefits are provided and rights respected. ASIST-AP supports the use of good labour practices by featuring such practices in training activities for small and medium scale contractors and by promoting



broader understanding of the implications of compliance for such enterprises. ASIST-AP provides support to ministries, workers' organisations and the construction industry to translate decent work policies into practice.

The Purpose of this Paper: Promotion of Decent Work

This paper looks at the status of decent work in civil works sectors in Nepal and Thailand. It aims to provide accurate information to trade unions, workers' and employers' organisations, the Governments of Nepal and Thailand, and interested institutions about labour practices and needs of workers, employers, investors in infrastructure and facilitating government institutes. The ultimate purpose of the paper is to inform decision-making and action taking that will result in more decent work in the infrastructure sectors of these countries.

Research methods

This paper consolidates the results of sister studies undertaken in Nepal and Thailand. The construction industries in these countries are large both in terms of the employment engaged in the sector and the importance of the sector in the national economy. Considering this, the resources available for the studies permit only an impressionistic rendering of decent work in the sector. The studies

nevertheless relied on a formal data collection methodology involving structured interviews with relevant stakeholders.

Questions posed in interviews aimed to address the following three areas:

1. What are the current labour-practices on public infrastructure projects in rural areas?
2. What are the felt needs of stakeholders with regard to labour policies and practices in public infrastructure provision in the rural areas?
3. Which actions could the different stakeholders realistically take to improve conditions of decent work?

Organisation of the paper

This paper is divided into three chapters, in addition to this introduction. The results of the studies in Nepal and Thailand are presented in Chapters 2 and 3, respectively. Chapter 4 compares and contrasts the results of the two studies, and places conclusions in the context of international experience with labour policies and practices in the sector. Chapters 2 and 3 open with an overview of the national construction sector. Each then moves on to discuss labour policies applicable to the sector and actual practices.

Uses made of the sister studies

The Nepal study was vetted in a national workshop in Kathmandu on 18 March 2004. ILO Kathmandu organized the workshop with a view to promoting decision-making and action taking by the stakeholders on issues raised by the study. A first result on the government side is expected inputs promoting decent work being provided in the drafting of public works directives to be used by local client bodies in contracting for infrastructure construction and maintenance. It is also hoped that the workshop has prompted discussion of ways to improve client verification of labour clauses found in public contracts. It is expected that employers' and workers' organisations, along with the Ministry of Labour and the Department of Local Infrastructure Development and Agricultural Roads (DOLIDAR), will move also to consider the study's conclusions.

The study in Thailand is being vetted with the Government with a view to finding support for initiatives for promoting decent work in the infrastructure sector that are appropriate in the Thai environment.

2

DECENT CONSTRUCTION WORK IN NEPAL

The Nepalese Construction Sector in Brief

Employment and earnings

The construction industry in Nepal is significant in economic terms, accounting for 45% of total development investment made since 1975. It absorbs over NPs. 18000 million in investment per year (about US\$263 million). In terms of employment agriculture, forestry, and hunting occupies just over three quarters of Nepal's active population. Fifteen percent of the remaining population finds employment in construction. Many construction jobs are seasonal, however, and those employed in this sector typically also work in agriculture.

Figure 1: Employment, by sector (in thousands)

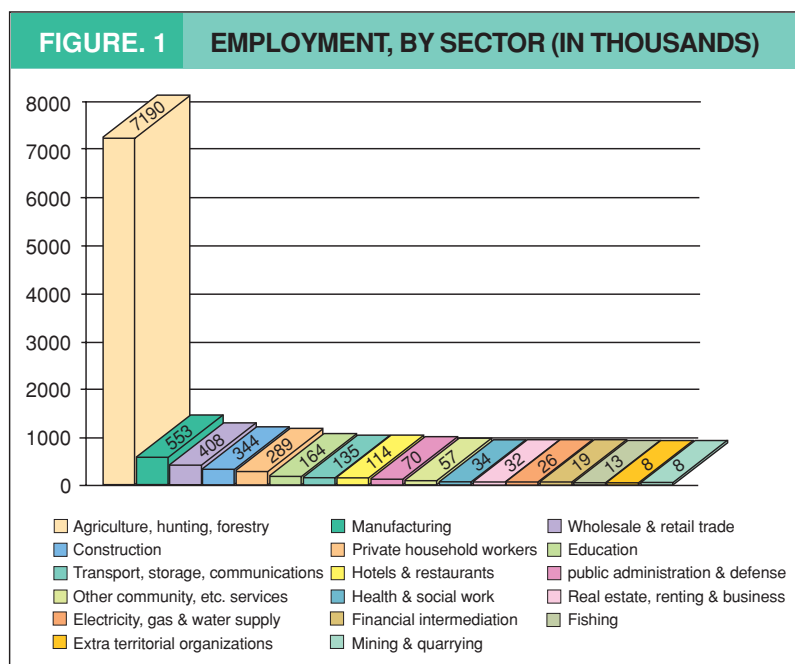
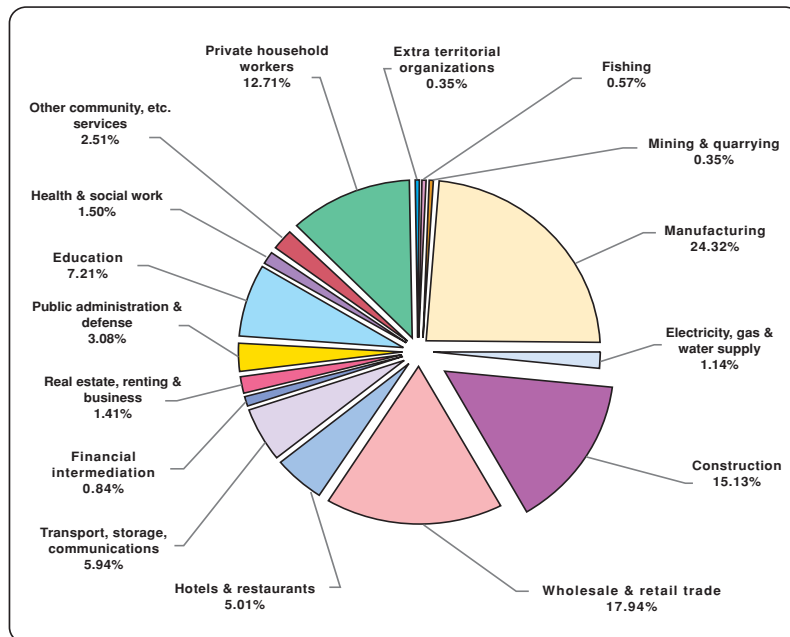


Figure 2: Employment after agriculture, by sector (as percentage)



In relation to other sectors of economic activity, month earnings in the construction sector ranks 14th out of 17, accounting for monthly average earnings of just over half of that in the highest ranked sector, financial intermediation (banking and finance).



Table 1: Average monthly earnings, ranked by sector

Rank	Sector	Average Earnings (NRs./month)
1st	Financial intermediation	4,468
2nd	Extra territorial organisations	3,425
3rd	Real estate, renting & business	3,399
4th	Electricity, gas & water supply	3,373
5th	Public administration & defence	3,078
6th	Hotels & restaurants	2,988
7th	Transport, storage, communications	2,950
8th	Health & social work	2,948
9th	Education	2,844
10th	Fishing	2,827
11th	Manufacturing	2,567
12th	Other community, etc. services	2,561
13th	Wholesale & retail trade	2,331
14th	Construction	2,298
15th	Mining & quarrying	2,073
16th	Private household workers	1,519
17th	Agriculture, hunting, forestry	1,246

Main actors

Several "main actors" can be identified for playing roles in the development and maintenance of rural infrastructure in Nepal.

Users' committees, as their name implies, are composed of persons in rural communities who will ultimately own the assets created in an infrastructure project and be responsible for subsequent maintenance. However, the role of a users' committee is twofold since it also acts like the contractor. It is hoped that this second role will help develop a self-help culture with respect to rural infrastructure. Users' committees are usually sole-sourced, meaning that they do not have to compete when playing their contractor role. In this case, His Majesty's Government of Nepal (HMGN) line departments or the District Development Council (DDC) engineer determine the price to be paid to the users' committee to initially develop the infrastructure. Often the line departments or DDC also provide the materials and equipment needed for the project, while the users' committee is responsible for mobilizing workers. In practice, users' committees are involved in vast amounts of construction work.

Contractors play an important role in Nepal. There are about 4000 large and small private contractors registered in Nepal; about 415 are Associate Members of the Federation of Contractor's Associations of Nepal (FCAN).

Government technical departments are involved in infrastructure policy and development. They include the main government agencies concerned primarily with construction activities, i.e. the Ministry of Physical Planning and Works (MOPPW), Ministry of Water Resources (MOWR) and Ministry of Local Development (MLD). The departments under these ministries include Nepal Electricity Authority (NEA), Department of Roads (DOR), Department of Local Infrastructure Development and Agricultural Roads (DOLIDAR), Department of Irrigation (DOI), Department of Soil Conservation (DSC), Department of Water Supply and Sewerage (DWSS), Nepal Water Supply Corporation (NWSC) and Department of Housing and Physical Planning (DHPP).

District Development Councils (DDC) provide technical support to users' committee works. Where contractors are to be selected during standard tender procedures, DDC engineers screen contractors on their technical qualifications.

NGOs have been involved in developing infrastructure in the context of development cooperation.

Workers in rural Nepal are largely unorganized. Three national trade union confederations nevertheless exist, with affiliates in the construction industry.

The Nepal Trade Union Congress (NTUC) was established in 1947 and reorganized in 1991. It has a membership strength of about 200,000, with 22 affiliated national associations including the Nepal Building Construction Workers Association (NBCWA) and the Nepal Woodworkers Association (NWWA). These are NTUC's major organisations targeting construction workers. Their membership strength stood at 35,832 in 1997. The NTUC-affiliated Nepal Electrical Workers Association (NEWA) has the current strength of 3,700.

The General Federation of Nepalese Trade Unions (GEFONT) was established in 1992. It is a confederation of 15 national federations covering various sectors including construction. It claims to have over 300,000 members including associate and signature members. The GEFONT-affiliated Central Union of Painters, Plumbers, Electro and Construction Workers of Nepal (CUPPEC) was established in 1997. Its current membership is roughly estimated at 44,500 in 23 districts of Nepal.

The Democratic Confederation of Nepalese Trade Unions (DECONT) was established in 1996. It claims to have over 100,000 members including the Construction and Allied Workers Union (CAWUN).

Implementation modalities

Three implementation modalities are most commonly used in the construction sector: contracting out to the private sector, having works managed by users' committees, and having works implemented under public administration. Depending on the ownership of the project, it is either a Government line department or the DDC engineer that is responsible for management of project design, preparation and implementation phases. This does not imply that all these activities are actually carried out by these two actors. In particular, the implementation and part of its preparation is contracted out to the private sector or users' committees. The practice of implementing works under public administration has become rarer. When contractors are engaged to implement the works, the Government line departments or district authorities ensures the quality of the civil works through monitoring and supervision. Technicians are usually assigned for this particular task.

Public Works Directives (PWD) play an important role in the industry by providing the formal procedural norms for implementing public construction works. The PWD was last updated in October 2001, having been prepared by the MOPPW with the assistance of the MOWR, the MLD, the Ministry of Tourism and Civil Aviation, the Ministry of Law, Justice and Parliamentary Affairs, the Financial Comptroller General's Office and the National Planning Commission. The PWD are based upon a combination of (1) existing procedures and rules contained in HMGN laws and regulations (including the Financial Administration Regulations), (2) actual practices in Nepal, (3) selected procedures from donor guidelines and (4) international best practices. The aim of the PWD is to bring standards on technical, social and environmental matters together as a single source of procedures and reference documents for implementing public construction works.

Nepal has adopted an active policy to contract out to users' committees works costing up to 2.5 million rupees. Users' committees are formed of between 9 and 15 members who are local people in the areas surrounding the project. At least 30 % of the members should be female. The users' committee has to open a bank account and is informed about the numbers and qualifications of the workers required for

the project. The workers should be recruited from the population living in the direct vicinity of the project. The PWD indicates the exact roles of the users' committees. The most important elements in relation to this study are:

- To enter into an agreement with the concerned office for carrying out the construction works of the project;
- To carry out construction works on the project, subject to the cost estimate prepared by the technician specified by the concerned office;
- To mobilize the labour force and supporting resources to the construction; and
- To provide progress reports on project construction to the concerned office on a monthly basis.

Where a users' committee is part of project implementation, the responsible line department or district authority appoints an engineer/technician to guide and supervise the works of the users' committee. If for any reason it is not possible for the office to provide technical assistance for the work carried out, the user's committee may appoint a technician on its behalf on a contract basis subject to the ceiling of the expenditure as prescribed. The remuneration of the technician shall be paid out of the contingency amount and such an amount shall not be more than 3% of the cost estimate. The engineer/technician also monitors progress of work and reports this to the concerned office. Often this technician is a *Naikea* living in the direct surroundings of the project.

The informal group of construction workers, headed by a *Naikea*, could be considered as the most important entity in the construction industry in Nepal - particularly when considering implementation realities. Regardless of the mode of project implementation it is not the contractors, users' committees, the line Departments or DDCs who employ the majority of the workers. It is the labour subcontractors or *Naikeas* that do. *Naikeas* operate in several forms. Some operate as subcontractors that actually construct specific elements of the design or carry out specific activities, in addition to supplying labourers. Other *Naikeas* operate more like labour-only contractors that are not involved in the construction works as such; their only responsibility is for the management of the workers. The first modality is more common on small-scale infrastructure projects and the second is more common on large infrastructure projects in which a lot of earthworks take place. According to the PWD, which act as guidelines for project management, the contractor has to ask permission from the Project Manager or the Executing Agency to engage sub-contractors. However this is seldom done.

On works implemented by contractors, *Naikeas* manage the workers on the site. This includes setting out the tasks of these works and monitoring the progress of the individual workers. The users' committees' set the tasks and assignments to the workers and monitor and record their progress themselves. *Naikeas* working on rural infrastructure works usually receive a percentage based on the number of workers provided to the project. However if they operate as a subcontractor, they are paid like subcontractors. That means that they are paid upon satisfactory delivery, the amount as agreed upon. On large assignments of a long duration they may receive instalments based on the progress of the works.

Policies for Productive Employment Creation in Infrastructure

Giving women and men employment opportunities is one of the 4 key aspects of the ILO decent work agenda. Setting a global policy framework, the 1990 Constitution directs the State to raise the standard of living of the people through emphasis on education, health and employment and through equitable distribution of economic resources for balanced development in the various geographical regions of the country. The Local Infrastructure Development Policy and Strategy 2061 (2004) moves forward in implementing this mandate of the Nepalese State by, calling for implementation strategies using labour intensive and environmentally friendly techniques, in conjunction with participatory working procedures.

Labour Policy and Practice

The remaining three aspects of the ILO's decent work agenda deal with the protection of workers' rights, their protection against vulnerability, and the promotion of social dialogue. Each of these areas have resonance in labour policies and practices as applied in the Nepalese construction sector. They are reviewed here.

Laws and regulations

Several policies and legal instruments have come into existence in Nepal since the announcement of the 1990 Constitution. These include provisions aimed at establishing environments conducive for decent civil work in the country.

Specifically in the area of regulation of labour conditions, the most important acts for construction workers are the Labour Act of 2048 (LA), the Labour Act (First

Amendment) 2054, A bill made Relating to the management of trade unions, the Trade Union Act 2055 (First Amendment), and the Bonus Act 2030. In addition, provisions concerning labour and working conditions are made in the PWD.

The LA of 2048 defines several terms that are critical for understanding the limitations set for its coverage.

- An "enterprise", for example, is "any factory, company, association, firm or a group thereof established under the prevailing laws for the purpose of operating any industry, profession or service where ten or more workers or employees are engaged." Provisions of the law that apply only to "enterprises" - and there are many very significant ones - thus do not apply to places where less than 10 workers or employees are engaged.
- "Employees" and "workers" are defined by the law. The first are persons "engaged in administrative functions of the Enterprise." Workers are persons "employed on the basis of salary to work in any building, premises, machinery or any part thereof used for any production process or providing service, or any act relating to such work or for any unscheduled works and this word shall also include any worker working at piece-rate, contract or agreement." Thus, a person engaged in an administrative function of a business that employs 5 persons is a worker, but not an employee.



- "Managers" and "proprietors" are also defined. The first denotes "a person appointed for performing the functions in the Enterprise" and the second is a person "having final authority on the activities of the Enterprise and this word shall also include any person appointed as the Chief of any part or unit of the Enterprise with powers to exercise final responsibility or authority in respect thereof." Are there managers and proprietors in places that employ less than 10 persons? Obligations placed on managers and proprietors by the LA must be understood to apply only where the place of work involved employs more than 10 persons, as managers or proprietors in terms of the law exist only in "Enterprises" and enterprises, by definition, employ more than 10 persons.

With respect to this study, 40 of the 77 workers interviewed were employed in enterprises within the meaning of the LA.

The PWD were finalized in January 2002 as part of progress made in building the government's capacity for privatization over the coming years. The PWD provide policy guidance for use of HMGN's agencies in implementing central- and district-level projects carried out by the regional/divisional/district offices of HMG. The PWD combine financial administration regulations (FAR) and other rules and regulations on technical, social, and environmental matters to provide a single source of procedures and reference documents for implementing public construction works. Their guidance applies to the procurement of works under large, medium and small contracts. As concerns decent work, several sections within the PWD mention application of labour laws. The PWD specifically mentions that in all cases, existing laws prevail over the directives and, as noted in more detail in this paper, some of these documents contain obligations for contractors.

