

WORKING TOGETHER FOR STRONG SOCIAL DIALOGUE IN THE TOURISM SECTOR OF NEPAL

**CASE STUDY OF TREKKING GUIDES
AND PORTERS IN NEPAL**

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ABBREVIATIONS AND ACRONYMS

ACAP	: Annapurna Conservation Area Project
ANTUF	: All Nepal Federation of Trade Unions
ANTHCRWU	: All Nepal Tourism Workers Union
ATU	: Authorised Trade Union
CA	: Constituent Assembly
CBA	: Collective Bargaining Agreement
CLAC	: Central Labour Advisory Committee
DECON	: Democratic Confederation of Nepalese Trade Unions
GEFONT	: General Confederation of Nepalese Trade Unions
ILO	: International Labour Organisation
IW	: Informal Workers
JTUCC	: Joint Trade Union Coordination Centre
LRC	: Labour Relation Committee
MNC	: Multi-National Companies
NTB	: Nepal Tourism Board
NTUC	: Nepal Trade Union Congress
NTHCRWU	: Nepal Tourism, Hotel, Casino and Restaurant Workers Union
OHS	: Occupational Health and Safety
SD	: Social Dialogue
TAAN	: Trekking Agencies' Association of Nepal
TIMS	: Trekkers' Information Management System
UNITRAV	: Union of Trekking Travels Rafting Workers of Nepal

EXECUTIVE SUMMARY

The tourism industry, being the most potential industry in Nepal, is striding high to overcome the informal economy and its impact. Informal workers within the tourism industry in Nepal have the most risky jobs, yet they struggle a lot to have a decent livelihood and economic sustainability. The Tourism Act, existing policies and even the newly introduced social security act (contribution-based) still do not incorporate the issues of informal workers.

This study is an output of rigorous discussions and focus group discussions with workers, union representatives, employers, and government agencies.

Interviews were held at Kathmandu, Pokhara and Rasuwa, which are the cities on the first leg for tourists and workers in Nepal.

This report briefly describes and narrates social dialogue scenarios in the Nepali tourism sector. It presents the general process, stakeholders, enabling conditions for social dialogue linked to the livelihood opportunities of informal workers, more specifically of trekking guides and porters.

Recommendations strongly integrate the scenario and 'ground zero' issues.

FOREWORD

This research was commissioned by Mondiaal FNV within the scope of their Social Dialogue programme as part of the Trade Union Cooperation Programme 2017-2020. The research project aims to take stock and investigate in which ways issues of informal workers are addressed in social dialogue mechanisms and to what extent informal workers are or can be included. To be able to distil this macro-perspective, a micro-approach was adopted by zooming in on eight case studies across the world. Each case study pursued the same research objectives and investigated the related research questions as mentioned in the introduction. Each case study adopted a qualitative research approach looking into successful cases of “inclusive” social dialogue processes. Primary data was collected during 5 to 8 days of fieldwork and included semi-structured interviews, focus groups discussions, participant observation and in some cases participatory workshops. The primary data was contextualised via literature review as well as media and document analysis adopting a historical, political economy perspective. Following the Terms of Reference (TOR) developed by Mondiaal FNV, social dialogue and collective bargaining were defined as followed in all eight case studies:

“Social dialogue can be characterised by bipartite or tripartite bargaining and negotiation processes between government institutions, employer organisations/ employers and trade unions at four levels: internationally, nationally and at sector and company level. So, collective bargaining is seen as a part of social dialogue as well.”

Although specific attention was given to less-institutionalised forms of social dialogue by including the wide range of informal negotiation processes found in both the formal and informal economy.

The following report represents the research results of one of the eight case studies: Guides and porters in **Nepal’s** tourism sector and the sector-wide agreements that have been accomplished.

