



Policy Analysis of Child Labour in Nepal

CLARISSA POLICY ANALYSIS 1

CLARISSA

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Objective

Commissioned by the CLARISSA Programme with the goal of describing the general policy environment around child labour in Nepal and identifying entry points for action, this analysis will enable programmes like CLARISSA to better support child participation and tackle the drivers of the worst forms of child labour. The core analysis for this document was undertaken by Mr. Chandrika Khatiwada and Ms. Nina Maharjan on behalf of the Institute for Legal Research and Consultancy (ILRC), Kathmandu, with additional analysis from CLARISSA partners and stakeholders.

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Child Labour: Action-Research-Innovation in South and South-Eastern Asia (CLARISSA)

is a consortium of organisations committed to building a participatory evidence base and generating innovative solutions to the worst forms of child labour in Bangladesh and Nepal.

SUMMARY

The Government of Nepal is committed to addressing the issue of child labour and to making Nepal child labour free, as evidenced through continued enactment and implementation of laws, policies, rules, procedures, strategies and standards. The commitments made to the Sustainable Development Goals (SDGs) and in international fora further encouraged the government to set and reach the goal of child labour elimination. However, a significant number of children in Nepal continue to work in dangerous and harmful conditions, known as the 'worst forms of child labour'. These forms of child labour are prevalent in the informal economy, which is generally outside the purview of governmental rules and regulation but which provides essential economic income to families living and working in Nepal.

OVERVIEW OF KEY CHILD LABOUR POLICY DEFINITIONS IN NEPAL

A child is a person who has not completed the age of 18 years (section 2(j) Children's Act 2075/2018)¹. For the purpose of section 2(a) of the Child Labor (Prohibition and Regulation) Act 2056/2000, a child is defined as a minor not having completed the age of 16².

Child labour. There is no definition of child labour under Nepalese law. Nepal has acceded to ILO Convention C138 Minimum Age Convention 1973 (No. 138)³ which demands the abolition of child labour (article 1) and the exclusion of children under the age of 18 from employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise their health, safety or morals (article 3). Under section 3 of the Child Labor (Prohibition and Regulation) Act 2056/2000, no child under the age of 14 may be engaged as a laborer and no child may be engaged in any risky business or work including hospitality, manufacturing and mining.

Child work. Children under the age of 16 may be engaged in work with the permission of the labor office under section 6 of the Child Labor (Prohibition and Regulation) Act 2056/2000⁴. No child may be asked to work past 6pm or before 6am⁵.

Hazardous work. There is no definition of hazardous work in Nepalese law, although under section 3 of the Child Labor (Prohibition and Regulation) Act 2056/2000, no child under the age of 14 may be engaged as a laborer and no child may be engaged in any risky business or work including hospitality, manufacturing and mining. Nepal acceded to ILO Convention C182 on the Worst Forms of Child Labour 1999 (No.182)⁶. Under the accompanying ILO R190 Worst Forms of Child Labour Recommendation, 1999 (No.190)⁷, hazardous work is defined as a subset of the worst forms of child labour and includes any work exposing children to physical, psychological or sexual abuse, dangerous machinery and difficult conditions (article 3).

¹ The Children's Act 2075/2018 is available at <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf>.

² The Child Labor (Prohibition and Regulation) Act 2075/2018 is available at <https://www.warnathgroup.com/wp-content/uploads/2017/10/Nepal-Child-Labor-Act.pdf>

³ ILO Convention on Minimum Age 1973 (C138) is available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C138:NO.

⁴ The Child Labour (Prohibition and Regulation) Act 2056/2000, is available at: <https://lawcommission.gov.np/en/?cat=367>.

⁵ Id. Chapter 3.

⁶ ILO Convention on the Worst Forms of Child Labour 1999 (C182) is available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182.

⁷ ILO Recommendation on Worst Forms of Child Labour 1999 (R190) is available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:SUP,en,R190,/Document.

Informal economy. There is no definition of informal economy in Nepalese law. ILO R204 Transition from the Informal to the Formal Economy Recommendation, 2015 (No.204)⁸ defines the informal economy as all economic activities by workers that are de jure or de facto not covered or insufficiently covered by formal arrangements and does not include illicit activities. Those employed in private households are regarded as in the informal economy.

