Decent Civil Works in Nepal: From Research to Action Planning

Series 8
Decent Civil Works in Nepal: From Research to Action Planning

International Labour Office in Nepal
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 Nepal section is reproduced here and published under the ILO Nepal Country Office's Decent Work for Women and Men in Nepal series.

The study in Nepal 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.

In at least two areas improvements can 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. Construction work as practiced in Nepal is hard and often dangerous work; while construction practices in this country 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.

Leyla Tegmo-Reddy
Director, ILO Office in Nepal
July 2005
The original Nepal study was implemented by Mr John van Rijn from ILO ASIST-AP. Mr Madhuba Lal Maskey, National Consultant, undertook the field work with inputs from Mr Jagannath Ojha, DOLIDAR representative and Mr Ganesh Ghimire. Ms Thanida Voraurai from ILO ASIST-AP compiled the findings.

The final and published version of the Nepal study underwent considerable revision and development by Mr David Tajgman to whom we are grateful. Acknowledgments are also extended to those in the Nepalese government and civil society groups who attended a workshop which presented the findings from the original Nepal study and provided valuable comment and advice. Finally acknowledgments are extended to Mr Bjørn Johannessen and Ms Chloë Pearse from ILO ASIST-AP who provided editing inputs and Mr Coen Kompier from the ILO Sub-regional Office in New Delhi, India who took time to provide comments and advice as well as Nita Neupane and Saloman Rajbanshi of the ILO Office in Nepal who backstopped the initiative.

Leyla Tegmo-Reddy
Director, ILO Office in Nepal
July 2005
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' organisation 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.
Foreword iii
Acknowledgements v
Executive Summary vii
Abbreviations xi

Chapter 1: Introduction: The ILO, ASIST and decent work in construction 1

Chapter 2: Decent construction work in Nepal 5
   The Nepalese Construction Sector in Brief 5
   Policies for Productive Employment Creation in Infrastructure 9
   Findings and Recommendations 23
   Notes 25

List of tables and figures

Table 1: Average monthly earnings, ranked by sector 6
Table 2: Wages in construction (in rupees) 13

Figure 1: Employment, by sector (in thousands) 5
Figure 2: Employment after agriculture, by sector (as percentage) 5
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CAN</td>
<td>Contractor's Association of Nepal</td>
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<tr>
<td>CAWUN</td>
<td>Construction and Allied Workers Union</td>
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<td>CBS</td>
<td>Central Bureau of Statistic</td>
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<td>CUPPEC</td>
<td>The Central Union of Painters, Plumbers, Electro and Construction Workers-Nepal</td>
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<td>DDC</td>
<td>District Development Council</td>
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<td>DECONT</td>
<td>Democratic Confederation of Nepalese Trade Unions</td>
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<td>DHPP</td>
<td>Department of Housing and Physical Planning</td>
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<td>DOH</td>
<td>Department of Highways</td>
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<tr>
<td>DOI</td>
<td>Department of Irrigation</td>
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<tr>
<td>DOLIDAR</td>
<td>Department of Local Infrastructure Development and Agriculture Road</td>
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<td>DOR</td>
<td>Department of Roads</td>
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<td>DSC</td>
<td>Department of Soil Conservation</td>
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<td>DWSS</td>
<td>Department of Water Supply and Sewerage</td>
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<tr>
<td>FCAN</td>
<td>Federation of Contractor's Association of Nepal</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GEFONT</td>
<td>General Federation of Nepalese Trade Unions</td>
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<td>GNP</td>
<td>Gross National Product</td>
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<td>HMGN</td>
<td>His Majesty's Government of Nepal</td>
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<td>IFBWW</td>
<td>International Federation of Building and Wood Workers</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<td>LA</td>
<td>Labour Act of Nepal</td>
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<td>LFS</td>
<td>Labour Force Survey</td>
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<td>MLD</td>
<td>Ministry of Local Development</td>
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<td>MOL</td>
<td>Ministry of Labour</td>
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<td>MOPPW</td>
<td>Ministry of Physical Planning and Works</td>
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<td>MOWR</td>
<td>Ministry of Water Resources</td>
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<td>NBCWA</td>
<td>Nepal Building and Construction Workers Association</td>
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<td>NEA</td>
<td>Nepal Electricity Authority</td>
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<td>NEWA</td>
<td>Nepal Electrical Workers Association</td>
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<td>NGO</td>
<td>Non Governmental Organisation</td>
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<td>NICE</td>
<td>National Institute for the Improvement of Working Conditions and Environment</td>
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<td>NLFS</td>
<td>Nepal Labour Force Survey</td>
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<td>NRs</td>
<td>Nepalese Rupees</td>
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<td>NTUC</td>
<td>Nepal Trade Union Congress</td>
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<td>NWSC</td>
<td>Nepal Water Supply Corporation</td>
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<td>NWWA</td>
<td>Nepal Wood Workers' Association</td>
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<td>OSH</td>
<td>occupational safety and health</td>
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<td>PWD</td>
<td>Public Works Directives</td>
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<td>PuWoD</td>
<td>Public Works Department</td>
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<td>RAP</td>
<td>Rural Access Programme</td>
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<td>RCIW</td>
<td>Rural Community Infrastructure Works Programme</td>
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<td>RID</td>
<td>Royal Irrigation Department</td>
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<tr>
<td>RIP</td>
<td>Rural Infrastructure Project</td>
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<td>SSO</td>
<td>Social Security Office</td>
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<tr>
<td>VDC</td>
<td>Village Development Committee</td>
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<tr>
<td>WB</td>
<td>World Bank</td>
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<td>WFP</td>
<td>World Food Programme</td>
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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 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 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?