Since the arrangement of laws and regulations underpinning procurement by HMGN's agencies in implementing central- and district-level projects are different from those binding on district councils, village councils and municipalities, these local bodies are not bound by the PWD. However, since the PWD incorporates procedures and procurement documents for implementing small projects, local bodies may benefit from them and have been encouraged to adopt them.

Further reference is made to provisions of these laws, regulations, and the PWD in the pages that follow.

Recruitment policy and practice

The LA requires proprietors (establishments with more than 10 workers or employees engaged) to classify the jobs of workers and employees and to provide this information to the concerned Labour Office. Where a worker or employee needs to be employed in a classified position, the manager has to advertise the post, and provide an appointment letter.

The following requirements are also set for enterprises.

- Workers or employees, even if engaged on a piece rate, shall be appointed permanently after having completed one year of continuous service.
- Enterprises are allowed to employ persons for specific time periods or for specific assignments.
- A register shall be maintained for workers and employees, indicating name, nature of job, remuneration and method of payment, and "other prescribed particulars".

Under the PWD, contractors are encouraged, where possible to employ labourers with the appropriate qualifications and experience from sources within Nepal. However, the contractor shall not recruit or attempt to recruit his labour from among persons in the service of the employer or the engineer.

Most workers originate from the agriculture sector and balance their construction work with demands placed on them by agricultural production. With the exception of migrant workers, in this study only a few were found to be continuously employed in the construction industry.

In practice, eighty percent of construction workers work via *Naikeas*. The *Naikea* forms informal groups of skilled and unskilled workers, and uses these groups as his first choice whenever he has work to do. These groups can become extensive networks, resulting in medium sized enterprises. When *Naikeas* every now and then recruit new people into their group, they are usually family members or friends of existing members or of the *Naikea* himself.

The main exceptions to workers not being recruited by *Naikeas* are workers engaged by publicly administered ("force account") projects, who are recruited directly by the implementing agency. Workers working on users' committee projects are usually members of the community and the users' committee or its technician



directly recruits them. Workers engaged on users' committee-managed works are selected during community meetings. Often these workers are not only selected on the basis of their physical capabilities but also on the basis of their social needs. When too many people apply for the job some users' committees will rotate the jobs. A major concern for employers and in particular for the users' committees while recruiting their workers is political pressure to engage family members.

However, these family members are not always among the most productive of the workforce. The Rural Community Infrastructure Works Programme (RCIW) concluded that payment modalities influence favouritism and nepotism during the recruitment process; productivity based payments were reported to reduce these tendencies in recruitment.

Job security

As mentioned above, the LA requires proprietors to provide letters of appointment and appoint workers permanently when they are in continuous service for one year or longer. Piecework and contract workers engaged by an enterprise (i.e. 10 or more employees or workers engaged) have the same entitlements.

None of the interviewed workers received appointment letters from their employers. It is quite possible that none of them were, in fact, eligible to receive a letter of appointment, considering the pattern of temporary employment in the industry. In

any case, appointment letters may have a low value to most workers because they are often illiterate.

The LA makes detailed provision for retrenchment and putting workers in reserve. Compliance with these specific provisions are largely irrelevant in the construction industry since enterprises are allowed to hire temporary workers - on condition that they are given a contract with a fixed duration. Only Class A contractors, who employ highly specialised staff like equipment operators on a permanent basis, may retain some of these workers during idle periods. Employers are able to shed staff by employing temporary workers, or effectively subcontracting for labour through *Naikeas*.

Interviewed workers were very modest when asked how many days in advance they would want to receive notice that their employment will be terminated. About 53% were happy with one-day's notice and about 11% with a notice period shorter than one week. Fourteen percent (14%) wanted a notice period of one or two weeks and 22% of the workers would not have wanted any notice period of their employers.

These survey results do not mean that workers are not interested to know about the duration of their employment and the amount of salary they can possibly earn during that period. Such information helps workers plan ahead, to look for jobs as well as enabling them to allocate their budgets and prioritise their domestic demands.

Unfortunately most workers do not receive any information about the duration of their employment. In the case of users' committee executed works, contractors and client engineers do not prepare resource plans. Resource plans would help employers assess the required labour inputs. The contractors are not required to prepare such resource plans, before or during the implementation of the contract. The *Naikeas* and contractors can, in fact, give only rough indications to their workers about the duration of their employment. They are happy with the current situation as it provides them with the greatest freedom to alter plans at the last moment.

Although none of the interviewed workers was permanently employed, about two thirds of the workers felt that they were more or less permanently employed by their *Naikea*, although they do not receive any income during idle periods. Other ILO studies found that *Naikeas* were helping their workers find work with other *Naikeas* during slack periods and that they had no difficulties employing these workers again.



Most workers have a long working relationship with their employer, regardless of whether the employer is a contractor or a *Naikea*, the owner of the project (force account) or users' committee. However, many workers will have long working relationships with several employers. About 70% of the interviewed workers said they were asked to work on their current job by their employer. The other 30% indicated that they themselves approached the employer for work.

All the contract arrangements for engagement of construction workers between the contractor and *Naikeas* are informal and verbal. Most workers (70% in this study) did not need to submit a copy of any document during the recruitment process. When documents are asked for it is usually a Village Development Committee (VDC) recommendation or citizenship card. If driving is included in the job description a driving license is required.

A new development in the recruitment process is the use of recommendation letters and references. This practice seems to be more popular for the recruitment of skilled migrating workers.

The basis for remuneration depends on the nature and volume of the work item as well as on mutual convenience. Seventy five percent (75%) of the workers were paid on the basis of time worked. With regard to productivity based payment systems, the piece rate system of payment has been adopted, whereby the unit rate is mutually agreed upon between *Naikeas* and workers. Over and above the basis for remuneration, workers recruited for very short periods of time (a few days) usually earn ten to fifteen percent more, because they do not have any job security.

During the agricultural peak seasons (planting and harvesting) the construction sector has to compete for labour with the agricultural sector. Some projects close down or continue at a slower pace. Projects with strict deadlines have to increase their wages to keep the workers. On the other hand, line departments and district engineers who assume in their cost estimates that workers will be paid just minimum wages potentially threaten relatively high earnings for construction workers, since this situation can signal contractors or *Naikeas* to pay only minimum wages to their workers. The give and take at the marketplace between competing job availability in the agricultural sector, the floor and ceiling effects of the minimum wage, and the supplementary nature of earnings from agricultural employment, can serve as an explanation for the relatively poor level of average month earnings shown for construction workers in Table 1, shown on page 9.

Concerning the actual payment of wages, about 85% to 90% of the interviewed workers receive their salaries on time. Where delays occur they seem to be within acceptable limits. Workers engaged by the administrations receive their pay at the respective offices. The contractors and users' committees usually pay the wages at the work sites or otherwise at their offices, around 60% and 40% respectively.

Actual payment of wages in the construction industry often depends on the contractor actually receiving funds from the client during the course of work. According to the PWD, a contractor can include with its claim for instalments all expenditures for labour actually paid. Furthermore, the client must award this part of the claim. Thus even if the contractor and client have a dispute concerning the progress and quality of the works resulting in a delay of the payment, the contractor is still reimbursed for its labour inputs and able to pay its workers on time. Unfortunately instalments to contractors are often delayed in government-funded projects. The donor-funded projects did not report any delays. The delay is due mainly to resource constraints and long administrative procedures in transferring the money from the central level to district level.

Concerning actual practice in making deductions from remuneration, users' committees generally withhold 10% of the salaries and use these funds to maintain the created assets in the future. This is a common and accepted practice in Nepal.

Where a *Naikea* is involved, he or she may take responsibility for payments to individual workers. Alternatively, the contractor will pay each worker individually and directly as per daily wage rate applicable. In the first case, contractors pay the *Naikeas* either a fixed sum for a certain output or a fixed rate for the number of workdays supplied; the *Naikea* then pays workers only a part. In the latter case, the *Naikea* receives a commission of up to 5% (NRs. 3 to 6) per worker. It was reported that the latter system of payment is becoming more popular with the *Naikeas*, because they profit considerably without bearing the burden of supervising the performance of the workers. In both cases the *Naikeas* negotiate wages with their workers. All interviewed workers claimed that they received the wages as agreed upon.

Concerning recordkeeping, most employers in the construction industry keep daily records in which the progress or the attendance of the workers is recorded. About 50% of the workers working for contractors and 86% of the workers engaged by the users' committees know that their employer maintains such records. Seventy-five percent of workers working on projects under administration, 93% of workers engaged by users' committees and 47.5% of workers engaged by the private sector claim to have permission to check these records to verify their correctness.

In some cases, public audits are performed. They are usually conducted after the workers are paid and after delivery of the works. During such audits, for example, the RCIW Programme gives workers the opportunity to verify and file complaints about their payment entitlements.

Concerning payment in kind, food for work projects operate in Nepal. Food, often rice, is provided to workers in these projects as a kind of remuneration. Most of the food for work projects are partly funded by the World Food Programme (WFP) and implemented by users' committees. Generally in these projects, between 50 and 90 percent of the payments are made in kind; in the food for work projects studied here only food was given. The workers are usually paid on the basis of productivity and receive about five to six kg of rice per day's work, the equivalent of 75 to 90 rupees. The WFP adopted a policy to pay less than the equivalent to a common wage in the construction industry in its programmes. The WFP does this to target the poor, believing that if the value of food is lower than average, regular construction workers will not participate.

It is not difficult to purchase rice at the local markets in the particular district in which the projects were located. However, in most remote areas of the country such as in the high hills, access to these markets is severely constrained. Implementers of food for work programmes complain that the logistics of distributing food is difficult and cumbersome. Furthermore the food quality is inconsistent and most of the workers are said to object the system and prefer cash to food.

Gender issues

The 1998 Nepal Labour Force Survey (NLFS) concluded that *female participation in the construction industry in Nepal is significant*, having found 52,000 female workers out of 344,000. Despite this overall 15.2% figure, the actual participation of female workers on rural infrastructure projects remains low. On average only 7.8% of the workers were female, and 22% of the visited projects had employed women. Users' committees provide most of the employment for female workers, resulting in 14.3% participation. Although the interviewed users' committees showed no preferences in employing women or men, some users' committees have established policies that aim for 20% female participation on their works, as indicated in the sample contract documents in DOLIDAR's approach manual.

Private contractors were less interested in employing women because female workers have the reputation of being less productive and attend work irregularly. Although contractors realize that some women's irregular attendance is due to domestic tasks, they do not allow workers to work part-time to overcome this burden. While part-time work in infrastructure is generally not practiced, in the remote areas due to lack of sufficient number of skilled workers, part-time work is sometimes considered necessary for this category of workers, in particular during the agricultural peak seasons. But because women are hardly ever employed as a skilled workers in the construction industry in Nepal, they typically never would benefit from this practice.

Most district engineers observed that women might not be willing to participate due to cultural barriers, but this depended largely on the area of the project and tribe of the women. Some district engineers consider women unqualified due to their perceived weaker physical condition. Seventeen percent of the male workers interviewed said they consider women to be physically weaker. Some of the male workers paid on the basis of production were worried that working with female workers would lessen their productivity and, as a result, wages.

With regard to wages, the 1990 Constitution provides that there should be no discrimination in regard to remuneration between men and women for the same work. The Labour Regulations (1993) reiterate this. In practice, as seen in Table 2 on page 16, female workers are paid between 10 and 25% less for work of the same skill level. About three-quarters of the interviewed workers were very concerned about the difference in wages for men and women.

The Labour Regulations make some special provisions relevant to women.

- Women may not be generally employed outside 6 a.m. to 6 p.m. except in cases of special arrangements between management and workers. Women must be provided with necessary security.
- Allowable loads for girls for 16 to 18 years of age is 20 kg.

The LA requires proprietors to make arrangements in enterprises for separate modern type toilets for male and female workers or employees at convenient places. This study found that women find it extremely unpleasant to share toilet facilities with men. This could be one of the reasons why women do not want to participate in rural infrastructure projects in particular parts of the country.

Compared with other sectors of the economy (e.g. the garment industry) very few cases of sexual abuse have been reported against female construction workers in Nepal. Based on interviews with trade union representatives, it was understood that sexual abuse against female construction workers is no less than in any other sectors of the economy in Kathmandu, but it is generally confined to within the working group. As the construction groups are mobile and the bulk of activities take place in rural areas it is difficult to report such cases and so it becomes hidden. A survey undertaken by the International Federation of Building and Wood Workers (IFBWW) suggests that 30% of female workers are directly or indirectly victimized and one out of twelve female workers are forced to quit the job due to sexual abuse.

With regard to maternity leave or benefits, like pension schemes, they are far from the imagination of the construction workers in the rural areas.

As concerns skills development among women construction workers, most workers start as unskilled workers associated with a certain group headed by a *Naikeas*. In this context, many male workers develop into semi-skilled or skilled professions in this group. Female workers however are never given the opportunity to upgrade their professions and usually remain as unskilled workers.

Child labour

Concerning child labour, the LA as amended in 2000 says that a "child" is a person who has not attained 16 years of age, a "minor" is a person who has attained 16 years of age but has not completed the age of eighteen years, and a "major" is a person who has completed the age of eighteen years. Children under the age of 14 are not allowed to work and minors are only allowed to work during daytime; other restrictions concerning hours of work and rest, and requiring equal remuneration with other workers, also apply to minors. *Construction enterprises* have, however, been designated in law as "risky", and thus no one under the age of 16 should be employed in them.

The PWD, although finalized in 2002, contain model Conditions of Contract for Medium and Small Contracts that do not take into account the changes in general law. Under these model provisions, a child who has not attained the age of fourteen years is not allowed to be employed in any day work as a labourer.

In practice, the interviewed workers reported that children are not working on construction sites. There were some references to children working for suppliers, in particular at the stone quarries and sand delivery facilities, where the problem has been documented. Most of the employers said that they did not employ children, but three of the 22 employers interviewed said that about 5% of their labour force are younger than the minimum age. In all the defaulting cases the employers were contractors. Some districts reported that minors are involved in heavy construction works, in particular on road construction projects. Although children are not attractive to the contractors, the contractors are not aware of their obligations with regard to child and minor workers. Many of the interviewed district engineers did not know the correct minimum age for construction work.

Working time and rest

On the issues of working time, the LA applies broadly to all workers and employees, and sets limits of eight hours per day or forty-eight hours per week. Workers are entitled to one day of weekly holiday for every week. Provisions for time and a half overtime pay also broadly apply to any worker or employee, with a limit of no more than 4 overtime hours per day and 20 per week. The LA goes further to provide that in any enterprise (i.e. more than 10 workers or employees engaged), workers or employees shall have a half hour for rest for no more than every 5 hours of continuous work. That half-hour is part of the eight working hours.

In practice, all 77 interviewed workers worked 7 days per week and did not receive overtime pay against the correct rate for the extra hours spent. The workers of the contractors usually worked 12 hours per day. The administration and the users' committees respect the eight-hour workday.

Workers are usually not paid, or only partially paid on days that they cannot work due to rain, lack of equipment or materials, even if they have reported for work. The workers call this leave without pay. Nor are workers paid when they take leave for medical reasons, even if they provide medical justifications to their employers. Some *Naikeas* allow their workers to send replacements for days they cannot attend, provided that such cases are limited.

Occupational safety and health

The LA makes general provisions applicable to all enterprises (i.e. more than 10 workers or employees engaged). The most relevant and basic for the construction sector, are:

- the obligation to make provisions for sufficient supply of potable water during working hours;
- to make provisions for separate modern type toilets for male and female workers or employees at convenient place.

The LA makes special provisions for safety and health in the construction business; most require action by proprietors, implying requirements set on establishments where 10 or more workers or employees are engaged. These include:

- Arrangements for quarters, foodstuffs, drinking water, etc., shall be made at temporary construction work sites for workers who do not have residence nearby.
- The proprietor shall have to insure all workers engaged in the construction site against accident in the way as prescribed.
- The proprietor shall make necessary and adequate arrangements for safety at the sites of construction workers.
- The proprietor shall have to arrange for personal protective equipment necessary for the workers engaged in construction works.

As concerns labour matters, the Model Contract for Large Works found in the PWD recommends direct use of clauses 34 and 35 FIDIC's Part 2: Conditions of

Particular Application. The PWD goes on to suggest the inclusion of specific sub clauses setting up safety and health obligations.

- The Contractor shall have on his staff on Site an officer dealing only with questions regarding the safety and protection against accidents of all staff and labour. This officer shall be qualified for this work and shall have the authority to issue instructions and shall take protective measures to prevent accidents.
- The Contractor shall take due precautions, and at his own cost, to ensure the safety of his staff and labour and, in collaboration with and to the requirements of the local health authorities, to ensure that medical staff, first aid equipment and stores, sick bay and suitable ambulance service are available at the camps, housing, and on the Site at all times throughout the period of the Contract and that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements.
- The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of his staff and labour.
- The Contractor shall maintain such records and make such reports concerning safety, health, and welfare of persons and damage to property as the Engineer may from time to time prescribe.
- The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means.

For medium sized contracts, the PWD suggests more limited contract language requiring the contractor to:

- Have full regard for the safety of all the persons entitled to be upon the site and keep the site and the works in an orderly state appropriate to the avoidance of danger to such persons.
- Provide and maintain at his own cost all lights, guards, fencing, warning signs and watching when necessary or required by the project manager or by any duty constituted authority, for the protection of works for the safety and convenience of the public or others.
- Take all reasonable steps to protect the environment on and off the site and to avoid damage or nuisance to persons or to property of the public or others

resulting from pollution, noise or other causes arising as consequences of his methods of operation.

In practice, although the labour laws and standard contract documents say that the employer has to provide *sanitation facilities*, only 75% of workers working on works under administration, 31% of workers engaged by the private sector and 50% of workers engaged by users' committees had access to sanitation facilities at work. Where such facilities were available, they were often shared facilities between women and men. A major complaint from workers with access to toilet facilities was that there was usually no water available for washing after use.