Worst forms of child labour (WFCL). There is no definition of WFCL in Nepalese law. Nepal acceded to ILO C182 Worst Forms of Child Labour Convention, 1999 (No.182)⁹ under which WFCL includes slavery, debt bondage, compulsory labour, armed conflict, child prostitution, hazardous work (defined under ILO R190 Worst Forms of Child Labour Recommendation, 1999 (No.190)¹⁰, and illicit activities.

CONTEXT

- 1 While the Constitution of Nepal¹¹, the Labour Act (2017/2074 BS)¹², the Children's Act (2018/2075 BS)¹³, and the Child Labour (Prohibition and Regulation) Act (2000/2056 BS)¹⁴ all prohibit children to engage in risky work, child labour is still a major child rights violation and a child protection concern in Nepal.
- 2 In accordance with SDG target 8.7, the Government of Nepal has committed to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking, secure the prohibition and elimination of the worst forms of child labour, and end child labour in all its forms by 2025. At least two master plans¹⁵ have been endorsed by the Government of Nepal to address the issue of child labour.
- 3 Despite these commitments and three decades of the prohibition and regulation of child labour in Nepal, a significant number of children are still working as child labourers. According to the 2021 National Child Labour Report¹⁶:
 - Among seven million children (total children) between the ages of 5 and 17 in Nepal, 1.1 million children (15.3%) were found to be engaged in child labour.
 - Child labour figure amounts to 14.1% for children attending school while it is 25.1% for children not attending school.
 - About 0.2 million (3.2%) children are found to engage in hazardous work.
 - More males (3.7%) are engaged in such work in comparison to females (2.6%).
 - About 74% of children engaged in the informal sector work in hazardous conditions.

8 ILO Recommendation on the Transition from the Informal to the Formal Economy 2015 (R204) is available at https://www.ilo.org/dyn/normlex/en/f?p=NOR_MLEXPUB:12100:0::NO::P12100_ILO_CODE:R204.

9 Supra, note 6.

10 Supra, note 7

11 Article 15. The Constitution of Nepal (2015/2072) is available at <https://ncrc.gov.np/uploads/topics/16393880441375.pdf> and <https://lawcommission.gov.np/en/?cat=87>.

12 Article 5. The Labour Act (2017/2074) is available at <https://lawcommission.gov.np/en/wp-content/uploads/2021/03/The-Labor-Act-2017-2074.pdf>.

13 Article 17. Supra, note 1.

14 Article 3, inter alia. Supra, note 4.

15 UNICEF, Ten Year Master Plan on Child Labour, 8 July 2018, is available in Nepali at <https://www.unicef.org/nepal/reports/national-master-plan-child-labour-nepali-version>.

16 ILO and Central Bureau of Statistics of Nepal, Nepal Child Labour Report, 2021, Executive Summary Section, pp. 13-14, is available at <https://www.dol.gov/agencies/ilab/nepal-child-labour-report>

Factors leading to child labour

- 4 In Nepal, the practice of engaging children in household chores to support the family is an important part of childhood and is considered a normal part of growing up in Nepalese culture. But the work that children engage in to support their family should be light work for a limited number of hours without risking their health, safety, school attendance and play time. Likewise, the economic exploitation of children by engaging them in the worst forms of child labour, jeopardising their health, safety, and morals, is a matter of critical concern.¹⁷
- 5 Child labour is found in various sectors and forms across the country. Some sectors have a long history and are found across the country (i.e., the agricultural sector), whereas others have emerged in the process of changes in social norms and structure (i.e., various jobs in automobile workshops, children carry mercury lights for the whole night during wedding ceremonies, work in brick kiln, adult entertainment sector, jari work and others). In cities, children are more likely to be involved in sectors such as domestic work, the brick industry, the adult entertainment sector, the transportation sector, hand embroidery, begging and street vending, and the hotel and restaurant sectors. In rural areas, children are more likely to be engaged as porters or herb collectors or to work in the agricultural sector or in weaving¹⁸. According to the National Child Labour Report, 2021, there is a higher prevalence of children engaged in hazardous work in urban areas (3.3%) than in rural areas (2.9%).
- 6 Nepali children engage in child labour for various reasons. Research and Evidence Paper 4 of CLARISSA Programme found the root causes that led children to end up in worst form of child labour include family violence, parents addicted to alcohol, financial problem in family, parents' multiple marriage, peer influence, family health issues, abuse/beatings from family, school dropout and child marriage/elopement.¹⁹