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.
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 NRs. 18000 million in investment per year (about US$263 million). In terms of employment agriculture, forestry, and hunting occupy 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.

In relation to other sectors of economic activity, monthly 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).

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 ensure 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 Naike living in the direct surroundings of the project.

The informal group of construction workers, headed by a Naike, 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 there are not the contractors, users’ committees, the line Departments or DDCs who employ the majority of the workers. There are the labour subcontractors or Naikes that do. Naikes 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 Naikes 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, Naikes 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. Naikes 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 Naikes. The Naike 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 Naikes every now and then recruit new people into their group, they are usually family members or friends of existing members or of the Naike himself.

The main exceptions to workers not being recruited by Naikes 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. Piecwork 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 Naikes.

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 Naikes 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 Naike, although they do not receive any income during idle periods. Other ILO studies found that Naikes were helping their workers find work with other Naikes 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 Naike, 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 Naikes 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.

Concerning career development, new male workers are usually assigned to unskilled tasks, but over the years are given the opportunity to develop their skills. Most male workers who worked for several years for the same Naike develop their career into semi-skilled, skilled or even supervisory roles. Female workers are seldom given these opportunities and usually remain as unskilled workers.

**Remuneration and wage payment policies and practice**

Timely payment of adequate wages is a hallmark of decent work. The LA gives proprietors (establishments with more than 10 workers or employees engaged) the responsibility to provide remuneration to workers or employees of the enterprise. The proprietor may fix the period of payment of remuneration to workers or employees on weekly, fortnightly or monthly basis in a way not exceeding the period of one month, but this does not apply in respect of persons who are working on daily wages, piece-rate or contract basis. The LA sets out prohibitions, applicable to workers and employees, on deductions from salary and a complaint process for undue deduction or delay in payment.

Minimum wage rates are fixed in Nepal and published in the Nepal Gazette. Officially, every district has to set its own minimum wage. However in practice most districts apply the national norm. Under
the PWD, the rates of wages paid to the workers should not be less favourable than those established for the trade or industry where the work is carried out.

In practice, wages in the construction industry are usually higher than the established minimum wage. Even women, who in general are paid significantly less than their male colleagues, usually earn more than the minimum wage levels. The current minimum wage level is 74 rupees. The table below presents the wage levels found in districts with three topographical characteristics.

<table>
<thead>
<tr>
<th>Ecological Zone</th>
<th>No. in sample</th>
<th>MALE</th>
<th>FEMALE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terrai</td>
<td>11</td>
<td>200</td>
<td>150</td>
</tr>
<tr>
<td>Hilly areas</td>
<td>59</td>
<td>237</td>
<td>157</td>
</tr>
<tr>
<td>Higher altitudes</td>
<td>7</td>
<td>333</td>
<td>-</td>
</tr>
<tr>
<td>TOTAL</td>
<td>77</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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 Naikes 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 Naikes 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 6.

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 Naike 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 Naikes either a fixed sum for a certain output or a fixed rate for the number of workdays supplied; the Naike then pays workers only a part. In the latter case, the Naike 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 Naikes, because they profit considerably without bearing the burden of supervising the performance of the workers. In both cases the Naikes 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 worker 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, 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 *Naikes*. 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 *Naikes* 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 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 Naikes 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 Naikes. Even if the contractor would enter into a formal contract with a Naik, it still remains responsible for the provision of accident insurance for the workers.

In practice, where Naikes are involved, the large majority of the workers depend on their relationship with the Naikes for support when they or one of their family members is sick, has an injury or dies. In 50% of the cases the Naik provides the workers with cash advances or compensates for medical expenditures. This strengthens the relationship between the worker and the Naik. The Naik usually pays these costs from its own revenues. Naikes 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 *Naikes* 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 mobilisers 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.
Page 5, USD263 million... NICMAR, 1998

Page 5, 6 Figure 1, Figure 2, Table 1... Data from 1998-1999

Page 7, 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 8, Nepal has adopted... DOLIDAR's Approach Manual


Page 9, 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 10, 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 10, The following requirements are also set for Enterprises... LA, 2048, pages 4(2), 7, 9(1)

Page 10, The LA requires Proprietors to classify the jobs... Labour (First Amendment) Act, 2054/1998, page 4, amending page 4 of the Principal Act

Page 10, Under the PWD, contractors are encouraged... POW sub-cl. 16.4 and sub-cl. 34.3

Page 11, The LA makes detailed provision for retrenchment... LA, 2048, pages 11 & 12

Page 12, Minimum wage rates are fixed in Nepal... Labour Code, 2048/1992, page 21

Page 12, The LA gives Proprietors... LA, 2048/1992, pages 22 and 23

Page 12, The LA sets out prohibitions... LA, 2048/1992, pages 24 and 25

Page 12, Under the PWD,... PWD sub clause 34.2

Page 15, The LA requires Proprietors... LA, page 27, clause h

Page 15, Allowable loads... Labour Regulations, 1993, page 39

Page 15, 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 15, Women may not be generally... Labour Regulations, 1993, page 4

Page 16, Construction Enterprises have, however, ... Schedule to the Child Labour Prohibition and Regulation Act, No. 14 of 2000

Page 16, *In practice, the interviewed workers...* Child Labour in Stone Quarries, A National Survey Conducted By CONCERN-Nepal, 2002


Page 17, *The LA makes special provisions...* LA, 2048/1991 page 46

Page 17, *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 19, *The LA requires proprietors...* LA, 2048/1991 page 46, clause c

Page 21, *The PWD notes this.* PWD, Part II Procedural Directives, II 2 Environmental Assessment, page 3-14

Page 22, *Collective claims...* LA, 2048/1991 page 74

Page 22, *With regard to complaints,...* LA, 2048/1991 page 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 24, *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.