The other 7 case studies are about:

- Street-vendors in **India** and their adaptations to Town-Vending Councils as new social dialogue arenas
- Indirect workers (or tercerizados) in **Colombia’s** palm oil industry and their struggle for formalisation
- Boda boda (motor taxi) drivers in **Uganda** and the political tango they are in to protect their livelihoods
- Domestic workers in **Peru** and their collective action towards the ratification of ILO Convention 189 (on Domestic work)
- Market- and street-vendors in **Ghana** and the initial steps made by UNIWA towards local informal workers’ forums’
- Construction workers in **Rwanda** and the creation of various Memorandums of Understanding by tapping into the political priorities of the government.
- Informal construction workers and outsourced workers in the electricity sector in **Indonesia** making slow but steady gains in an uncondusive environment

These 8 cases show us that there is not one-size-fits all when it comes to social dialogue practices of informal workers. Nevertheless, another Mondiaal FNV’s research SOCIAL DIALOGUE AND INFORMAL WORKERS: WHAT WE CAN LEARN FROM 8 SUCCESS CASES summarises the overarching insights based on the comparative analysis of the eight case studies.

1. INTRODUCTION

The tourism industry is growing very rapidly and Nepal has tremendous potential for tourism development because of its unique natural and cultural heritage. It has contributed towards economic development and diversification by enhancing the national productivity and income, increasing foreign currency earnings, creating employment opportunities, improving regional imbalances and projecting the image of Nepal more assertively in the international arena. Nepal has the highest mountain in the world; Mount Everest. Eight out of 14 highest mountains above 8000 metres are situated in Nepal. Nepal has 10 national parks, reserves and conservation areas. Nepal holds a unique diversity with diverse ethnic groups and several kinds of floras and faunas. The history and hospitability of Nepal holds the never colonised history and age-old traditions still practised of living Buddhism and Hinduism. The other perspective endured by Nepali culture relies on the treating of guests as God.

There are many different kinds of informal workers in the Nepali tourism industry but we could argue that two specific groups form the backbone of the entire industry, namely: trekking guides and porters.

Trekking guides are in general literate and relatively more highly educated than porters. They are the guides and the logistic managers during the trek. They do not have to carry luggage other than their own bags and have more widespread access. Their job is relatively less risky compared to porters and the pay scale is higher than that of porters. Trekking guides are managed under the Trekking Agencies Associations of Nepal (TAAN) and it is mandatory for them to have a guide license. Their pay scale is on average above 23\$ per day and up to \$50 per day. Porters are the luggage carriers who carry luggage on their backs. Porters are hardly literate and their work is more exposed to risks. The rate of injury and accidents of porters is high as they climb uphill terrain with luggage on their backs. The pay scale of porters is significantly lower and is between the range of (13 to 20\$) per day depending upon the demand for porters and the number available.

Tourism is a service industry and it represents diverse places and peoples. The natural beauty, cultural

attractions and heritage sites have been attracting visitors to Nepal from across the world ever since the country opened its doors for foreigners in the 1950s. Three years after 1950, the climbing of Mount Everest attracted tourists. In the mid-90s, the tourism industry was affected by the insurgency between the state parties and the rebel parties. However, the end of the insurgency in 2006 and the signing of a comprehensive agreement increased the number of tourists; both international and domestic, in diverse sectors of the industry. Nepal, previously a unitary nation with a monarchical regime, which had a shift to a presidential regime with its new identity of becoming the Federal, Democratic, Republic of Nepal. Later, the Government of Nepal, came up with the Vision 2020 towards giving continuity to tourism growth and creating a prosperous tourism industry.

Tourism is often regarded as an extreme form of recreation, involving longer time periods, travelling longer distances and often staying overnight. According to Valene L. Smith, "a tourist is a temporary leisured person who voluntarily visits a place away from home for the purpose of experiencing a change". Nepal is renowned for adventure tourism due to its prominent peaks. The number of expedition teams permitted has reached 291, comprising a total of 2277 people. Of these, 1225 succeeded in reaching the summit of various peaks, of whom 692 were foreign and 533 Nepalese. The highest number of climbers comes from the USA, Germany and the United Kingdom respectively¹.