With the exception of workers engaged by the users' committees and working on force account projects, most workers receive *potable drinking water*. Only 36% of workers engaged by the users' committees claim that they receive an adequate supply of drinking water. The workers working on force account projects need to bring their own drinking water to the worksites.

Most employers provide workers with *equipment and tools* to work with. If the users' committees carry out the works, the client provides the workers with all the necessary tools. The provided tools and equipment were reported to be in good or satisfactory condition and no respondent mentioned accident or injuries stemming from the deteriorated state of equipment or tools. However, none of the workers seen at the sites visited during the study were wearing any kind of protective clothing. Only 50% of the projects provide shade on site for the construction workers. The study found that only half of the visited projects contained first aid kits to treat minor injuries. It was also reported that because smaller injuries are neglected, they develop into more serious ones, resulting in sick leave periods.

The interviewed contractors claimed that they obtained information about reducing health hazards through various sources such as the news media, public health channels and friends. Only 10 of the workers indicated that they received training in the proper handling of equipment and tools that they work with. If training is given at all, it is usually done on the job through instructions. Most employers do not have any expert in health and safety issues.

Contractors usually study the history of the construction site, in particular the geology but also the availability of safe drinking water and hygienic foods. However the contractors did not mention that they made any assessment of the construction methods or work zones.

The most common accidents were falling from high places, slipping and cuts from nails and other sharp objects and backaches due to overloading. In high mountains the workers also suffer from sunburn, colds and fevers. In some cases it was reported that accidents had occurred because slopes of earth had collapsed.

When it comes to works managed by users' committees, the exact responsibilities of the Committees and their officers are not clear. Regardless of the official structure and procedures, users' committees simply lack the knowledge and required skills to make risk assessments and take preventive measures.

Interviewed workers feel that the labour inspection unit and trade unions should conduct regular inspections on the construction sites to see that safety rules are followed during the construction phase. Due to the lack of manpower and other resources, however, the labour inspection units cannot make visits to the rural infrastructure construction sites. The interviewed labour inspection units claim that they will take action when a worker files a complaint at the labour inspection unit.

The right to organize

The 1990 Constitution specifies rights of association and social justice as the fundamental rights of the Nepalese people. Workers can organize and form unions. The Trade Union (First Amendment) Act, 2055/1993 provides a legal basis for organizing the trade union and specifies the objectives of the trade union movement.

Only 4 of the 77 interviewed workers are members of a trade union. Only three workers could confirm that trade union representatives had ever visited a civil works project they had worked on.

About half of the workers claim to have meetings with their employer about the working conditions, predominately before the start of a new project. Although only one of the interviewed workers ever filed a case to his employer, about forty percent know where to file a case against the employer if they wished to do so.

Insurance and social security

The LA requires proprietors in the construction business to insure all workers engaged in the construction site against accident. The Nepal Labour Rules of 1993 specify that the Employer is required to pay compensation up to a maximum

amount of 5 and 3 years salary respectively in the event of physical disability or death arising as a result of an accident during work.

The PWD standard contract for medium works prescribes that the contractor shall provide, in the joint names of the employer and the contractor, insurance to cover personal injury or death which are due to the contractor's risks.

Officially, contractors have to submit copies of insurance policies and payment certificates to the project manager for approval prior to the start of the works. However these procedures are seldom practiced.

In an one case, the World Bank's Rural Infrastructure Project (RIP), which was implemented in two rural road infrastructure projects in Kaski District, included a special provision for insurance in the bill of quantities. According to the RIP contract, the Contractor is to provide, in the joint names of the Employer and the Contractor, insurance cover that includes personal injury or death. The insurance is to provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred. For minimum cover in the case of personal injury or death, for each occurrence with unlimited occurrences is NRs.1,000,000.00 for a contractor's employee, a worker as per the LA, or any other person. In other donor-funded projects, the DDC pays the premium for the insurance schemes, but through the contractor.

Although some donor-funded projects - such as RIP - have provisions for accident insurance, many workers were not aware about these provisions. Indeed none of the interviewed workers was aware about their right to coverage by insurance and it was commonly accepted that they were not insured or would not receive any pension benefits. Still 25% of the interviewed contractors said that they have life insurance schemes for their workers.

If the contractor engages subcontractors, the contractor still remains responsible for the insurance of the workers. The contractor may demand that the subcontractor insures its own workers against such liabilities, but it should specify that the subcontractor should be able to produce to the executing agency, the policy of the insurance and the receipt of the payment of the current premium.

Because Naikeas are informal operators, contractors seldom enter into a contract with them; therefore, to meet its obligations, the contractor is obliged to insure the workers of the Naikeas. Even if the contractor would enter into a formal contract

with a Naikea, it still remains responsible for the provision of accident insurance for the workers.

In practice, where Naikeas are involved, the large majority of the workers depend on their relationship with the Naikeas for support when they or one of their family member is sick, has an injury or dies. In 50% of the cases the Naikea provides the workers with cash advances or compensates for medical expenditures. This strengthens the relationship between the worker and the Naikea. The Naikea usually pays these costs from its own revenues. Naikeas seldom enter into insurance schemes.

When users' committees carry out works it is not at all clear who - if anyone - is responsible to provide insurance to the workers. In general, in practice, workers of the users' committees are not insured, with the exception of some donor funded projects. The DFID Rural Access Programme (RAP), for example, developed its own set of "Conditions of Contract for Community Contracting" in which the DTO/DDC has the responsibility to provide insurance for the workers. According to the RAP team, one of the major problems with regard to accessing insurance claims is that the projects do not record the accidents properly.

While standard contracts clearly give the executing agency/employer the option of keeping in force any insurance required of a contractor, in practice, it is unlikely to do so since the contractor is primarily accountable, even for the defaulted insurance obligation. On a practical level, further de-motivating factors include the fact that workers seldom claim any of their entitlements and secondly, the contractor will take care of the claim if they do.

Concerning contribution to social security arrangements, employers in the construction industry do not commonly withhold part of the salaries of their permanent or project workers and deposit it in a provident fund. Most workers are not willing to contribute to any insurance scheme. They claim that their earnings are too low to consider further reduction of take-home pay. Those few workers that are willing to contribute were willing to contribute about 5 to 10% of their wages to an insurance scheme.

Migrant workers

Numerous provisions are made in the LA and contract documentation for the provision of facilities of various types for the quartering of workers at temporary construction sites.

As seen in the study results, migration is very common in Nepal. Sixty-one percent of the interviewed workers had migrated to find work on construction sites. Not only Nepali citizens but also Indian nationals travel around to find work in the construction industry during the agricultural slack season.

There were camp facilities for workers who had migrated in 11 construction sites surveyed (60%). Eighty-eight (88%) percent of the migrant workers were using the accommodation provided. The camps are usually located in the close vicinity of the project site. Usually workers living in the camps walk no more than 5 minutes to the site. Only one worker mentioned a travel time of 20 minutes. Workers who stay at home sometimes have to travel 10 to 15 kilometres; travel times of one hour or more for a single trip is not uncommon. All camps have water facilities, but only sixty percent (60%) of the workers living in the camps claimed that they had access to acceptable toilet facilities. Unfortunately many camps do not provide the separate sanitation facilities women highly desire.

It has generally been proven that transmission of sexually transmitted diseases thrives at civil works project sites that employ migrant workers. The PWD notes this. Service delivery businesses, including prostitution, often accompany these projects. Unfortunately only 9.1% of the interviewed workers received information about the risks of sexually transmitted diseases and safe sex practices. It is not yet common for large-scale infrastructure projects to have information campaigns about the risks of unsafe sex. Since only 16.9% of all male workers and 1.3% of female workers were found to be literate, only oral or pictorial dissemination techniques can be considered appropriate.

Exchange of information and claims

Because of high illiteracy rates, signboards providing information about vacancies and entitlements have limited potential effect. The workers are in general very poorly informed about their rights and entitlements, if at all. They receive information directly from their employer or indirectly from friends. Members of trade unions are best informed about their rights and benefits from an independent source. Community organisations do not act like trade unions and seldom inform workers about their rights. Likewise, neither line departments nor DDC supervisors inform workers of their rights.

Some donor-funded projects use social mobilisers who can be of help in disseminating information. Furthermore it was suggested that the VDCs could play a more active role in providing information to the workers.

With regard to complaints, workers can file individual or collective claims. Individual claims have to first be submitted to management; if not resolved, the claim can be taken to the Labour Office. A collective claim must be presented in writing to the concerned proprietor(s) signed by at least fifty-one percent of the concerned workers. Due to these requirements - on account of illiteracy and fear of recrimination - most construction workers will neither make individual complaints nor participate in a collective one.

On a positive side, the interviewed Labour Inspection Units and District Administrative Office in the districts visited mentioned that, if a case is filed the law will be automatically applicable. For example, in cases such as the default in payments by the employer, the worker can place a complaint in the District Labour Office (DLO) or with the Office of the Chief District Officer (CDO). The result will be that the DLO or the CDO will call the culprit within fifteen days and can force him to deposit the due payments.

Freedom to leave work

Nepal's Constitution includes a prohibition of slavery and forced labour. In some community works the leaders insist that members of their community should provide voluntary labour on their projects. The practice tends to depend on the nature of the community. If the community has strong ties in terms of ethnicity, kinship or friendship, and the leader is not just a head of community but also considered to be the head of family and others are considered the member of family, people say that the members are "bonded" to their leaders. In these communities, if a member doesn't agree with his leader, the member may be forced to leave the community as a kind of a penalty.

Employers in the construction industry seldom provide significant loans to any of their workers. The practice of small cash advances of their salary is however a common system in the construction industry. Usually the employers do not charge any interest, but one exception was recorded where 24% interest was charged. A few workers reported that the employer did restrict them to search for other work until their loan was repaid.

Findings and Recommendations

Several suggestions can be raised from the results of the study.

- Very careful consideration ought to be given to broadening the scope of protections in the LA to ensure that full protections on basic elements of decent work are given to all workers, and not just those employed in enterprises (i.e. establishments with 10 workers or employees engaged). A close review and decision taking should be made concerning the legal responsibilities of contractors, subcontractors and Naikeas towards workers, particularly in the context of practical situations where ambiguities on responsibilities exist; the results should be recorded and publicized.
- Since the PWD are not applicable for works carried out by local bodies, standard contract documentation for works to be implemented by users' committees should be developed to clarify obligations - particularly in relation to safety and health and insurance cover - to workers. Such a standard contract should specify the requirements of both the users' committees and the client offices.
- Consideration should be given to involving further local authorities responsible to approve construction or renovation of physical infrastructure in developing and promoting decent work. For example, in urban areas, municipalities have the authority to introduce minimum standards of physical infrastructure, housing etc. and any construction without its approval is liable to attract penalties. VDCs have similar authority. At present, the DDCs have skilled manpower at their disposal to help monitor compliance with the LA, but still not enough to monitor and supervise all the works. Furthermore the DDCs have to cover large areas and their transport facilities are limited. Although the technical capacity of the VDCs to monitor the civil works in terms of compliance with the LA is weak, they may be the actor best in the position to monitor compliance. Methods could be conceived for using this authority to improve working conditions in the local construction industry. Training on how to implement such authority would be needed.
- Consideration should be given to having more direct instructions given to supervisors concerning respect for decent work. When on site most supervisors have sufficient time to monitor works in terms of compliance with Nepal's labour laws and regulations, and contractual obligations, but supervisors are typically not directed to do so by the DDC and the offices at the centre. Should clearer instructions be given, they would need to be accompanied with training on obligations and methods for monitoring

- compliance with obligations concerning labour.

 - Methods for filing formal complaints under the LA present risks for workers. In countries like Nepal with high unemployment, workers are easy targets for recrimination to the extent they are obliged to first inform their proprietor of a claim. Claims are thus unlikely to be made. Consideration could be given to changing the rules to allow workers to somehow file anonymous complaints.
 - Closer monitoring of contract obligations that impact on decent work is needed. For example, most workers work 7 days a week, twelve hours a day. Such patterns could be prevented if the client would monitor the situation on site. Insisting on labour resource plans and detailed cost estimates would help the clients assess if works are planned and executed in compliance with the laws.
 - Consideration should be given to altering the general rule of "No work, no pay". Although workers may show up ready for work, if it rains or the contractor fails to get materials or equipment on site, workers are not paid. This is typically the case, even if they are paid a time-based wage. This system is unfair, although not unlawful. As it is unlikely that this practice would be changed voluntarily in the near future, the District Wage Committees could consider setting higher minimum wages for the construction industry to take account of the practice and compensate workers for the risk. Alternatively, promoting change of the practice outright, by instituting a "reporting allowance", would also motivate better management in cases where work does not proceed for lack of materials or equipment.
 - With regard to safety and health, present standards are minimum and standard specifications and/or procedures have not been adopted by government. Furthermore most contractors, client engineers and technicians lack manuals and reference materials. Consideration should be given to strengthen response in this area by standardizing specifications of requirements, increasing knowledge and monitoring of requirements. This includes consolidation of requirements for separate toilet facilities and educational campaigns and methods (including social mobilises focusing on migrant workers) concerning safe sex.
 - Obligations exist concerning insurance on works procured under model PWD contracts, but research suggests that with the exception of some donor-funded projects, employers in the rural infrastructure industry fail to insure their workers as required. Consideration should be given to steps that can increase the accountability of contractors, and improve checks and balances built into the tender, award and payment process. Consideration might be given to

client's themselves entering into insurance contracts with insurance companies. Information about coverage for costs of injury and death should be passed along to workers.

- Women do not have equal opportunity to graduate from being unskilled workers. Furthermore, and related to this, female workers are perceived to be less productive than their male counterparts. The unequal pay for work between women and men is likewise related to this perception. Donor programmes give probably the best opportunity to address these items. An effort could be made to study the labour productivity of workers in general and women in particular. Their findings should be published and publicized. Special skills enhancement programmes for female workers might be piloted in donor programme.
- Consideration should be given to addressing directly what appears to be a relatively minor entrenched use of child labour among construction material suppliers. Action should be considered wherever child labour is used in the construction industry. PWD standard bidding documents should also be amended to take into account current Nepal law setting the minimum age for entrance to employment.



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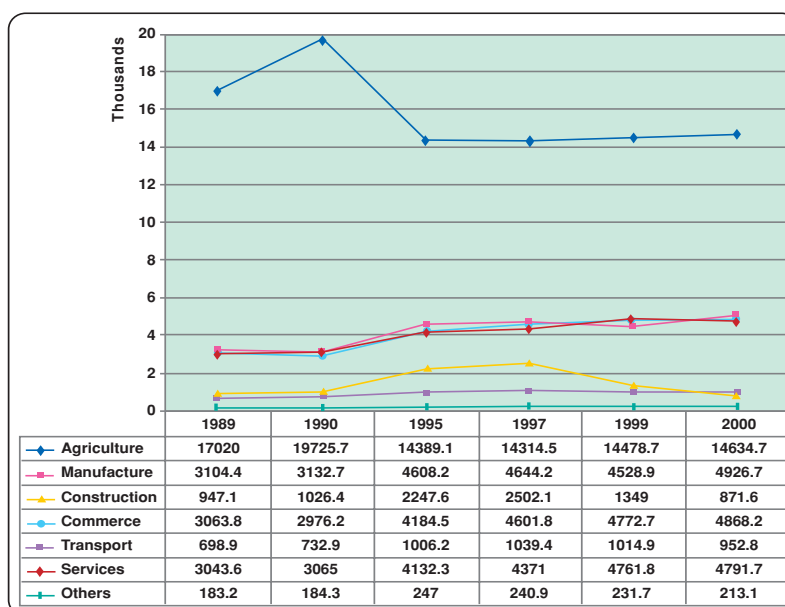
DECENT CONSTRUCTION WORK IN THAILAND

The Thai Construction Sector in Brief

Employment and earnings

In 1999 the construction industry in Thailand employed 1,349,000 people. The total number of registered unemployed persons at that time was 1,737,100. Figure 3 shows that since the severe economic crisis of 1997, employment in the construction industry has been in decline. The economic crisis resulted in large-scale layoffs. The construction sector was hardest hit by layoffs, followed by wholesale and retail business and the service sector. By 2000 the order was reversed but in 2001 the construction sector had again the highest number of layoffs (20,901). The direct contribution of the construction industry to GDP is therefore diminishing. By contrast, the contribution to GDP of sectors like electricity, water supply and sanitation, transportation and communication were stable in the years directly before and after the economic crisis.

Figure 3. Employment, by sector, 1989-2000 (in thousands)

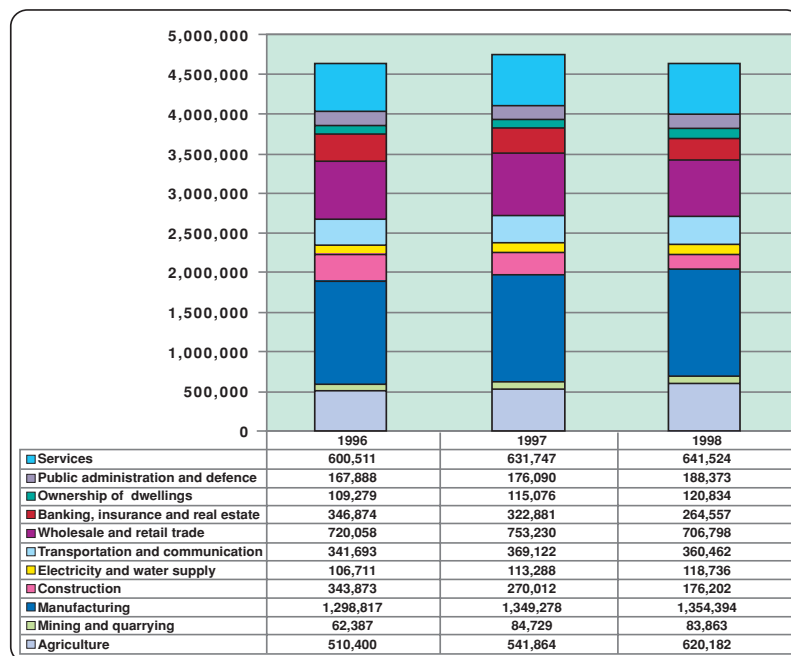


Generally speaking, the pattern of employment among construction workers is segmented into skilled workers who typically work full time for a contractor, unskilled workers who strive to work full time for one or more contractors or labour subcontractors, and unskilled workers who are employed in construction as well as in agriculture.

