



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2008)¹: NEPAL

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES , except for the 2002 and 2003 Annual Reviews (ARs).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES , according to the Government: Involvement of the General Federation of Nepalese Trade Unions (GEFONT), the Nepalese Trade Union Congress (NTUC), the Democratic Confederation of Nepalese Trade Unions (DECONT), the National Democratic Confederation of Nepalese Trade Unions (NDCONT), the All Nepal Federation of Trade Union (ANFTU) and the Employers' Council of the Federation of Nepalese Chamber of Commerce and Industry (FNCCI), through communication of the Government's report.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations of the FNCCI comprised of 90 affiliates.	
	Workers' organizations	<p>2008 AR: Observations by the National Democratic Confederation of Nepalese Trade Unions (NDCONT) comprised of 20 affiliates, the All Nepal Federation of Trade Union (ANFTU) comprised of 22 affiliates, the Democratic Confederation of Nepalese Trade Union (DECONT) comprised of 25 affiliates and the General Federation of Nepalese Trade Unions (GEFONT). Observations by the International Trade Union Confederation (ITUC).</p> <p>2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU).</p> <p>2006 AR: Observations by the ICFTU.</p> <p>2002 AR: Observations by the ICFTU.</p> <p>2000 AR: Observations by the ICFTU.</p>	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Nepal ratified in 1996 the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98). However, it has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) (C.87).
		Ratification intention	<p>Yes, since 2000, for C.87 (in process since 2006).</p> <p>2008 AR: According to the Government: Nepal has already ratified C.98 and is now in the final stage of ratifying C. 87, which will be presented to the Cabinet for endorsement. The FNCCI expressed its support to the ratification of C.87 and indicated that it was currently being discussed before a tripartite committee. The NDCONT, the ANFTU and the DECONT supported the ratification of C.87. They indicated that a Central Advisory Committee under the Ministry of Labour has already endorsed the ratification of C.87. The document will be subsequently submitted to the Cabinet and the Parliament for final approval.</p>

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the Government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

			<p>2007 AR: According to the Government: The ratification of C.87 is in process.</p> <p>2001-2002 ARs: According to the Government: Nepal is in the process of amending minor clauses in the Police Act and the Military Act to introduce some reservations for these sectors for the purpose of the ratification of C.87. Moreover, a technical committee has been implemented to initiate the process of ratifying ILO core Conventions.</p> <p>2001 AR: Based on information in GB.282/LILS/7 and GB.282/8/2 (Nov. 2001): The Government intended to ratify C.87.</p>	
Recognition of the principle and right (prospect(s), means of action, main legal provisions)		Constitution	<p>YES</p> <p>2008 AR: The Government indicated that in the new Interim Constitution of Nepal, dated January 2007, the rights to freedom of association and to collective bargaining have been enshrined as fundamental rights. Several tripartite discussions have therefore been conducted to promote the PR.</p> <p>Article 12 of the Constitution of the Kingdom of Nepal guarantees to all the citizens the right to freedom to assemble peacefully and without arms and to form unions and associations.</p>	
		Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Policy <p>2006 AR: The Government indicated that it has developed a new Labour and Employment Policy and a National Plan of Action on Decent Work in consultations with the social partners and other stakeholders.</p> <ul style="list-style-type: none"> • Legislation <p>The Trade Union Act, 1993 and the Labour Act, 1992 deal with the principle and right (PR).</p>	
		Main legal provisions	<p>(i) Constitution (article 12); (ii) Trade Union Act, 1993, (iii) Labour Act, 1992.</p>	
		Judicial decisions	<p>2005 AR: The Government mentioned a case filed by the Jagriti Child Club in the Supreme Court in 1998 which had challenged the Government's decision to deny the registration of the Child Club as an organization based on existing Organization Registration Act, 1977. The Act demanded a citizenship certificate, which children cannot obtain until the age of 16. It was also argued that the children as minors are not able to bear all the responsibilities or the liabilities arising thereof. The Supreme Court declared the decision void in 2001. This decision had set a precedent and was considered to be a milestone in the children's right to association.</p>	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	<p>2004-2005 ARs: Government authorization or approval is required to establish employers' organizations, but not to conclude collective agreements. Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by all categories of employers.</p>

			For Workers	<p>2004-2005 ARs: Government authorization or approval is required to establish workers' organizations, but not to conclude collective agreements. The principle and right (PR) can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons: medical professionals; teachers; agricultural workers; workers engaged in domestic work; migrant workers; workers of 18 years old or over (16 years old in the 2004 AR); workers in the informal economy.</p> <p>However, the gazetted level civil servants engaged in the management of state affairs and senior level employees of public enterprises cannot exercise freedom of association (FOA). All workers in the public service and any group of workers that fails to organize into collective entities or unions cannot exercise collective bargaining.</p>
			Special attention to particular situations	NIL
			Information and Data collection	According to the Government: Lack of information.
		At international level	According to the Government: There are no particular restrictions for the international affiliation of employers' and workers' organizations.	
	Monitoring, enforcement and sanctions mechanisms	<p>2008 AR: The Government indicated that in the new Interim Constitution of Nepal dated January 2007, the rights to freedom of association and to collective bargaining have been enshrined as fundamental rights. Several tripartite discussions have therefore been conducted to promote the PR.</p> <p>2005 AR: According to the Government: Action is taken where FOA has not been respected. The principle is constitutionally guaranteed and legally protected in the country, in case of violation of this from any quarter; the concerned party can have recourse to the Labour Court or Appellate Court and even to the Supreme Court for remedies. Since 1996, Nepal has a labour court to deal with industrial disputes.</p>		
	Involvement of the social partners	<p>2006 AR: According to the Government: a new Labour and Employment Policy and a National Plan of Action on Decent Work have been developed in consultations with the social partners and other stakeholders.</p> <p>2000-2002 ARs: According to the Government: Consultations with the social partners concerning the ratification of C.87 have been held through the formation of a technical committee.</p>		
	Promotional activities	<p>2008 AR: The Government indicated that in the new Interim Constitution of Nepal dated January 2007, the rights to freedom of association and to collective bargaining have been enshrined as fundamental rights. Several tripartite discussions have therefore been conducted to promote the PR.</p> <p>According to the FNCCI: awareness-raising activities have been organized on the regional level together with workers' associations. The NDCONT, the ANFTU and the DECONT indicated that several meetings have been held by the Ministry of Labour in cooperation with ILO on FOA and the Declaration FPRW.</p> <p>2001-2002 ARs: The Government indicated that it had formed a technical committee with representatives from trade unions, employers' associations and non-governmental organizations (NGOs) with a view to ratifying ILO fundamental Conventions. In cooperation with the ILO it had organized a one-day workshop in Katmandu on November 1999 in order to raise awareness of all stakeholders at the national level on the liabilities linked to the ratification of the ILO core Conventions.</p>		