Both the formal and the informal labour sectors undergo the process of social dialogue in different contextual circumstances. The informal economy thrives in the condition where poverty is rampant, there is the prevalence of unemployment and underemployment, gender inequality occurs and in a context of precarious work. Workers in the informal economy differ widely in terms of income (level, regularity, seasonality), status in employment (employees, employers, own-account workers, casual workers, domestic workers), sector (trade, agriculture, industry), type and size of enterprise, location (urban or rural), social protection (social security contributions), and employment protection

¹Nepal Tourism Statistics,2017<http://tourism.gov.np/files/statistics/2.pdf>

(type and duration of contract, and annual leave protection). Extending coverage to such a heterogeneous set of workers and economic units requires the implementation of several (coordinated) instruments adapted to the specific characteristics of the different groups, the contingencies to be covered and the overall national context².

Social dialogue becomes a necessity when it comes to prosperity of the tourism sector as workers are the backbone of this industry. The guides and porters form an important ingredient towards the sustainability of

this tourism service industry. There are several issues on wages, occupational health and safety, insurance, training programmes that allocate space for social dialogue. Social Dialogue has been a key achievement of humanity and as a practice has now almost one century of history in the developed world. Social dialogue contexts and processes differ across countries as there is a variety of industrial relations models. Social dialogue occurs in a bi-partite form (collective bargaining), but more often also in a tripartite and sometimes tripartite-plus set-up.

²ILO: Extending social security to all: A guide through challenges and options (Geneva, 2010).

2. RESEARCH FUNDAMENTS

2.1 RESEARCH QUESTIONS

The research questions included:

1. What are the practices of social dialogue carried out by trekking guides and porters?
2. How is the social dialogue carried out towards resolving the contextual issues?
3. How are workers being benefitted by social dialogue?
4. What kinds of roles of are trade unions and stakeholders seen as playing in social dialogue?

2.2 RESEARCH OBJECTIVES

1. To analyse the effectiveness of social dialogue in informal sector workers.
2. To identify the social dialogue procedures carried out by the trekking guides and porters in Nepal.
3. To recommend trade unions and stakeholders in consideration to different facets of social dialogue.

2.3 RESEARCH METHODOLOGY

This research is qualitative in nature with purposive sampling and a descriptive research design.

It has undergone both primary and secondary data collection. The primary data collection in this report includes the first-hand information collected from the field through observation, interviews and focus group discussions. Whereas, the secondary data collection includes the desk review of journals, articles, newspapers, research reports and books.

The site selection of the field was carried out in two provinces of Nepal. The two provinces were Province 3 and Province 4. The site selection of these two provinces included Rasuwa and Pokhara respectively.

As most of the Himalayan region trekking is carried out from these two regions, the site seemed favorable for this research.

The interview with the chief executive officer concerned, from Nepal Tourism Board (NTB), has been mentioned in this research. This research also incorporates the interviews with the President of the Trekking Agencies' Association of Nepal (TAAN) both in Kathmandu and Pokhara. Moreover, it also incorporates presidents and members of three different trade unions working for the rights and prosperity of both trekking guides and porters. They are Nepal Tourism, Hotel, Casino and Restaurant Workers Union (NTHCRWU), All Nepal Tourism Workers Union (ANTHCRWU) and Union of Trekking Travels Rafting Workers of Nepal (UNITRAV). In addition; it includes focus group discussions with the Trekking Guides and Porters in both the selected sites. Furthermore, the Gender issues with regard to equality and equity is also one of the major components in this research.

The research has done its utmost to avoid ethical sensitivity and bias during the research study and research writing period. The ethical issues are handled sensitively and carefully during research while collecting data and conducting interviews. This research has ensured integrity and quality of scientific research. All the members and respondents were informed fully about the purpose, methods and intended possible uses of the research, what their participation in the research entails and what risks, if any, are involved. The Practice of "DO NO HARM" approach has been adopted in the entire data collection process.

3. BACKGROUND

3.1 TOURISM

Despite being one of the biggest industries and an economic backbone for Nepal, the tourism sector struggles in its labour relationships with several issues and debates. The trekking business relies entirely on porters and guides and their attitude during the whole trek. Any coldness between the guest and host is unacceptable and the paradox arises when the closeness between porters or guides and guests becomes so close that next time the tourist visits, he comes via another trekking agency recommended by the porters

or guides. This market shifting tendency has been a paradox while on the other hand the occupational health and safety considerations, accidental compensation, the accommodation quality for workers during a trek and the fluctuation of daily wages have made a remarkable impact on labour relation in the tourism sector.