In this study, 67% of the interviewed workers had been working in the construction industry for more than 10 months. Seventeen percent (17%) of the interviewed workers had been working in the construction industry for less than 3 months. Most of the daily workers interviewed had achieved the minimum requirement of primary school grade 4 level. All the interviewed office staff had at least a diploma degree.

Occupational mobility is low among the interviewed workers. The maximum number of employers during the last five years was five. Forty-three percent of the workers worked for only one employer during the last five years, but may have been without a job in that period. Another 23% provided their services to two employers during that period.

Figure 4: GDP, current market prices by industrial origin, 1996-1998, (in million Baht)



Main actors

Several "main actors" can be identified for playing roles in the Thai construction industry.

Government agencies are an important client for the construction industry. The Public Works Department (PuWoD), Tambon Administration Offices (TAO) or Department of Highways (DOH) define the works to be carried out.

In 1998, there were 16,396 registered contractors enterprises in Thailand. Small professional organisations exist, but none play a role representing firms or employer organisations. Detailed information on the number and size of firms is found later in this study.

Neither employers' nor trade unions in Thailand are highly organized. Indeed, in the context of dealing with employment relations, they are amongst the most unorganized in Asia. There is no trade union movement of significance in the construction industry.

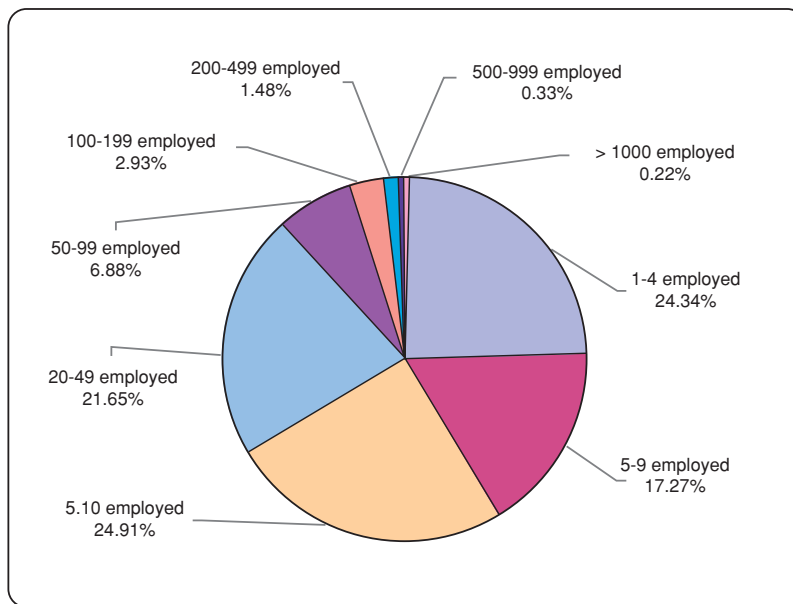
In sum, the picture painted of main actors in civil works in Thailand has very clear lines showing a dominating role played by government in procuring the construction and maintenance of infrastructure directly from many private contracting enterprises located throughout the country.



Implementation modalities

The majority of civil works in Thailand are undertaken by the private sector. In 1998 there were a total of 16,396 registered contracting firms competing for work. Their size in terms of number of persons employed is shown in Figure 5.

Figure 5: Registered construction establishments, by number employed, 1998



Although many contractors rely to a great extent on public works contracts, as seen in Table 3, there is a significant number of contractors relying entirely on private sector clients.

Table 3: Construction establishments with government contracts, 1998

Establishments by size (persons employed)	Number	Number with government contracts
1 - 4	3991	867 (21.7)
5 - 9	2832	1511 (53.4)
10 - 19	4084	2719 (66.6)
20 - 49	3549	2535 (71.4)
50 - 99	1128	816 (72.3)
100 - 199	480	327 (68.1)
200 - 499	242	184 (76.0)
500 - 999	54	37 (68.5)
> 1000	36	24 (66.7)
Total	16,396	9020 (55)

In Thailand, most contractors engage subcontractors who in turn may engage smaller subcontractors. Usually the subcontractor operates autonomously and is able to manage its subproject independently.

The pattern of multiple subcontractors applies to labour subcontracting as well. In the case of labour subcontractors, the main contractor provides materials and equipment and the subcontractor provides the manpower. The labour subcontractor usually manages the workers operating under the supervision of the contractor, their client. In this study two of the thirteen labour subcontractors used other subcontractors.

As most labour subcontractors are not registered as commercial entities, there is usually no formal contract between the principal contractor and the labour subcontractor. The client or project promoter has no direct relationship with or responsibility for the contractor or his subcontractor's workforce.

Policies for Productive Employment Creation in Infrastructure

Although the Public Works Department (PWD) is familiar with labour-based technology for road works it does not use labour-based methods. Government standard contracts and specifications are said to hamper the application of labour-based approaches.

Interviewed TAO officials were knowledgeable in labour-based technology. Two of the TAO officials consider it an inferior technology. The Ministry of Interior was said to influence the TAOs with regard to technology choice.

Although most contractors are unfamiliar with the term labour based technology, many work practices followed could be considered as labour based. Such practices have developed naturally as the most cost-effective means of undertaking particular tasks.

In general, end product specifications are used for most construction projects. It is therefore very rare that choices of construction technology would be explicitly specified by the contract specifications. There are, however, situations where adopted specifications could result in preference for a certain technology. There have also been construction projects under special employment promotion programmes that specified labour-based construction method as the standard.

Usually the implementing agencies determine the choice of technology. In theory this could be done in various ways. The first is by explicitly specifying the choice of technology as part of the contract document; a second is by adopting designs or specifications that give preference to certain technology; and a third is by influencing the contractor to employ the required technology during the work supervision process. The first approach is rarely applied in Thailand.

Labour Policy and Practice

The remaining three aspects of the ILO's decent work agenda deal with the protection of workers' rights, their protection against vulnerability, and the promotion of social dialogue. Each of these areas have resonance in labour policies and practices applied in the Thai construction sector. They are reviewed here.

Laws and regulations

Four Acts are of particular importance for workers in Thailand. The Labour Protection Act, BE 2541 (1998) (LPA) is the national labour law. The Social Security Act, BE 2533 (1990) (SSA), as amended in 2537 (1994) and 2542 (1999), and the Workers' Compensation Fund, B.E. 2515 (1972) (WCF), sets out the rules and regulations of the National Security Scheme. The Labour Relations Act BE 2518 (1975) (LRA) regulates the establishment of employers' and workers' organisation and the arrangement of labour relations in the country.

The LPA covers all workers except those employed by the government or state enterprises. Ministerial Regulations may, however, be issued prohibiting application of any or all parts of the Act to any specific class of employers. Such regulations have been made, but they are not relevant to this study.

The SSA and the WCF cover employees in the private sector with one or more employees. They do not cover employees who are employed occasionally or seasonally.

Recruitment policy and practice

The LPA gives little guidance on recruitment. In practice, as concerns contractors, the site management staff, including the site engineer and foremen, is typically recruited first. The foremen usually then recruit skilled and unskilled workers. Most often they recruit complete work-gangs rather than individual persons since unskilled workers tend to have links with one or more skilled workers.

Concerning duration of employment, skills and education, most permanently employed workers are involved with office work like administration and finance. They are selected on the basis of their educational and professional background. It is not unusual, among the smaller firms, to employ relatives or friends/acquaintances for skilled or unskilled work. However, skilled employment is only offered to trained workers.

For site workers, there is no correlation between the level of education and the level of skills. Whilst women are not employed as skilled workers, labour subcontractors consider most men qualified for skilled tasks. The only male worker interviewed who considered himself an unskilled worker works on a community contracting arrangement and is self-employed.

Government agencies like DOH, Royal Irrigation Department (RID), Department of Forestry, etc. implement their unplanned construction works such as emergency maintenance and natural hazard relief usually under force account operation. Even though workers are employed on a daily wage basis, they could work continuously for years if there is work to be done. Employment opportunities with government agencies are announced on the administration news billboards and in local newspapers. A committee appointed by Head of the Administration interviews the applicants.

Concerning women workers, all those interviewed were working together with their husbands. When couples migrate to work on a particular project, they prefer to be employed together. Employers are willing to employ couples because they tend to have better attendance records. Most employers prefer to employ workers they know for the same reasons of reliability and good performance.



As for the formalities of employment, the LPA says that an "employment agreement" is a written or verbal agreement which is clearly stated or which is implicitly understood, where a person referred to as the employee agrees to do work for another person referred to as the employer, and the employer agrees to pay a wage throughout the period of work. Few interviewed contractors, or labour subcontractors, provide their workers with a written agreement. Only one interviewed contractor provided written contracts to permanently employed workers. None of the interviewed labour subcontractors were willing to issue written employment agreements, regardless of the status of employment (permanent or project). Interviews with workers confirm the practice of employers concerning employment contracts. Seventeen percent (17%) of the interviewed workers said that they have a verbal employment agreement with their employer including the conditions of work, compensation package and duration of the work and none of the interviewed workers had a written contract.

Contractors and labour subcontractors raise two objections to written agreements for project-based workers. They say first that the administration required is expensive. Labour sub-contractors in particular raise this objection, understandably in light of the sometimes very large number of workers they employ. Secondly, contractors say that workers would be better protected with a written agreement and that this would result in higher costs.

Contractors nevertheless recognise some benefits of written employment agreements. Although productivity improvement is not seen as one such benefit, workers with written agreements are said to be more loyal, more likely to complete their work, and less likely to abandon the job before it is finished. In light of the infrequent use of written agreements, other methods are apparently used to win the loyalty of good workers. These include securing jobs for them, increasing their wages and occasionally through alternative arrangements for the family of the employee, provision of health care and bonus schemes.

Job security

The LPA says that the termination of employment should be in accordance with the employment agreement. The employer is required to give written notice of termination at or before the time for any wage payment where the employment agreement does not specify a termination date. This serves to terminate the agreement at the time of the next wage payment. The LPA specifies that no more than three months advance notice need be given.

In practice, contractors do not provide any notice to the daily workers. Permanent workers, even without a written agreement, would receive notice one or two months before the employment ends. There is no general practice among the labour subcontractors with regard to providing notice to project based workers. It could vary from no notice to 2 months. The common practice is that most daily workers never receive any notice from their employers.

During slack periods, contractors' permanent workers tend to be kept occupied preparing bids and doing similar work. All other workers are usually laid off.

Workers typically rely on their employer to find further jobs for them, even if that would not happen immediately after the completion of a project. Some workers quit their jobs at short or no notice. Only a few know the precise end date of their employment, which is usually the same as the end date of the project.

Insofar as planning could assist in giving workers better information of their employment security, contractors are not obliged to prepare resource plans as part of the work plan. The work plan is judged only on the quality of the product, budget and timing. Those interviewed PuWoD and TAOs do not consider it their task to evaluate and monitor the work plans from the perspective of compliance with existing infrastructure related laws. Where contractors do prepare resource plans, the government officials/client representatives do not check it if the amount of employment is balanced.

Remuneration and wage payment policies and practice

In Thailand too, timely payment of adequate wages is a hallmark of decent work. The LPA includes a number of clauses setting the standard for these matters.

Minimum wage setting is handled through a tripartite National Wages Committee, as prescribed by the LPA. The daily minimum wage is now determined regionally. The law requires that in fixing the minimum wage, the Wages Committee study and consider the impact of the current minimum wage and other factors. These other factors include the consumer price index, inflation rate, standard of living, cost of production, prices of goods, affordability to businesses, quality of work performed by labour, gross domestic products, and economic and social conditions. Under the Labour Relations Act, after the National Committee sets the minimum wage,

tripartite provincial committees can review the wage situations and recommend a higher wage be set for the individual provinces. As can be seen from established minimum wages (Table 4) there is a 20% difference between the highest and lowest wages set.

Table 4: Daily minimum wages (Baht, from 1 January 2002)

Phuket	168
Bangkok and Municipal area	165
Chon Buri	146
Chiang Mai, Nakhon Ratchasima, Phangnga, Ranong, Saraburi	143
Ang Thong	138
Chachoengsao	137
Sing Buri and Narathiwat	135
The rest of the country	133

Contractors usually pay their workers on a time basis; productivity-based remuneration systems are still unpopular in the construction sector. Only one of the interviewed contractors applies this system.

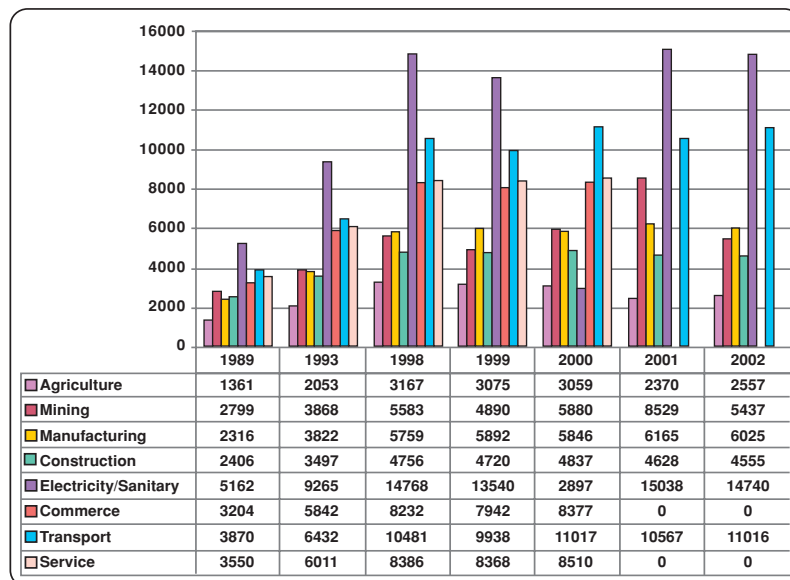
The data on earnings in the construction sector available to the study covered the years 1995 to 1999 and are seen in Table 5. Average wages in the construction sector in Bangkok and the 5 surrounding provinces are twice as high as those in the rest of the country. In addition, other statistics suggest that the difference in wages between related sectors outside the centre of country is far less than the sector-wise differences in wage in the centre of the country.

Table 5: Average wages, construction, repair, demolition, 1995-1999 (Baht/month)

	Bangkok Metropolis	5 provinces around BKK	Central Region	Northern region	North-eastern region	Southern region
1995	12719	8410	5229	-	3873	440
1996	14974	9578	5362	2935	3839	5570
1997	7422	6818	5977	6059	5085	5109
1999	12369	10115	6039	5249	4918	5402

More recent sectoral data, shown in Figure 6, suggests that jobs within the construction industry are lowly paid as compared with other sectors of the economy.

Figure 6: Wages, by sector, 1989-2002 (Babt, monthly)



Although productivity-based pay is not common, the LPA says that where remuneration is productivity-based, wages paid on holiday and leave days should be based on average daily wages for the pay period immediately prior to the period in which leave is taken. The LPA says other important things about the payment of wages.

- Contractors who have employed subcontractors are jointly liable with these subcontractors for wage payments to the subcontractors' employees.
- When an employer stops all or part of the business temporarily for any reason other than a natural disasters, employees must be paid at least fifty percent of the usual working day's wage for the duration of the stoppage. The employer is obliged to inform employees and the Labour Inspection Officer in advance of the stoppage.
- The LPA also includes a concept of basic pay. This idea includes among others that employees are entitled to receive payments even during periods when he or she is not working. This indicates that workers are entitled to their daily wage, even if they could not work because of rain or non-availability of materials or equipment.

Labour inspectors are assigned to monitor the compliance with provisions concerning wages.

In practice, during down time for inclement weather or other reasons, workers who have worked 4 or more hours are paid for a full day, or according to the work done if their pay is productivity based. When casual workers were unable to work at all, employers apply the "no work, no pay" rule, but usually pay their permanent workers the full amount. When casual workers work more than 1 hour but less than four hours they are usually paid on a pro rata basis.

Payment in kind is not practiced in Thailand's construction industry.

Concerning actual wage payment policies and practices, the LPA specifies that payment should be made at the workplace and within specified time limits. Most contractors and labour subcontractors pay their workers every fortnight, either at the site, camp, or office. Office staff is paid via their bank account. Almost 30% of interviewed workers said that salary payments are delayed. Since delays in the payment of wages are often related to delays in payments to contractors, it is interesting to know the frequency with which such delays occur. TAO officials claim that they do not always have sufficient funds to pay the contractors on time and that payments can be delayed because of poor quality of work. Data on payment delays from 1998 is seen in Figure 6.

Table 6: Average delay in payments from government (in percent)(1998)

Size	No delay	1 month	2 months	3 months	4 months	5 months	6 or more months	
1-4	37.4	38.4	14.3	6.9	0.9	0.4	1.7	100%
5-9	29.6	42.4	14.2	8.9	2.3	0.7	1.9	100%
10-19	30.8	41.1	14.7	8.9	1.8	0.7	2.0	100%
20-49	25.9	40.7	17.4	10.7	1.7	1.1	2.5	100%
50-99	20.8	40.0	19.2	12.6	1.6	1.5	4.3	100%
100-199	18.3	37.0	20.2	13.8	3.7	1.2	5.8	100%
200-499	16.9	36.4	22.8	16.9	2.2	0.5	4.3	100%
500-999	13.5	18.9	24.3	27.1	8.1	2.7	5.4	100%
>1000	8.3	16.7	41.7	29.2	4.2	-	-	100%
Total	28.1	40.5	16.2	10.0	1.8	0.9	2.5	100%

Five of the six interviewed contractors claim that today there are only marginal problems with delay in payments from Government. The labour subcontractors are in general very content with punctuality of the payments by the contractors. Only 15% of those interviewed experienced serious delays.