Government mandate allocation and policy implementation

- 7 The impacts of the covid-19 pandemic have further exacerbated the challenges children face, especially for children from marginalised communities and children in WFCL. Many children lost their families and many jobs were lost, putting additional financial pressure on families. The government's increased prioritisation of health - and decreased prioritisation of the child protection sector - has further forced children to engage in WFCL for their own and their family's survival.²⁰
- 8 Another concern relates to the allocation of government roles and mandates concerning child labour to ministries within the federal government. While the portfolio on general issues related to children, including child welfare, rescue and rehabilitation as well as the inter-country adoption of children, sits with the Ministry of Women, Children and Senior Citizens (MoWCSC), the portfolio of policies and laws related to eliminating child labour belongs to the Ministry of Labour, Employment and Social Security (MoLESS).²¹ As a sectoral ministry for children and child protection, the MoWCSC has a degree of accountability for child labour as a child protection issue, but it has not been given a clear role in this regard. While the issue of child labour is inter-ministerial, there is limited coordination among the ministries. Consequently, the response to child labour is fragmented and not a priority in either ministry, resulting in a lack of leadership and accountability on child labour.²²

17 Chandrika Khatiwada and Nina Maharjan, A Report on Policy Landscape Analysis of Child Labour in Nepal, June 2022, p.17.

18 Id., pp. 17-18.

19 Elizabeth Hacker and Ranjana Sharma, Life Stories from Kathmandu's Adult Entertainment Sector: Told and Analysed by Children and Young People, December 2022, pp. 19-32

20 Nepali Times (2022) 'Nepal's long -covid impact on children', 25 January, available at <https://www.nepalitimes.com/latest/nepals-long-covid-impact-on-children/>.

21 Section 11. The Nepal Government Work Division Regulation (2074 BS), is available in Nepali at <http://www.moljpa.gov.np/wp-content/uploads/2019/10>.

22 Supra, note 17, pp. 33-34.

9 Chapter 6 of the Children's Act 2018²³ envisions a set of local level institutional mechanisms that could be implemented for children engaged in child labour, including Local Child Right Committees, temporary protection services, rehabilitation centres, establishment of a child fund for immediate rescue, relief and rehabilitation, and providing compensation to children, and the appointment of Child Welfare Authorities, social service providers and child psychologists concerning the rights of the child, child protection as well as the elimination of child labour. However, at most local levels, these mechanisms for child protection and child labour are yet to be established and functionalised. In local levels where such mechanisms are in place, deploying human resources and enhancing their capacity to function is a prime concern.²⁴

Children's participation

10 Article 39 of the Constitution of Nepal²⁵ guarantees some of children's rights to participation and chapter 2 of the Children's Act 2018 states:

*[A] child who is competent to form his or her own opinion shall have the right to participate in the decision-making process of family, community, school or other public institution or organization on the matters concerning him or her [and] every child shall have the right to open a child club or organisations or the right to assemble peacefully for the protection and promotion of the rights of the child.*²⁶

11 In Nepal, child clubs initiated and managed by children themselves are one of the most effective participatory spaces for children. Through child clubs' children learn new skills and gain knowledge which they cannot learn in other institutions such as school or home. The children themselves see the opportunity to do things together as a distinctive quality of the child clubs. The children obtain real life experience of how to make decisions together and manage their own organisation; designing and managing their relations democratically from an early age. However, according to reviews of child clubs in 1999 and 2011/12, many marginalized children are not fully included in these child clubs.²⁷ Consequently, children from marginalized communities, including the children who are engaged in worst form of child labour, lack the agency to express their views, influence decision-making and receive supported to take action to improve their lives.

23 Supra, note 1.

24 Supra, note 17, p. 32.

25 Supra, note 11.

26 Supra, note 1.

27 Jasmine Rajbhandary, Roger Hart and Chandrika Khatiwada, The Children's clubs of Nepal: A Democratic experiment, January 1999, is available in English at https://www.researchgate.net/publication/242687443_The_Children%27s_Clubs_of_Nepal_A_Democratic_Experiment



CLARISSA Nepal

In Nepal, CLARISSA is primarily focused on the WFCL in the Adult Entertainment sector and is coordinated by Voice of Children in partnership with CWISH and Tdh Nepal. The programme is collecting experiences of children working in WFCL and generating solutions based on the evidence.

Building on this evidence - extensive participatory processes, with children at the centre- will generate ideas and innovations to both shift the factors that perpetuate WFCL and improve the lives of those who have no choice but to continue working in these sectors.