	Special initiatives/ Progress	NIL	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	2008 AR: The FNCCI raised the issue of the realization of the PR in the private sector with the creation of several new trade unions who have not only social but political demands.
		Workers' organizations	<p>2008 AR: The NDCONT, the ANFTU and the DECONT indicated that only the Defense Ministry, Ministry of Justice and Home Affairs Ministry do not agree on the ratification of C.87. Therefore, additional pressure is needed from all social partners. They also added that capacity building and scarcity of manpower are lacking in Nepal. Moreover, the worker's federations indicated that strike restriction remains a problem in practice even though the Essential Service Act was revised in April 2007.</p> <p>2007 AR: According to the ICFTU (Additional challenges): (i) the Government has revoked public servants' rights to belong to unions; and (ii) excessive strikes restrictions.</p> <p>2006 AR: The ICFTU raised the following challenges: (i) the Government again made abusive use of the Essential Services Act to ban strikes; (ii) even though the PR is recognized by law, the Government has not yet implemented all the provisions of these laws; (iii) restrictions at the enterprise level to form trade unions; (iv) strike restrictions; (v) only few workers are unionized in the informal sector that represents 90% of the national workforce.</p> <p>2002-2005 ARs: The ICFTU raised the following challenges: (i) restriction on strikes; (ii) trade unions are not recognized in the country as representatives of workers, (iii) no structure to bargain and collective bargaining is rarely practiced; (iv) union rights are denied to public officials and bank workers; (v) no trade unions in the informal economy although it represents 70 per cent of the workforce (especially in the agricultural sector).</p>
	According to the Government	<p>2008 AR: According to the Government: capacity of the tripartite social partners needs to be enhanced.</p> <p>2005 AR: According to the Government: The main difficulties encountered in Nepal concerning the realization of the PR are as follows: (i) lack of public awareness and/or support; (ii) lack of information and data; (iii) social and economic circumstances; (iv) political situation; and (v) lack of capacity of responsible government institutions.</p>	
TECHNICAL COOPERATION	Request	<p>2008 AR: The Government requested technical cooperation and assistance from ILO to improve the collaboration between social partners. According to the FNCCI: ILO technical assistance is needed to carry out training activities for workers and employers. It also requested that a country assessment be conducted on the Declaration follow-up. The NDCONT, the ANFTU and the DECONT required technical assistance from the ILO to facilitate the organization of workshops and training programmes intended to guide the workers on the issue of FOA. ILO technical assistance would also be needed to carry out a country assessment on the Declaration follow-up.</p> <p>The ITUC raised the following challenges: (i) the Government again made abusive use of the Essential Services Act to ban strikes; (ii) freedom of association is severely restricted, a prior approval must be obtained from the Regional Administrator or Chief District Officer to organize workshops, meetings or conferences; (iii) every year, thousands more women find themselves in domestic service, where there are no trade unions.</p> <p>2007 AR: According to the Government: Priority needs for technical cooperation to facilitate the realization of the PR exist in the following areas, in order of priority: (1) capacity building (Government institutions, employers' and workers' organizations); (2) facilitate the legal reform (labour law, trade union law and other relevant regulations).</p>	

		<p>2006 AR: According to the Government: The new Labour and Employment Policy and the National Plan of Action on Decent Work anticipate support and technical cooperation from the ILO and other agencies.</p> <p>2005 AR: According to the Government, priority needs for technical cooperation to facilitate the realization of the PR exist in the following areas, in order of priority: (1) strengthening capacity of employers' organizations, strengthening capacity of workers' organizations, sharing of experiences across countries/regions, capacity building of responsible government institutions, awareness raising, legal literacy and advocacy, strengthening data collection and capacity for statistical collection and analysis; (2) legal reform (labour law and other relevant legislation), strengthening tripartite social dialogue; (3) assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the principle, training of other officials (police, judiciary, social workers, teachers).</p>
	Offer	2001-2002 ARs: ILO
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS/ OBSERVATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) welcomed the inclusion of the principle and right within the Interim Constitution of Nepal. They also noted that restrictions on the right to organize of certain categories of workers in Nepal, such as domestic workers, are not compatible with the realization of this principle and right (Cf. Paragraph 34 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs listed Nepal among the countries that had been indicating their intention to ratify C.87 and C.98 for several years, with no indication that progress had been made (Cf. Paragraph 33 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2005 AR: The ILO Declaration Expert-Advisers listed Nepal among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification. Moreover, they hoped that the momentum of the positive dialogue on the realization of the PR would be kept and that the intention to ratify C.87 would be realized soon in Nepal (Cf. Paragraphs 13 and 139 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p>	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	