Concerning accuracy of wage calculations, interviewed contractors and labour

subcontractors all keep daily muster rolls. All the interviewed contractors and 33% of the labour subcontractors claim that they provide attendance cards to their workers.

All registered firms have to submit annual worker payment reports to the Social Security Office (SSO), showing the total amount of wages paid to each worker together with their daily wage rate and number of working days. The SSO verifies wage deductions and individual employee contributions to the social security fund. Labour inspectors rely on this information but seldom check whether basic unit wages are actually paid.

Concerning deductions from wages, the LPA allows deductions in only 5 instances and sets the maximum deduction that can be made. The employer may deduct more than the fixed proportion only with the employee's prior consent and deductions with respect to taxes are outside these rules.

Of the interviewed workers, 13.5% have loans from their employers. Usually repayment is made through salary deductions, with details agreed in advance. Most workers said that they could not work for someone else until loans are repaid; the study did not identify any workers with outstanding debts to previous employers.

The study did not uncover irregularities with regard to deductions in the payment of the salaries when this was dealt with by employers.

Gender issues

Despite gender specific protective measures in the LPA, the *participation of women in the construction industry* appears to be uninhibited. The following measures are to be applied, according to the LPA.

- Female workers are prohibited from working on scaffolding that is more than 10 meters high.
- Pregnant women may not work between 22.00 and 6.00, work overtime, work on holidays or perform (a) work on plant or equipment that vibrates, (b) operate or go along with a mechanically propelled vehicle, (c) lift, carry or bear on her head or shoulders, or pull or push loads that weigh more than 15 kilograms or (d) work on water going vessels.

As seen in Table 7, in 1998 about 19% of the workforce was female, with larger firms more likely to employ women. The current study showed that between 5% and 20% of workers are female, and that contractors are aware of the protective clauses in the LPA.

Table 7: Sex & status, private infrastructure sector, 1998

Size	Number of firms	Total employees					
1-4	345	1173 (100%)	Male	1099 (93.7%)	Labourer 739 = 100%	M	708 (95.8%)
				F		31 (4.2%)	
			Female	74 (6.3%)	Professional 18 = 100%	M	13 (72.2%)
				F		5 (27.8%)	
5-9	289	1975 (100%)	Male	1740 (88.1%)	Labourer 1474 = 100%	M	1343 (91.1%)
				F		131 (8.9%)	
			Female	235 (11.9%)	Professional 21 = 100%	M	17 (81%)
				F		4 (19%)	
10-19	173	2320 (100%)	Male	1867 (80.5%)	Labourer 1915 = 100%	M	1572 (82.1%)
				F		343 (17.9%)	
			Female	453 (19.5%)	Professional 48 = 100%	M	39 (81.2%)
				F		9 (18.8%)	
20-49	75	1966 (100%)	Male	1446 (73.6%)	Labourer 1829 = 100%	M	1386 (75.8%)
				F		443 (24.2%)	
			Female	520 (26.4%)	Professional 31 = 100%	M	27 (87%)
				F		4 (13%)	
50-99	13	884 (100%)	Male	661 (74.8%)	Labourer 694 = 100%	M	509 (73.3%)
				F		185 (26.7%)	
			Female	223 (25.2%)	Professional 26 = 100%	M	26 (100%)
				F		0	
100-199	3	463 (100%)	Male	310 (66.9%)	Labourer 450 = 100%	M	300 (66.7%)
				F		150 (33.3%)	
			Female	153 (33.1%)	Professional 1 = 100%	M	1 (100%)
				F		0	

Despite this participation, evidence suggests limitations. Most contractors are willing to employ women for unskilled jobs. A few interviewed contractors mention that women do not apply for works in this sector. One interviewed labour subcontractor claimed that women require more rest than men and therefore are less productive. Most (labour sub) contractors assume women are unable to carry out skilled work or carry heavy loads. They believe that women are best suited to tasks like cleaning and preparing reinforcement for concrete structures.

All the interviewed female labourers work on the same project as their husbands. The prospect of waged work often attracts them from outside the area. When they migrate to a particular job, relatives at their homes take care of their children. Such couples expect to be hired as a pair, and because most male workers who migrate to work on these kinds of projects prefer to work full time, they do too. Employers are said to favour employing married couples because it reduces absenteeism of the male spouses, who would otherwise visit their homes at regular intervals.



The interviewed female workers do not seem to face difficulties in finding employment in the sector. Only one female worker mentioned that it bothered her that she is considered unqualified for skilled work because she is female. None of the interviewed men or women had ideas on how women could enter skilled jobs in the construction industry. Quite a number, again both men and women, think that it is impossible to do so.

As concerns wages, the LPA requires equality between men and women provided the work that is performed is of the same nature, quality and quantity. Table 8 shows that women in the construction industry are usually paid less than their male colleagues. The same table shows opposite trends in some other related industrial sectors.

Table 8: Average monthly wage, by industry/sex, 2001 and 2002

Industry	Male		Female	
	2001	2002	2001	2002
Agriculture	2511	2643	1988	2207
Mining and quarrying	8098	5702	-	-
Electricity, gas and water supply	14975	14617	15526	15580
Construction	4710	4662	4143	3903
Transport, storage and communication	9686	10604	13572	12570

This difference in average monthly wages in the construction sector is partly explained by the fact that employers do not employ female workers on skilled jobs. Male skilled workers seem to earn between 1.5 and 2 times more than their male unskilled colleagues. As seen in Table 9, female workers are paid less for work of equal value than their male colleagues. Male workers usually receive the minimum wage for unskilled work, but female workers are almost always paid less than the official minimum wage.

Table 9: Wages, range and average (Baht/day), 2002

Kind of Work		Contractors		Labour Subcontractor	
		Average	Range	Average	Range
Unskilled	Male	140	120-160	155	125-185
	Female	110	100-120	127	120-140
Skilled	Male	225	170-300	195	150-250
	Female	180	160-200	170	160-180

Under the LPA a pregnant female employee is entitled to maternity leave of not more than 90 days for each pregnancy, but according to the interviewed labour inspection

unit only the permanent employed female workers are entitled to maternity leave. Practices like maternity leave are still not common in the construction industry in the rural areas. Pregnant women usually do not apply for such jobs or stop work in the final stages of their pregnancy. Contractors do however allow maternity leave for their permanent female staff i.e. office personnel, but only one interviewed contractor knew the correct duration of the entitled period.

Although the LPA requires employers to treat male and female employees equally in their employment, and sexual harassment is likewise forbidden, only 50% of the interviewed workers, both male and female, think that employers treat both sexes equally. The situation among workers employed by contractors and those employed by labour subcontractor seems to be the same.

Child labour

The LPA sets 15 years as the minimum age for employment. The Act furthermore says that when a person older than 15 but under 18 years of age is employed, the employer shall:



- report the employment to the labour inspector within 15 days,
- prepare and maintain a record of conditions of employment of the person, to be held at the place of business ready for inspection, and
- report within seven days of the event, the termination of employment of the person.

A number of other special conditions are set for the employment of persons between the age of 15 and 18 concerning a one-hour rest break after four hours work, night work only with written permission, a prohibition of overtime and work on holidays, and other restrictions on the type of work that can be done, including no work on scaffolds higher than 10 meters.

The research team did not encounter children younger than 15 years old on the sites. Some persons younger than 18 but older than 15 were active as helpers. Contractors claim that these teenagers are only allowed to do light work, but receive the same wages as their mature colleagues.

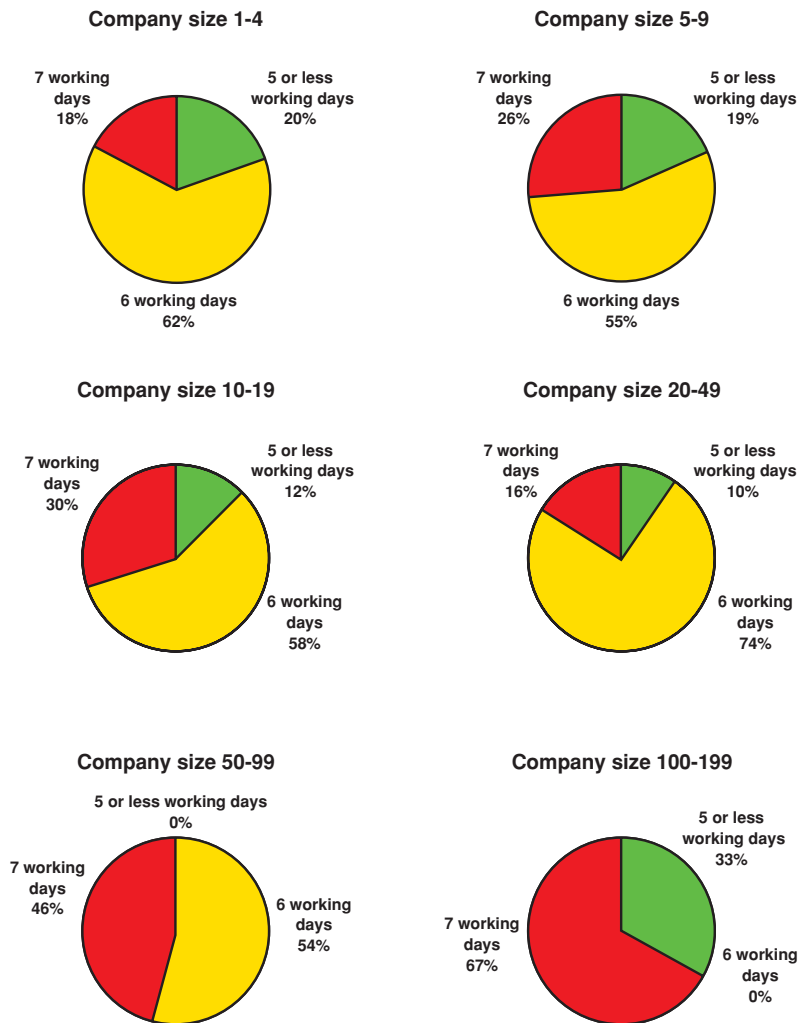
Working time and rest

The LPA requires the employer to inform employees of the starting and finishing times for each working day. The total working hours per day should not exceed eight and the upper limit per week is 48 hours. An employer must allow an employee a rest period of at least one hour once the employee has worked five consecutive hours during a working day, and at least one day of rest weekly.

An employer is prohibited from requiring an employee to work overtime without the employee's consent and from requiring an employee to work on a holiday. Exceptions are made for work that if not carried out would result in damage or is considered urgent and for certain specified industries; this would not include construction.

In practice, the study found that most workers (75.6%) work 7 days per week, some are given one day off (16.2%). A National Statistics Office study done in 1998 indicates that of all the enterprises surveyed, 17% of employees had 5 or less working days, 60% had 6 working days, and 23% worked 7 days a week. Figure 7 shows details of the study, according to company size.

Figure 7: Weekly working days by company size, private infrastructure, 1998



The study found that a normal working day starts at 08.00 hrs and finishes around 17.00 hrs. It is common for workers to take a one-hour break for lunch. Overtime rates vary between 100% and 200% of basic pay with the average rate paid being 158%. The overtime rate for 28% of the workers covered by the study was the basic rate.

Employees are entitled under the LPA to take sick leave if they are sick but are entitled to be paid only for 30 days per year.

In practice, contractors covered by the study do not establish rules with regard to sick leave. About half of the interviewed workers claim that they continue to receive 100% of their salary when they are sick whilst the other half interviewed said they do not receive any salary. Eighty three percent (83%) of the interviewed labour subcontractors said that they apply a "no work, no pay" rule in case of illness among their workers.

Occupational safety and health

The construction industry is recognised as being particularly hazardous and statistics in Thailand confirm this. Of the 2 million people employed in the construction industry in 1997, 38,848 construction workers are recorded as having suffered accidents, including 231 fatalities. These figures account for 16.9 per cent of all compensated accidents and 22.4 per cent of all occupational fatalities.

The most common reported accidents and illness are:

- Stepping on nails and other sharp objects
- Falling from scaffolds and ladders
- Objects falling on people
- Slipping
- Electric shock due to deteriorated insulation material of the cables
- Flu and fever

The lack of training of both supervisors and workers in the industry is seen to contribute significantly to the industry-wide accident rate. A significant proportion of construction workers are previous agricultural workers - many workers are still engaged in farming - with a low level of education and skills relating to occupational safety and health. This factor makes it difficult to maintain high standards of safety. Thus, in addition to the OSH training requirements for safety officers required under regulations mentioned above, employers must provide OSH training for new workers. However, there is a lack of guidance on how training might be conducted.

Numerous ministerial regulations have been made to address the problem of safety and health in construction. These include the Notification on Safety

Committees (1995) and the Notification on Safety Officer Training (1997). The former requires establishments with 50 or more workers to set up occupational safety and health committees consisting of representatives of employers and workers. The latter requires the training of safety officers and lowers to 50 the minimum number of employees where a professional safety officer must be employed. This legislation provides a basic safety management framework for enterprises. It is understood that the regulation applies to construction sites with more than 50 employees total, despite no employer having more than 50 employees.

A related administrative order requires that certain large public construction projects include specifications for a Safety Management System in bidding documents, and that expenses for the system may be specifically stipulated. Guidelines for Safety Management Systems in Construction have been developed and published by the National Institute for Working Conditions and Employment in the Ministry of Labour with this order in mind. This provision essentially means that contractors are expected to make explicit provisions for safe work, and pass related costs along directly to their public sector clients.

In fact, there are few enterprise-level training programmes that focus on construction safety. Table 10 clearly shows that the majority of the construction firms do not educate their workers on OSH issues. The larger the firm, the more likely information will be given.

Table 10: Contractors providing OSH and life quality information to workers, 1998

Size Company	Providing information (%)		
	All construction companies	Civil engineering contractors	Construction firms in site preparation
1-4	11	10.2	11
5-9	23.4	23.9	21.8
10-19	23.9	22.5	27.9
20-49	30.3	29.9	29.9
50-99	28.6	39.3	27.6
100-199	37.9	38.9	25.0
200-499	47.9	48.1	83.3
500-999	46.3	47.5	66.7
>1000	44.4	50.0	-

Standard construction contract documents hold the contractor responsible and accountable for site accidents, ultimately with a view to lowering accident rates. The contractor is required to hold valid insurance policies covering all workers. Upon request of the client, the contractor will submit the policy for verification. All insured workers receive a SSO card, which permits confirmation of their being insured. As mentioned, large contracts require contractors to submit their health and safety programme, including worker insurance against accidents, participation in the social security scheme, first aid procedures, protective gear, etc. Not only is this not a requirement for small and medium sized projects, but contract documents and specifications rarely describe minimum occupational safety and health requirements.

When asked in this study, contractors said that accidents would be reduced if additional protective gear were available, strict controls were required to ensure that protective gear is used, and detailed work instructions were given to workers. Among the labour contractors interviewed, fifty-eight percent (58%) believed that the provision of protective gear would reduce the accident rate, twenty-five percent (25%) believed that the site could be kept cleaner and forty-two (42%) say that it is necessary to provide more detailed safety and health instructions on site.

In practice, whilst most contractors provide protective equipment to their workers, the type and quality is variable and workers do not always use the equipment provided. It is interesting that the 86% of the labour subcontractors who call for provision of protective gear already provide protective equipment to their workers.

Finally, contractors usually arrange some latrine facilities (with water supply) and shelter against heavy rain. It is less common for the employer to provide canteen facilities.

Labour inspection can also help reduce occupational accidents. Table 11, shows that 15,455 safety labour inspections were carried out in 1996, and 12,325 establishments were inspected. Most of the inspections were general or follow-up inspections. Two hundred and forty (240) inspections were carried out in response to complaints and 161 after accidents. There were 7,015 violations (57%) at the 12,325 establishments inspected. The significant violations relate to fire safety (32.15%), electricity safety (8.78%), employees' work safety (7.58%) and machine safety (7.49%). In these instances, the most common action was to provide advice and warnings to employers. Only 106 cases were prosecuted.

Table 11: Safety inspections, 1996

Type of Inspection:	General	Complaint	Follow-up	Accident	Special	Total
Manufacturing	3,831	177	3,545	87	482	8122
Wholesale/retail, restaurants and hotels	2239	15	1,001	12	92	3359
Construction	1,423	28	574	52	232	2,309
Community, social and personal service	412	9	217	1	18	657
Financing, insurance, real estate and business services	299	3	117	2	26	447
Transport, storage and communication	165	6	106	2	14	293
Mining and quarrying	89	2	82	3	5	181
Electricity, gas and water	46	-	21	2	7	76
Unspecified	9	-	1	-	1	11
Industry						
Agriculture, forestry and fishing	-	-	-	-	-	-
Total	8513	240	5664	161	877	15455

Table 12 compares the number of compensated accidents and the number of safety inspections carried out in 1996. While the numbers of safety inspections are high for manufacturing and construction industries, the inspection frequencies are still not high for these industries if we take into account the number of accidents occurring. Since the data in Table 12 is derived through the workmen’s compensation system, the actual ratio of accidents per inspection for the construction industry could be much higher if all construction workers were, in actual practice, covered by the Workmen’s Compensation Scheme.



Table 12: Establishments, accidents & inspections, 1996

Industry	Number of establishments	A (Number of accidents compensated)	B (Number of safety inspections)	A ~ B (Accidents compensated/ No. of inspections)
Manufacturing	92,095	163,699 (70.63%)	8,122	20.2
Construction	18,562	39,788 (17.17%)	2,309	17.2
Wholesale/retail, restaurants & hotels	131,324	14,993 (6.47%)	3,359	4.5
Financing, insurance, real estate and business services	21,146	4,531 (1.96%)	447	10.1
Transport, storage and communication	9,542	3,690 (1.59%)	293	12.6
Community, social and personal services	42,365	1,763 (.76%)	657	2.7
Mining and quarrying	1,508	1,761 (.76%)	181	9.7
Electricity, gas & water	2,118	1,440 (.62%)	76	18.9
Agriculture, Forestry and Fishing	13,951			
Unspecified			11	
Total	332,611	231,665	15,455	

According to a survey of safety inspectors carried out in 1998, only 20% had a technical background in areas such as engineering, industrial hygiene and occupational health. The remaining majority of safety inspectors have a background in other areas such as law, economics and political science.

The right to organize.

The right of workers and employers in Thailand to organize is recognised and subject to the LRA. According to the law, trade unions need to be registered in order to operate legally and the support of at least ten employees is needed to request registration from the Registrar of Trade Unions. The LRA allows for three types of labour unions. The first type, namely company unions, can be established by a least 10 employees who work for the same employer or work in the same industry. Labour union federations can be established by not less than two labour unions that work for the same employer or work in the same industry. Labour union councils can be formed by at least 15 labour unions federations within the same industry.

On the employers’ side, the LRA allows employers to form employers’ associations. The first type can be established by at least 3 employers in the same industry. Employers’ association federations can be established by at least 2 employers’ associations in the same industry. And employers’ councils can be formed by at least 5 employers’ associations or employers’ federations.

Table 13: Labour unions and employers' organisations

	Labour Union	Total	Bangkok Metropolis	Regions
Trade Unions	State Enterprise Association	44	39	5
	Private Enterprise Labour Unions	1088	279	805
	Labour Union Federations	19	8	11
	Labour Union Councils	9	8	1
	Total	1160	334	822
	Labour Union	Total	Bangkok Metropolis	Regions
Employers' Organisations	Employers' Associations	226	166	6
	Employers' Assoc. Federations	3	2	1
	Employers' Councils	10	9	1
	Total	239	177	8



Concerning membership in organisations in practice, the results of this study are consistent with the findings of the 1998 study as seen in Table 14. The 1998 Labour Force Survey reported that 4.6% of all private sector wage employees in the country had a labour union in their workplace. Only 2.9% reported being members of a union.

Table 14: Construction establishments, member of employer/worker organisation, 1998

Size establishment	Total establishments	Member employer organisation (%)	Member Labour Union (%)
1-4	3991	0.6	0.4
5-9	2832	1.3	0.9
10-19	4084	1.2	0.7
20-49	3549	2.8	1.3
50-99	1128	6.4	2.8
100-199	480	7.3	3.1
200-499	242	9.5	4.1
500-999	54	11.1	1.9
>1000	36	8.3	11.1
Total	16396	2.1	1.1

Collective bargaining in Thailand is conducted mainly at the company level since by law trade union organisation is by enterprise or by industry. Information available to the study shows that there is no significant industry- or enterprise- level trade union movement, no construction industry-wide collective agreement, and only one collective agreement at the enterprise level.

In practice, employers usually issue work orders through a foreman. These leaders sometimes have limited discussions with the supervisors about working conditions and related issues. Nor is it uncommon for the PuWoD or TAOs to be pro-active in encouraging workers' organisations, or to organise the workers on their construction sites.

Insurance and social security

Decent work means workers are protected from the vulnerability stemming, among other things, from injury or death from accidents at work, loss of employment, and departure from the labour market because of old age. The study looked at these protections for construction workers in Thailand.

The SSA and the WCF establish the foundations of social security in Thailand. The SSO implements both laws, having gradually extended the provision of benefits in respect of seven contingencies: workmen's compensation benefits, sickness, maternity, invalidity, death, old age pensions, and a child allowance. Benefits for these contingencies are to be applied to workers in private enterprise having one or more employees.

In fact, a number of important exceptions are made to both schemes' coverage. One of particular importance for construction workers is of "casual employees or seasonally active employees". Nor are workers on force account projects executed by government departments covered. Indeed, since most construction workers are "casual employees or seasonally activity employees", they are likely outside of coverage under the SSA and the WCF.

In practice, the SSO reported that in 2002 301,518 establishments contributed to the social security scheme and covered 6,900,223, just over 20% of the recorded total labour force at that time of 33,860,800. The 1999 Labour Force Survey (LFS) included a question on whether employees of private establishments were covered under the SSA. The LFS data indicated that only 15% of Thai workers reported being covered under the SSA, with wide variations across different types of workers. Reported coverage was higher among private-sector employees (41%) than among state enterprise workers (22%) and government employees (14%), as public employees are already covered by other pension and medical benefit schemes. SSA coverage is negligible among other types of workers. Social security coverage also depends heavily on establishment size. Thus, employees in large establishments have near-universal coverage (91%), while only 43% of employees in medium-sized establishments are covered. Coverage in small establishments is negligible. Since contributions to the social security fund by the employer, employee and the government are compulsory for private-sector establishments, it implies that the large majority of medium- and small-sized establishments (those that employ between 1 and 99 workers) do not comply with the provisions of the SSA. Information published by the ILO in 2000 indicated that in 1998 54.9% of those employed in the private sector (17.4% of total employment) were insured under by the SSO.

Our study found that 37.8% of the interviewed workers say they are reported to the SSO. The study showed that knowledge among the workers about their possible coverage of SSO is low. Most people obtain information from their friends, relatives and colleagues - not from official sources. Information that is received can be erroneous as a result.



There are suggestions that, for better or worse, alternative arrangements may exist to protect against vulnerabilities otherwise dealt with by the Social Security Scheme. One needs to keep in mind each of the 7 contingencies in considering the issue of protection in spite of the exemption and less than 100% respect for obliged contributions to the SSO. For example, government standard contracts require contractors to insure all workers against work related accidents - this should take care of at least part of the harm caused by work related accidents; it is not known whether this cover includes future income lost as a result of an accident-caused permanent disability. The 30 Baht Health Care Card is intended to provide a level of universal, low-cost, basic health care. One worker claimed that her employer did not register her at the SSO because she had a 30 Baht Health Care Card. Under the law and according to the SSO in Chiang Mai, this is an unlawful practice since employers with more than 1 employee are to make contributions on their employees - with the exception of occasional daily workers. In another example of alternative arrangements, one TAO kept a financial reserve to cover costs in the event of serious accidents because most daily workers are not insured at the SSO.

The Provident Fund Act BE 2530 (1987) establishes a voluntary programme for employers and their employees to contribute to and be covered by a savings fund. The objective of the Fund is to provide security to employees in the case of death, termination of employment or resignation from the Fund. Table 15 shows that

contractors generally are not members of the Fund although large-scale contractors are more interested in participating than small- and medium-sized contractors.

Table 15: Construction establishments member of Provident Fund, by size

Company size (employees)	Contractors member of Provident Fund (%)		
	Contractors, all works	Contractors, site preparation	Contractors, public works
1-4	5.8	1.7	6.6
5-9	6.1	3.0	7.9
10-19	4.5	3.6	4.6
20-49	7.3	9.0	6.6
50-99	10.7	10.3	10.1
100-199	12.5	12.5	12.6
200-499	15.3	-	15.4
500-999	24.1	66.7	20.8
>1000	33.3		36.7

Low participation in the Provident Fund could be partly justified by the typical project-based employment relationship that exists in the industry. The study found that the fund is neither attractive to project workers nor their employers. Most contractors said they preferred to provide security from the vulnerabilities covered by the fund through informal processes.

Employer contributions under the SSA and WCF are considered a regular cost of doing business since they are not covered within the bill of quantities and bidding format.

As concerns the contingency of loss of employment, provisions in the SSA have only just come into effect, with contributions being collected since January 2004 and benefits being paid out since July 2004. In order to receive benefits, a worker must first be enrolled under the SSA and then have made at least 6 months of contributions. On the other hand, under the LPA employers are required to make severance payments in case of employment termination. It says that an employer shall compensate an employee whose employment has been terminated, according to the schedule in Table 16. Since the payment of severance pay is a legal requirement under the Labour Protection Act of 1998 and applies to all commercial businesses, all waged employees in the country, in principle, ought to be covered by severance pay. The benefit is first available to an employee who has worked a full 120 days.

Table 16: Service conditions for severance pay

Where the employee has worked a full:	120 days →	but not a full:	1 year, →	the employee is to receive at least:	30 days' wages
	1 year →		3 years, →		90 days' wages
	3 years →		6 years, →		180 days' wages
	6 years →		10 years, →		240 days' wages
	10 years →		no limit, →		300 days' wages

In practice, the relevance of severance pay as a form of insurance against unemployment is limited in Thailand owing to the small proportion of workers covered by severance pay benefits. Data from LFSs indicate that less than a third (32.4%) of all wage employees in the country - including a large proportion of government employees and employees of state-owned enterprise - were covered by some form of severance pay arrangement during the survey period, i.e. third quarter of 1999. Only 13% of all private-sector wage employees reported being covered by severance pay during the same period.

In our study, only one interviewed contractor said that he would pay severance pay to his permanent employees, but he didn't know what the rules were. Labour subcontractors do not offer severance payments.

Migrant workers

In practice, contractors and labour subcontractors use workers from other areas as well as from the vicinity of the project. In the cases looked at in the study, at most 40% of workers came from the direct vicinity of the project. Contractors said that workers from the vicinity are more absent from work on account of such things as attending funerals, family, domestic and agricultural obligations. This situation is exacerbated in the more fertile regions, in the north for example, where labour shortages in the construction industry occur during the harvest seasons. The labour subcontractors prefer to use the same - known - workers on all projects. This is not surprising as about two thirds (66%) of the interviewed labour subcontractors regarded absenteeism as a serious problem, because it slows down the progress and it is difficult to plan in advance. Working with known, if migrating, workers is

assumed to be the best way to control the progress and the quality of the works. The prospect of long term or renewable jobs is also a motivating factor. Force account projects tend to employ workers from within the vicinity of the project.

Traditionally, construction workers in Bangkok and the south were internal Thai migrants from the northeast who returned to their farms for 1-2 months a year. In early 1997, before the financial crisis, Thai construction employers reportedly accepted this seasonal migration by internal Thai migrants, but as Burmese migrants became more readily available, internal Thai migrants were reportedly fired if they left their construction jobs seasonally. In this manner, the number of foreign migrants employed in Bangkok-area construction rose, and some subcontractors came to prefer migrants. The internal Thai migrants employed in Bangkok-area construction complained that the presence of foreign migrants reduced their wages and opportunities. Many are not full-time construction workers who do little farm work in their villages of origin, but continue to return for weddings and celebrations. See the section below entitled Freedom to leave work for another aspect of decent work as particularly concerns foreign migrants.

Migrating Thai workers are typically provided with a camp and sometimes with food. If an explicit deduction is not made to wages on account of these benefits, this becomes an explanation for unskilled migrating workers saying that they accept a wage lower than the official minimum wage; the difference is seen as contribution for the provided camp and food.



The walking travel time between the camp and the site is usually less than 10 minutes and sometimes 20 minutes. However, in 15% of the studied cases the travel time was found to be over an hour. Interviewed workers who claimed to be often sick or exhausted, stated that improvements at the campsite and/or provision of transportation would improve attendance.

Interviewed contractors spoke of options to reduce absenteeism and its impact, in some cases with a view to reduce the perceived need for migrant workers. Some contractors said they have experimented with warning systems, increases and deduction in wages. One contractor mentioned that he would like to have a reserve pool of workers. A third of the interviewed labour subcontractors believe that warnings and punishment could reduce absenteeism. Another third believe that works should not be carried out during the agricultural peak seasons.

Posters warning about unsafe sex, and in particular HIV infection, are common in most cities and towns in Thailand. This, however, is a general campaign by the government, not related to construction projects.

Exchange of information and claims

Employers that employ ten or more employees are obliged by the LPA to have work rules in Thai language. The rules should, as a minimum, contain particulars of the following:

- Working days, regular working hours and rest periods
- Holidays and rules for taking holidays
- Rules governing overtime and work on holidays
- Date and place of payment of pay, overtime pay, etc.
- Leave and rules for taking leave
- Disciplinary code
- Complaints procedures
- Termination of employment, severance pay and special severance pay

The LPA specifies further some minimum requirements for the internal complaint procedure required to be part of the work rules.

The employer is required to announce the rules, write them down and keep them at his or her place of business, disseminate and post them for convenient access of workers, and send a copy of them to labour protection officials.

In practice, billboards presenting work rules can be seen in most medium- to large-scale construction projects. They are very rare on small projects. Work rules commonly cited on the billboards concern:

- Working hours
- Prohibition to gambling and drinking
- Use of safety gear

Although all interviewed workers were able to read and write, most of them have, unsurprisingly, never read the LPA. Nevertheless, 21.6% had read the document, but usually in relation to their work as an administrative officer.

Employers with ten or more employees are also required to keep and maintain in the Thai language a register of employees containing, for each worker, name and family name, gender, nationality, date of birth, present address, date of commencement of employment, position and duties, basic pay and remuneration, and date of termination of employment. The study did not collect information on this, in practice.

Freedom to leave work

Although our study did not uncover direct evidence of forced labour practices, anecdotal information suggests that the potential exists for a problem in this area. The risk attaches to foreign migrants. In order to work legally in Thailand, all aliens have to be permitted to do so by the Department of Employment of the Ministry of Labour. The work done by permitted alien workers must support economic development and transfer technology to Thailand. Employers are the key actors in the permitting process; only employers can seek a permit for a migrant labourer. Work permit fees to be paid by the employer for citizens of Thailand's abutting neighbours are shown in Table 17. In practice there may be additional fees for a photo identification card and a "return guarantee" that may be forfeited should the migrant worker disappear.

Table 17: Work permit fees, 2004 (Lao, Myanmar, Cambodia)

Duration of permit	Fees (Baht)	Approximate equivalent days' minimum wages (Bangkok, 2002)
1 - 3 months	450	2.75
3 - 6 months	900	5.5
12 months	1800	11

A work permit is valuable for a worker migrating to Thailand. With it the migrant is entitled to legal residence in the country. Without it, the resulting illegal migrant is subject to arrest, fine and deportation. As a result, concern can be voiced about possible practices that can limit legal migrants' freedom to leave work, such as:

- employers' retention of their workers' permits "for safekeeping;"
- the passing of the cost of permits on to the migrants through wage deductions, which, coupled with the levying of other fees for services such as housing and food, and the payment of sub-minimum wages, could result in a system of bonded labour;
- actual smuggling of labourers into Thailand where, because of the vulnerability arising from their illegality, they become forced to continue work with the exploiting employer.

While searching out these practices is well beyond the scope of this study - and none of the practices were inadvertently uncovered by the study - mention elsewhere of the elements discussed above warrant their being raised in this paper.

Findings and Recommendations

Several suggestions can be raised from the results of the study.

- Most workers on public infrastructure projects are employed by labour subcontractors who are usually not registered and are not well informed of the requirement of the LPA and other legal obligations. Considering particularly the usefully broad scope of the LPA, the Government of Thailand could require civil works projects to make copies of the LPA and other relevant documents - or abbreviated user-friendly versions - readily available to the work force. Other means of publicizing rights and related documents may also be considered.
- The Government may consider ratifying the ILO's Labour Clauses (Public Contracts) Convention, 1949 (No. 94).
- The Department of Labour is responsible for enforcing the LPA and the National Institute for the Improvement of Working Conditions and Environment (NICE) is responsible for promoting enforcement of the various safety and health regulations. Noting the provisions mentioned above for

contractors in larger public contracts to prepare and conform to safety plans in the bidding process, it is conceivable that some responsibility for the enforcement of the LPA could be shared - with adequate advance coordination and the development of human resources - with government officials involved in the supervision and management of publicly financed projects who are usually employed by the Client (TAO, PWD, Department of Highways, etc).

- Regulations of safety and health at work might benefit from consolidation. Indeed, so much has been indicated as a goal in the Master Plan for Occupational Safety, Health and Working Environment for 2002-2006. The Plan calls for a major review of legislation and enforcement methodology and techniques as well as extension of protections.
- Contract documentation could be used to inform contractors of their specific implementation obligations with regard the labour laws. It can also be used directly to further oblige contractors to respect national labour and social security laws.
- Concerning bidding, detailed and tailored bid formats could include all the costs related to the workers including anticipated numbers and therefore expected SSO contributions, provision of protective gear and wage-bill.
- Concerning social security schemes, project workers on force account projects are entitled to receive less in social benefits than workers in the private sector - when the latter group actually receives such benefits - particularly with regard to coverage by the social security scheme. Social security schemes - particularly where they involve large formal employers, both private and public - could be harmonized to level benefits.
- The LPA recognises both verbal and written employment contracts. However, verbal contracts are difficult to verify. Employers in the construction industry tend to prefer verbal contracts of employment because of lower administration costs. The real concern of most employers is that workers will be able to claim more benefits and protection with written contracts. Written employment contracts should be standardised through the industry in order to reduce administration costs and build in consistency. Such contracts should have built-in release clauses for all workers. Furthermore, employers need

project based employees. It is difficult for supervisors to monitor verbal employment contracts for many such employees. In most developed countries, project based employment agencies provide employers with flexible project based staff, working under standardized written agreements, to fill up the gaps.

- The majority of project workers do not properly learn of the duration of their employment at the time of employment. More open planning would inform the workers of the expected duration of their employment.
- Concerning work rules, notice boards/billboards could be erected at all sites to present work rules. Rules that are posted on notice boards should specify worker obligations and rights. Such billboards would help the government disseminate important information about the rights and obligations of both employees and employers. The contract should specify the location and type of information billboards should carry.
- With regard to gender, employers do not accept women as skilled workers and do not intend changing this view. The government could use their force account projects to showcase skilled women at work and help remove prejudices against women being employed and treated as skilled workers.
- Labour inspection units need their OSH technical capacity upgraded and projects in this direction seem to be underway. All contract documentation should include a comprehensive section on OSH. The cost of OSH provisions in all projects could be included in the contractor's estimate. Technical supervisors should monitor OSH and enforce existing rules and regulations. Contractors should take OSH more seriously and discipline workers that fail to adhere to OSH procedures.
- Many workers attributed illnesses to poor living conditions at labour camps used by migrant workers. Standard specifications should include guidance on minimum acceptable housing and feeding standards and these standards should be monitored as part of the contract.
- Workers should be paid equally for work of equal value, irrespective of whether they are male or female. Payment records should include workers' signatures for receipt of payments and be open for inspection. Workers should be given the opportunity to lodge complaints anonymously.

- Concerning purchase schedules and non-workable days, in many cases, the "no work, no pay" on-site practice does not comply with the LPA; better enforcement is required. Contractors and their (labour) subcontractors could be trained in preparing detailed cost estimates, also budgeting for non-workable periods and the preparation of material and equipment schedules.
- With regard to the motivation of workers, productivity based payment for labourers is not popular in Thailand. Contractors and their subcontractors could look into this issue because productivity agreements in other countries have improved production and given workers the opportunity to earn more.
- Concerning social security, a major concern of many workers is that they are not registered with the SSO. The government could tighten up enforcement of SSO membership and monitor compliance. It is more important, however for government to consider removing the limit of social security coverage attached to casual and seasonal workers. If this is not possible, further work is needed to create a method for providing social security benefits similar to those in the SSA's employment-based system.
- Few workers are aware of the provisions of LPA. The government could provide an easy to read summary of the most relevant clauses and distribute this guide through, for example, the SSO and TAOs.
- As concerns job security, there are two options that the implementing administrations can pursue to improve opportunities for work. The first involves using labour-based technology wherever technical and financially feasible. And second is the balancing the amount of work throughout the year, with the exception, perhaps, of the agricultural peak seasons, which often results in labour shortages. These measures would result in a situation where the implementing agency determines which technology will be used and is able to estimate the employment generation impacts of each project.
- The fact that reported levels of severance pay coverage are only a small fraction of legally mandated coverage levels suggests widespread disregard for the severance pay aspect of the LPA by establishments. Efforts could be made to expand knowledge of this right, particularly in the light of casual workers and seasonal workers being excluded under the SSA.

4

PROSPECTS FOR MORE DECENT WORK

The challenges for decent work in civil works in Nepal and Thailand are in many ways similar, yet different in the way they arise in each country's unique conditions. International experience - Nepalese and Thai - can strengthen efforts by each individual country to seek more decent work. For this reason, conclusions from the sister studies in these countries are presented together in this chapter.

Policies for Productive Employment Creation in Infrastructure

The ability of governments to put into place policies that create productive employment in the infrastructure sector has been proven over the past 30 years by ILO work in this field. Policies favouring labour-based construction methods have proven their ability to create productive jobs and quality infrastructure, and increase skills and incomes. In the cases of Nepal and Thailand, aggressive policies in this direction have not been systematically pursued, although methods upon which modern labour-based construction techniques have themselves developed, play an important role in the industry on account of domestic factors, not the least of which is the cheapness of labour. Indeed, the complementary realities of porous borders and poverty in surrounding countries might make labour-favouring policies in Thailand counter-productive, particularly where there is less than complete enforcement of laws under working conditions and benefits.

At least two areas can nevertheless be seen from this study to be dampening the potential for systematically creating productive jobs in the sector.

The first involves methods of contracting, including contract documentation. Documentation can be made friendly to labour-based implementation, if not outright preferential to such technologies. Smaller contracts, naturally favouring smaller contractors, also typically increase the employment creating potential of projects.

The second has to do with training for efficient labour-based execution of works. Despite the wide spread traditional uses of labour-based technologies in building, "modern" provision of infrastructure via such techniques can be frowned upon as being inferior. Training of local engineers, along with others responsible for contracting has been shown to be effective in winning trainees over to labour-based methods. Their greater acceptance improves employment creating potential along with the quality of works implemented with these methods.

Labour Policies and Practices

Once policies are put in place to support labour-based, job promoting technology in civil works, experience suggests that complementing decent labour policies and practices are needed to help ensure the sustainability of the employment policy. Pressures undermining the employment policy can develop without them. The experience in Nepal and Thailand - as captured in this study at least - does not typify those seen elsewhere, where working conditions can be so bad that workers, at the extreme, produce poor quality infrastructure, show high rates of absenteeism, are accident-prone, or strike. The rules of law and ideas of equity suggest, however, that steps could be taken in the area of labour policies and practices, to improve the prospects for more decent work.

This being said, realism requires that the vulnerability of workers in the construction sector - vulnerability that works against achieving decent work - be recognised. The short term, project nature of work in the industry is just the starting point. The abundance of labour, weakness of worker representation, lack of knowledge of rights, difficulty to pursue complaints, significant levels of illiteracy, all work against achieving more decent work. Efforts can, nevertheless be made, and successes achieved.

Laws and regulations

The scope of protective labour legislation in Nepal and Thailand as concerns workers in civil works can be contrasted. A hallmark of good national labour legislation - the rules that essentially define the basic elements of decent working conditions nationally - is first that the intended scope of coverage of the rules is clearly understood and can be implemented in the light of actual practice. Secondly, the intended scope of coverage should be such as to "make sense" in its drawing of distinctions between classes of workers.

Thailand's LPA is virtually all encompassing as a labour law since its scope applies to all workers except those employed by government or state enterprises, private schools, home and agricultural workers. Looking further at the law, there are virtually no attempts to limit, section by section, rights granted in it.

On the other hand, the Thai SSA and complementing WCF provide important social security benefits, but only to persons in employment and not in casual or seasonal employment. These limitations are understandable from a policy standpoint; social

security programme, even when they intend to be fully encompassing, take many years to be fully accepted within an economy and perceived to be a gainsaid part of the employment relationships. Several of the benefits made unobtainable by consistent employment in casual or seasonal contexts are, however, quite important. The Thai government has thus moved to fill the gaps that exist for persons not entitled to coverage by the SSA: medical benefits are made available through a universal plan for persons not covered by the SSA; accidental injury coverage through private or self insurance; unemployment benefits through severance pay requirements. None of these measures are fully satisfactory, however, for reasons mentioned in this study. Efforts undertaken to extend these aspects of decent work simply have to continue.

Nepal's LA, in contrast to the LPA, draws a distinction between persons employed in establishments that engage more than 10 workers or employees and those that employ fewer, assigning lesser rights to persons employed in the smaller establishments. Furthermore, the difference in protections given in Nepal to the two groups of workers are such as to cause the reader to think of the equity in the arrangement. What could justify giving a worker hired by a large establishment the right to a half-hour of rest after 5 hours of work, but not to a person employed by a small establishment? This goes also for provisions setting OSH and other standards. Taking into account the practice of engaging a labour force through Naikeas who often work with less than 10 other persons, an inequitable situation develops. Someone trying to understand the law begins to think that persons working under Naikeas ought to be covered by simple protections and thus perhaps starts to interpret the LA in a way not originally intended, assigning joint liability to contractors who muster a workforce through Naikeas. Without the benefit of explicit authoritative guidance on the meaning of the rules, confusion is the result of this scenario. And often workers are on the losing side of such confusion.

It is suggested that very careful consideration be given to broadening the scope of protections in the LA to ensure that full protections on basic elements of decent work are given to all workers, and not just those employed in enterprises (i.e. establishments with 10 workers or employees engaged). A close review and decision taking should be made concerning the legal responsibilities of contractors, subcontractors and Naikeas towards workers, particularly in the context of practical situations where ambiguities on responsibilities exist; the results should be recorded and publicized.

Recruitment policy and practice

Clarity in the terms of employment - as a dispute may at some point arise over those terms - is a matter considered to be an issue of decent work in both Nepal and Thailand. The methods sought to memorialize the agreement on terms differs in countries. In Thailand, oral agreements are acceptable; in Nepal employers of more than 10 persons are required to keep a register of workers with particulars of their jobs and a letter of appointment is also required for some posts; there are no requirements for smaller employers. The theoretical problems arising from actual practice in both countries - wide-spread use of oral agreements, the lack of registers among those employers who should have them, and reliance on social rather than legal contracts for abidance to agreements - are clear but seem not to be realized in practice. Nevertheless, efforts could be made to ensure that workers work under conditions required by law, whether by attempting to formalize in writing the tens of thousands of employment agreements made possible by the large amounts of public funds used to finance infrastructure development, or by publicizing as broadly as possible the required conditions.



Labour subcontracting arrangements used in Nepal and Thailand are, in themselves not inconsistent with decent work. There is some evidence to suggest, however, that financial arrangements with labour subcontractors can result in a bleeding of funds meant for workers' wages and benefits. In the absence of strong workers' representation, heightened monitoring by clients and government agencies responsible for the protection of labour seems the only viable option to ensure that workers get what they are entitled to and contractors and subcontractors do not unduly profit at their expense.

Job security

Jobs working on civil works projects are, by their nature, temporary and insecure. In addition, the vulnerability of employment to economic downturn has been seen in statistics showing lost jobs during the 1997 financial crisis in Thailand. Several approaches can be attempted to making work more decent in such circumstances. Requirements for notice can help workers prepare for the economic shock of lost employment, severance payments from the employer can help cushion the shock, and state-sponsored benefits in case of unemployment can provide a further economic bridge between periods without work. Some countries go even further by attempting to make it difficult to terminate employment, particularly for those with long tenure in employment.

In Nepal, there are certain requirements of notice and payment of financial benefits or partial wages applicable to establishments with 10 or more workers where workers are put in reserve or retrenched, but even these are not widely applicable in the construction industry since establishments of this size are permitted to employ temporary workers or muster a labour force by way of labour subcontracting. In Thailand the employment agreement controls but where there is no provision for an ending of employment, written notice must be given.

Evidence of practice meeting the national requirements for decent work in this area is sketchy. At least 2 factors are at play in this area. First, heavy reliance is placed by workers on labour subcontractors in both countries to find new work or otherwise provide support to workers between jobs. Second, income from agricultural occupation plays a role for some significant proportion of construction workers, thus giving these workers the possibility - depending on individual circumstances and season - to take up gap-filling occupations between construction jobs. Thus, it is not entirely clear if notice of an end to work is of fundamental importance for creating decent work. Study data, particularly that from Nepal, seems to support

this conclusion. And while income supports, either from the employer or through the state, would probably be welcomed, neither are a significant part of the definition of decent work for the large majority of construction workers, as expressed in either Nepal's or Thailand's legislative frameworks.

Remuneration and wage payment policies and practice

Whether productivity or time is the basis of remuneration in civil works, the critical elements for decent work is that workers receive the wages they are entitled to in a timely fashion and form, and that the wage level be adequate for a worker and his or her family.

In both Nepal and Thailand, the wages to which workers are entitled find a floor in a state-established minimum. It appears from the study that actual wages are above the minimum. This does not mean, however, that all workers receive all they are entitled to. As mentioned above, some employment arrangements make possible the taking of a portion of wages for having the job, or as a means of compensating the supervision provided by a Naikha. The strengthening of local monitoring mechanisms is the only method for really dealing with such practices, which often involve complex formal and informal contractual arrangements. This is also the case with deductions from wages. Thailand has established very specific rules on the point; Nepal would benefit from similar rules.

Whether decent work means that workers are paid for time they have reported for work but not been provided it because of bad weather, bad planning or bad management is a question of equity best decided nationally. It is not uncommon to see provisions in law obliging the employer to arrange for work whenever workers are present and ready to work. As noted in the study, a provision addressing the issue is found in Thailand. The practice of a few employers in Nepal of giving partial payment in such circumstances could benefit from formalization in law or regulation. From a management standpoint, as the study suggests, efforts to improve planning and management skills at the project and work site level may be at least as good or better at actually resolving the problem of workers coming to work and finding none.

Where wages are paid in a form other than money, decent work implies that workers not be obliged to monetarise unneeded commodities. The ILO and WFP have developed guidelines for helping to guard against such situations as they may arise in WFP-involved food for work programmes. A condition for the operation of such guidelines is, however,



that the work concerned should involve an employment relationship where the food that is given is actually part of a wage. This condition might not actually be the case in some types of activities undertaken by users' committees, depending on the details of such activities and particularly the relationship between the infrastructure being developed and the persons working to develop it.

Perhaps the most serious challenge to decently remunerated work has to do with equal pay for work of equal value, discussed in the following section.

Gender issues

It is not uncommon to have different rates of pay for people doing different jobs. It is assumed that different jobs' value to the production process justifies the difference in pay. Questions of gender equality arise, however, where the holders of particular lower paid jobs are women, or where women in such jobs are paid less than men doing the same job, or where women simply are not permitted to take higher paid jobs. In both Nepal and Thailand, women are held in unskilled jobs that pay less

than skilled jobs. Whether these jobs actually have the same value of others that are better paid - the women's work in head loading and removing earth is just as important for the progress of a project as the man shovelling earth into baskets for removal - can only be resolved by actually studying and valuing the jobs. Evidence in the study hints, however, at important discrepancies in actual employment and remuneration practices as between men and women. These deserve attention in the name of decent work.

Protective measures that are founded upon biological differences between men and women, particularly with regard to reproductive functions, are justified, and they have been set down in Thailand. Nepal may benefit from taking up the matter in its own defining of decent work.



Child Labour

Construction work is often dangerous or harmful to the health of workers. Limits ought, therefore, be placed on the involvement of young persons and children in such work. It is not clear from the study that all conditions concerning the lawful employment of young persons in construction work in Nepal and Thailand are fulfilled. It appears that there is also some unlawful employment of persons who are under the minimum age for admission to employment. Child labour arises out of poverty; it is a problem that is difficult to eradicate. In Nepal, the most explicit

employment of children in the construction sector is known - materials suppliers - and pressure is being applied to deal with the problem. Amendment of contract documentation to acknowledge recent adjustments to the minimum age for entry to employment would also further prospects for more decent work, along with improved monitoring of the situation locally.

Working time and rest

Overwork in construction is one of the basic ways of exploiting workers, not only in terms of physical exertion, but also decent and fair remuneration. Nepal has recognised this for all workers by setting limits for daily, weekly and overtime work, and requirements for overtime pay. Thailand has done the same. It is disturbing then that the study found that most, if not all, workers work seven days a week and for long hours. Only through closer monitoring of legal and contract obligations can decent work be promoted in the absence of strong local workers' organisations. Insisting on labour resource plans and detailed cost estimates would help clients assess if works are planned and executed in compliance with the law.

Occupational safety and health

The data collected in Thailand concerning occupational safety and health in the construction sector reveals that the area is one ripe for effort to promote decent work. Simple and inexpensive steps can be taken to prevent costly accidents, injuries and deaths that happen in usually dangerous construction work. Efforts are, in fact, being taken in this area in Thailand. Present standards, particularly in



Nepal, are minimum and standard specifications and/or procedures need to be adopted, and where adopted, promoted. Consideration should be given to strengthen response in this area by standardizing specifications of requirements, increasing knowledge and monitoring of requirements. This also includes consolidation of requirements for separate toilet facilities in Nepal and educational campaigns and methods (including social mobilises focusing on migrant workers) concerning safe sex.

The right to organize

The right to organize is considered fundamental because it is often the most basic way to assure decent work. Organized workers - and employers - protect themselves from exploitation. Workers and employers have the right to organize to protect their interests in Nepal and Thailand, yet strong local organisations ready to protect occupational interests have not developed. What can be done to promote voluntary organisation, with a view to promoting more decent work? For government, the answer from the ILO has almost always been that it should do less to intervene in any manner in efforts by employers and workers to organize in their own occupational interest. Workers typically need though protections from employer harassment that can be meted out to workers who attempt to organize. These are lacking or weakly enforced in our subject countries and need to be strengthened, as has been done elsewhere, if workers are to be able to stand up for themselves in securing decent work.

Insurance and social security

The relationship between insurance taken out by a construction enterprise and the programme of social security benefits made available by the state is well illustrated in our subject countries. Whether by private insurance cover or state programmes, in the context of decent work, the objective is protection against the occurrence of contingencies exposing social and economic vulnerabilities.

In general, the obligation to insure works is part of standard contractual obligations in the construction industry worldwide. Risks to workers typically to be covered include harm done by occupational accident and possibly lost income resulting from such harm. Risks typically covered by social security programmes often begin with occupational accident and resulting lost income, and quickly move to such things as unemployment, sickness, maternity, old age, invalidity and death risks.

In Nepal, obligations exist concerning insurance on works procured under model PWD contracts, but research suggests that with the exception of some donor-funded projects, employers in the rural infrastructure industry fail to insure their workers as required. Looking at the matter from the other side of the coin, casual or seasonal construction workers in Thailand are explicitly excluded from cover by the SSA, and benefits under obligatory contractor insurance cover likely does not match the level of the seven benefit areas available under the state's workers' compensation scheme.

When it comes to enforcing contractual obligations, consideration should be given to steps that can increase the accountability of contractors, and improve checks and balances built into the tender, award and payment processes. Consideration might be given to clients' themselves entering into insurance contracts with insurance companies. And information about coverage for costs of injury, death, and lost income should be passed along to workers.

Migrant workers

Is work more decent if local, and not foreign or non-local national migrant, workers do it? Factors in Nepal and Thailand seem to favour the use of migrant workers in certain types of projects. In some contexts, pre-existing obligations compete for attention with attendance at the construction site, making migrant workers more attractive than locals. Even when facilities need to be provided, study results show the employment of migrants to be an acceptable, if not outright attractive, option. Improving conditions in this context means accommodation of migrant workers and protection from the vulnerabilities arising from migration. Nepal has established requirements for temporary construction sites that are limited in their scope to work sites where fifty or more workers are engaged. Toilet facilities are lacking in sites, but then again there is no requirement for them in legislation; nor are requirements set in PWD standard contracts. Consideration might be given to rationalizing, publicizing, and strengthening efforts to enforce requirements for the accommodation of migrant workers in Nepal.

In Thailand, the study suggests that migrant workers sometimes have to pay for accommodations and/or food provided by the employer. Ideas of decent work suggest that practices should be made uniform with regard to employers' charging migrants for the cost of their being away from their home place, and that if those costs are to be borne by the worker, the employer should be required to place only reasonable prices on them.

Finally, decent working conditions should include strategies for combating the spread of HIV/AIDS in the context of migrant work should be pursued where workers migrate for employment.

Exchange of information and claims

The ILO views social dialogue and consultation as one of the 4 pillars of decent work. In the most basic of ways, at construction sites, workers and employers should share information, and it should be possible to easily pursue claims where rights and obligations are not met.

Illiteracy challenges efforts to broadly exchange information in Nepal. The UN's estimated illiteracy rate for Nepal in 2001 was at 40.6% and 76% of adult women and men, respectively. The rates may be higher for the population of unskilled construction workers. Consulting and dialoguing may be difficult in such an environment, although when it comes to their conditions of work workers' understanding of basic equity should not be underestimated. Rules for making conditions of work known ought to be consolidated and methods for making claims should be simplified and anonymity should be possible.

In Thailand, the industry is well enough organized to support efforts to better communicate terms of employment by small employers on smaller projects. Consideration might be given to extending requirements to issue work rules in Thai, now applicable to employers of ten or more persons, particularly if the industry practice can be consolidated to supplement LPA requirements.

Freedom to leave work

Modern forced labour is seen in a variety of forms. In the construction industry, forced labour issues can arise with the use of prison labour placed at the disposal of private enterprises and practical difficulties faced by workers in leaving their work, resulting in work voluntarily undertaken becoming forced.

The study did not find that forced labour, in any of its forms, is a significant problem in civil works in Nepal or Thailand. In Nepal there is some evidence to suggest that workers can owe at least some amounts of money to employers and thus continue working until the loan is paid off. The resources available to the study were insufficient to delve deeper into the practice, to examine, for example, how large the debts were, the circumstances of indebtedness, or the periods over which workers worked for the same employer in order to liquidate the debt. In



Thailand, arrangements for legalizing foreign migrant workers could, theoretically, be used by unscrupulous employers to bind workers. Similarly, further research on the point was impossible. Such research would be needed before a conclusion can be reached that either of these are a real problem in these countries.

More Decent Work

Construction work as practiced in Nepal and Thailand is hard and often dangerous work. While construction practices in these countries are hardly the least mechanized in the world, labour-based methods are nevertheless widely used. In such a context, there is room to pursue more decent work.

This paper has attempted to show the areas where more decent work may be pursued in this sector, in these countries. Stakeholders are urged to use it as a basis for consideration, consultation, decision-making and action taking with a view to improving the conditions of work of the significant numbers of their countrymen and women who toil in this sector.

**Notes for Chapter 1 Introduction:
The ILO, ASIST and Decent Work in Construction**

- Page 1, *Today, the ILO's mission* See *Report of the Director General, Decent Work*, International Labour Conference, 87th Session, 1999
- Page 4, *The studies nevertheless relied on a formal data collection methodology* The study in Thailand collected data through interviews with 37 workers, 6 contractors, 13 labour subcontractors, 1 construction industry expert, 3 Tambon Administration Office officials, 1 Public Works Department official, and 1 Social Security Office official. The 6 contractors interviewed in the study had average annual revenues between 20 and 1,000 million Baht and employing between 60 and 250 workers. The interviewed labour subcontractors had an annual revenue range between 0.5 and 2 million Baht. The study in Nepal collected data in 11 districts, of which 2 were in Terai, 1 in the mountains and the other 8 in the hills. In total 77 workers, 8 client engineers, 22 employers, and several labour inspector units and insurance companies were interviewed.

**Notes for Chapter 2:
Decent Construction Work in Nepal**
Notes within this Chapter may appear out of page order.

- Page 7, *USD263 million* NICMAR, 1998
- Page 7-9, *Figure 1, Figure 2, Table 1* Data from 1998-1999
- Page 9, *Nepal has adopted* DOLIDAR's Approach Manual
- Page 9, *Public Works Directives (PWD)* The PWD were produced in January, 2002 under powers conferred by Rule 62 of HMGN Financial Administration Regulations, and were approved by Cabinet on 8 April, 2002. They became legally binding after publication in the HMGN Gazette on June 17, 2002, and were subsequently published in the Rising Nepal and the Gorkhapatra on June 25, 2002.
- Page 11, *Employees and workers* The words *or wages* which appeared following the word *salary* in the law of 2048/1992, were deleted by the Labour (First Amendment) Act, 2052/1998.
- Page 11, *Giving women and men employment* *Local Infrastructure Development Policy and Strategy 2061 (2004)*, HMGN, Ministry of Local Development, page 6.
- Page 11, *Since the arrangement of laws* The law relevant for local bodies are the Local Self-Governance Act, 2055/1999, the supporting Local Self-Governance Regulation, 2056/1999 and the Local Body (Financial Administration) Regulation, 2056/1999

- Page 12, *The following requirements are also set for Enterprises* LA, 2048, §§ 4(2), 7, 9(1)
- Page 12, *The LA requires Proprietors to classify the jobs* Labour (First Amendment) Act, 2054/1998, § 4, amending § 4 of the Principal Act
- Page 12, *Under the PWD, contractors are encouraged,* POW sub-cl. 16.4 and sub-cl. 34.3
- Page 13, *The LA makes detailed provision for retrenchment* LA, 2048, §§ 11 & 12
- Page 15, *Minimum wage rates are fixed in Nepal* Labour Code, 2048/1992, §21
- Page 15, *The LA gives Proprietors* LA, 2048/1992, §§22 and 23
- Page 15, *The LA sets out prohibitions, ...* LA, 2048/1992, §§ 24 and 25
- Page 15, *Under the PWD, ...* PWD sub clause 34.2
- Page 18, *Allowable loads...* Labour Regulations, 1993, § 39
- Page 18, *With regard to wages, the 1990 Constitution provides...* The Constitution of the Kingdom of Nepal 2047/1990, Article 11, clause 5, and Labour Regulation, 1993, section 11 provide that in the event that male or female workers or employees are engaged in work of the same nature in an establishment they shall be paid equal remuneration without any discrimination.
- Page 18, *Women may not be generally* Labour Regulations, 1993, § 4
- Page 19, *Construction Enterprises have, however,* Schedule to the Child Labour Prohibition and Regulation Act, No. 14 of 2000
- Page 19, *The LA requires Proprietors* LA, §27, clause h
- Page 19, *The LA, as amended in 2000* Child Labour Prohibition and Regulation Act, No. 14 of 2000, §§ 3, 9, 28
- Page 19, *The Public Works Directives,* Standard Bidding Documents, Medium Contracts, Conditions of Contract, Clause 9.3
- Page 20, *In practice, the interviewed workers* *Child Labour in Stone Quarries, A National Survey Conducted By CONCERN-Nepal, 2002*
- Page 20, *On issues of working time,* LA, 2048/1991 §16 concerning working hours, § 18 concerning rest, § 19 concerning overtime pay
- Page 20, *The LA makes general provisions* LA, 2048/1991 §27, et. seq.
- Page 21, *As concerns labour matters,* *PWD Standard Bidding Document, Procurement of Works, Large Contracts*, Section XI, Explanatory Notes. These notes concern the recommended clauses 34 and 35 dealing with labour, and suggest use of sub-clauses 34.5, 34.6, 34.11, 35.2, 35.3, inter alia.
- Page 21, *The LA makes special provisions* LA, 2048/1991 §46
- Page 22, *For medium contracts, the PWD* *The PWD Standard Bidding Document, Procurement of Works, Medium Contracts*, Clause 66 Safety, Security and Protection of the Environment
- Page 23, *For medium contracts, the PWD* *The PWD Standard Bidding Document, Procurement of Works, Medium Contracts*, clause 13, Insurance

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- Page 23, *The LA requires proprietors* LA, 2048/1991 §46, clause c
- Page 25, *The PWD notes this. PWD, Part II Procedural Directives, II 2 Environmental Assessment, page 3-14*
- Page 26, *Collective claims* LA, 2048/1991 §74
- Page 26, *With regard to complaints,* LA, 2048/1991 §73. The English translation says that the worker *may* take the claim first to the employer. However, the remainder of the section and actual practice suggests that recourse *shall* first be had to the employer.
- Page 26, *Formal methods for filing* LA, 2048/1991 §73
- Page 27, *With regard to safety and health* concerning safe sex. The Asian Development Bank, Burnet Institute, UNDP and World Vision together developed a toolkit for HIV prevention among mobile populations. ILO ASIST-AP tested this toolkit on similar infrastructure projects and rated it productive for larger donor assisted projects.

Notes for Chapter 3: Decent Construction Work in Thailand

- Page 29, *Figure 3. Employment, by sector, 1989-2000 (in thousands)* Source - National Statistics Office
- Page 30, *The greatest number of layoff* Bundit Thanachaisettawut, Labour Review Center, 2001.
- Page 33, *Although the Public Works Department* Labour-based technology is a technology that produces infrastructure products and assets meeting the common applied quality specifications against the lowest possible costs. Usually in low and middle-income countries this technology has high labour-capital ratios and is more environmental friendly than the fully mechanized construction processes.
- Page 34, *The LPA covers all workers* Regulations have made exceptions with respect to employers in private schools, housework, non-profit organisations (Ministerial Regulation No. 1, 19 August 2541), agricultural and home work (Ministerial Regulation No. 9, 14 September 2541).
- Page 36, *In addition, other statistics* Incomplete comparative data for the utilities sector, from 1995 to 1999, National Statistics Office
- Page 36, *Minimum wage setting is handled* LPA, Chapter 6, §§78 - 91
- Page 36, *Figure 6, Source - Labour Force Survey*
- Page 36, *Table 4, Source - Minimum Wage Notification No. 9, 1 January 2002, Ministry of Labour and Social Welfare*
- Page 36, *Table 5, Source - National Statistics Office*
- Page 36, *Contractors who have employed* LPA, §12

- Page 36, *When an employer stops* LPA, §75
- Page 37, *Figure 6*, Source - National Statistics Office
- Page 37, *Concerning deductions from wages, the LPA* The LPA, §76, prohibits employers from making any deduction from the wages and other salaries, except for - income tax, contributions to a labour union, payment of debts to a savings or other co-operative of the same nature as a savings co-operative, guarantee money, employee welfare fund. Another law says that employers and insured employees shall pay the contributions at the rate of 3% of wages to cover six types of benefits, and the Government will also pay one part. The employer shall deduct wages of an insured person at the amount to be paid for contribution and pay contribution on the part of employer and employee within 15 days.
- Page 38, *Despite gender specific protective measures* The LPA, §§38 and 39
- Page 38, *Table 7*, Source - National Statistics Office, Construction Survey
- Page 40, *Table 8*, Source - National Statistics Office
- Page 41, *A number of other special conditions* , LPA, §§ 46-52
- Page 41, *The LPA sets 15* , LPA, §§ 44 and 45
- Page 41, *Table 9*, Source - Current study. The minimum wage varied between 130 and 143 Baht per day in the research areas.
- Page 42, *An employer is prohibited* , LPA, §§ 24-25
- Page 42, *The LPA requires the employer to notify* , LPA, §§ 23 and 28
- Page 42, *Employees are entitled* , LPA, §§32 and 57. The employer may require a medical certificate for medical leave of more than 3 days. Maternity leave is not considered to be medical leave.
- Page 43, *Figure 7*, Source - National Statistics Office
- Page 43, *The lack of training* , .The ILO has started in Thailand a participatory training on occupational safety and health at small construction sites called WISCON (Work Improvement of Small Construction Sites).
- Page 45, *A related administrative order* Cabinet's Resolution on measure for the prevention and control of accidents in construction work in public projects, approving the order in the letter of the Secretariat of the Cabinet No. NorRor.0250/7877 dated June 28, 2000. The order applies to construction work (i) with a total area of all floors or any floor in the same building exceeding 2,000 sq.m. or the building with height above 15 meters and with the total area of all floors or any floor in the same building exceeding 1,000 sq.m. but not exceeding 2,000 sq.m.; (ii) Bridge construction work with length over 30 meters or cross-over bridge construction work or overpass (flyover) or u-turn bridge or motorway interchange; (iii) utilities excavation or repair work or demolish with the depth over 3 meters; (iv) tunnel or archway work; (v) construction work with the construction value over 300 million Baht.

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- Page 45, *Table 10*, Source - National Statistics Office, Construction Survey
- Page 47, *Table 11*, Source - Labour Studies and Planning Division, Department of Labour Protection and Welfare
- Page 47, *Table 12*, Source - Yearbook of Labour Statistics, 1996
- Page 47, *Concerning membership in organisations in practice*, Labour Force Survey statistics cited from *Social Protection in Southeast and East Asia*, FES, edited by Adam, von Hauff, and John (2002)
- Page 48, *Table 13*, Source - *Occupational Safety and Health in Thailand, A Country Report for ILO/ADB RETA Project - 5887, Strengthening the Role of Labour Standards in Selected Developing Member Countries*, 2002, pages 35-36
- Page 48, *In fact, a number of important exceptions*, Section 4 of the Social Security Act excludes from coverage - 1. government officials and regular employees of the central administration, provincial administration and local administration except for temporary employees; 2. Employees of foreign governments or international organisations; 3. Employees whose employers who have offices is in the country but are stationed abroad; 4. Teachers or headmasters or private schools under the law on private schools; 5. Students, nurse students, undergraduates, or interning physicians who are employees of schools, universities or hospitals, and other activities or employees as may be prescribed in the Royal Decree. The Royal Decree excludes 1. employees of the Thai Red Cross, 2. employees of state enterprises; employees in agricultural activities, fisheries, forestry and livestock whose employers do not hire employees for the whole
- Page 49, *The Social Security Act*, The following major steps toward establishment of the Social Security Scheme in its current form took place in line with the development of the administrative capacity of the SSO. (i) In March 1991, the new scheme was applied to workers in establishments with 20 or more workers who were insured for sickness (medical care and cash benefits), maternity, invalidity and death. (ii) In September 1993, employees of establishments with ten or more workers were insured. (iii) In September 1994, self-employed persons were permitted to join the SSO scheme on a voluntary basis. (iv) In 1995, the maternity allowance was extended from 60 to 90 days, invalidity pensions became payable for life and survivors' grants were introduced. (v) In December 1998, old-age pensions and child allowances were introduced. *Decent Work for All - Targetting Full Employment in Thailand*, ILO/EAMAT/Bangkok Area Office, 2000, p. 42. From 1 April 2002, coverage was extended to enterprises with more than 1 employee. Promulgation to the Social Security Act B.E. 2533

- Page 49, *Indeed, since most construction workers are* The SSO officer that was interviewed was not clear whether contractors have to insure occasional daily workers, because a detailed definition of employed occasionally is not provided.
- Page 49, *In practice, the 1999 Labour Force Survey* *Thai Social Monitor - Thai Workers and the Crisis*, World Bank, 2000, p. 40
- Page 49, *Information published by the ILO in 2000* *Decent Work for All - Targeting Full Employment in Thailand*, ILO/EAMAT/Bangkok AO, 2000, p. 44
- Page 49, *Looked at from another perspective* Sources - Report of the Labour Force Survey, National Statistical Office and Contributions Division, Social Security Office
- Page 49, *The 30 Baht Health Care Card* Persons for whom SSO contributions are received are intended not to have the right to a 30 Baht card since their health care cover is provided under the social security scheme.
- Page 51, *In practice, the relevance of severance pay* *Thai Social Monitor - Thai Workers and the Crisis*, World Bank, 2000, p. 40
- Page 51, *Table 16*, Source - LPA, §118. The Act specifies methods for calculating a days' wage for purposes of the severance payment.
- Page 52, *Traditionally, construction workers in Bangkok* , *Thailand - Improving the Management of Foreign Workers*, ILO, 2003, page 44
- Page 53, *Employer that employ ten or more employees* , LPA, §108
- Page 53, *The LPA specified further* , LPA, § 109. The complaints procedure must specify 1. The scope and meaning of complaints 2. The procedures and steps for complaints 3. Inquiries and consideration of complaints 4. Process for ending complaints 5. Protection of complainants and persons concerned.
- Page 54, *Employer that employ ten or more employees* , LPA, §§ 112 & 113
- Page 54, *Although our study did not* , *Thailand - Improving the Management of Foreign Workers*, ILO, 2003, pages 23-24. *Brief Information Booklet* (64 pages), Department of Employment, Ministry of Labour, (undated) page 10
- Page 54, *Table 17*, Source - Interview, Ministry of Labour, Bangkok, 14 October 2004. See also, Minister Regulation, Prescribing Working of Aliens' Fees B.E. 2545

Notes for Chapter 4:

Prospects for more Decent Work

- Page 67, *Illiteracy challenges* , Source - www.unstats.un.org/unsd/demographic/products/socind/illiteracy.htm

ASIST AP is a regional programme of the Employment Intensive Investment Programme (EIIP) of the ILO, concerned with developing and mainstreaming poverty alleviation strategies through sustainable infrastructure development. The programme is implemented through four major fields operation, viz : accessibility planning, labour-based works technology, small-scale contracting and infrastructure maintainance, thus providing a comprehensive approach to infrastructure development covering all stages from planning and construction to maintainance and operation.

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