Workers in the tourism sector evidently fall under the informal-sector worker category and these cyclical workers and provisions in respect of their rights are yet to be comprehensively addressed in policies.

CHARACTERISTICS OF INFORMAL WORKERS IN NEPAL

1. People work on the basis of verbal contract without letter of appointment
2. Uncertainty in works and working hours
3. Uncertain, unequal and irregular wage rate
4. Poor social security and insurance provision
5. High risk of unemployment
6. No mechanism for registration of informal sectors' workers
7. Unskilled and occasional work
8. No access to minimum benefits mandated by labour laws
9. No establishment of certain standards relating to migrant workers
10. Lack of maternity protection rights
11. Majority of small contractors/sub-contractors without legal status
12. Poor level of legal protection
13. Increased probability of exploitation of the worker
14. Wider involvement of women workers and marginalised people
15. Wider contracting system
16. Wider use of child labour
17. Less legal recognition of informal sectors
18. Informalisation of limited formal sectors
19. Minimal opportunities for collective bargaining and Social Dialogue
20. Less informed and empowered for active and meaningful participation in SD process.
21. Lack of alternative income/employment-generating environment
22. Lack of state investment in welfare of informal sector workers
23. Weak labour administration

3.2 SOCIAL DIALOGUE

The importance of social dialogue in promoting decent work conditions has been emphasised by the International Labour Organisation. In the context of labour relations, social dialogue refers to "interactions and interrelationships amongst the social partners that surpass, improve upon or enhance the traditional framework of classical collective bargaining and the central role of the collective agreement in labour

relations". ILO includes all types of negotiation, consultation or simply exchange of information between or among representatives of governments, employers and workers on issues of common interest relating to economic and social policy.

In the context of labour relations, social dialogue refers to an interactions and interrelationships among social partners. Negotiation, consultation and information

sharing³ are three major activities of social dialogue. Negotiation places an emphasis on collective bargaining at the enterprise, sectorial, regional, and national and even multiple level. Consultation focuses on engagement by the parties via exchange of views that can lead to in-depth dialogue. The parties participating in the consultations can engage in negotiations and the conclusion of formal agreements. This could be both bipartite and tripartite involving governments, workers and employers. Information sharing is considered a very important element for effective social dialogue as the real issues are discussed.

The history of Social Dialogue can be traced back to the late 19th and 20th century in Europe preferably with regard to dealing with conflicts between capital and labour. This resulted in the recognition of workers' rights including the right to trade union organisation. Social dialogue institutions can be bipartite, tripartite or tripartite plus.

Bipartism is a process of determination of a network of rules and regulations concerning terms and conditions of employment through consultation, negotiation, bargaining or other consensual processes. Tripartism, an important means of establishing social dialogue, refers to labour relations in which the State, employers and workers are autonomous yet interdependent partners with common interests. When bipartite dialogue does not lead to dispute avoidance or settlement, tripartite interventions like conciliation/mediation and arbitration/adjudication become necessary⁴.

3.3. HISTORY OF SOCIAL DIALOGUE

Social dialogue can take place in the form of simple exchange of information to more developed forms of information-sharing, exchange of views which can lead towards in-depth dialogue and collective bargaining. Major incidents and developments of Nepali industrial and political history are narrated and navigated with the highest participation and engagement of Nepali workers. Nepal shares a very recent industrialisation history dating from the 1950's. Gradually, as the labour movement started to contribute significantly to industrialisation and democratic consolidation, disputes and raised voices of workers started to demand proper legal provisions for addressing labour issues and concerns. There was a lack of defined structures, mechanisms and provisions for dispute resolution.⁵

Post 1990 is the start of a labour friendly era in Nepal during which the Labour Act 1992 was enacted. Labour Rules 1993 and Trade Union Act 1993 gradually legitimated the organising and collective bargaining process, making both the stakeholders of the employment relationship accountable to it. This also added newer dimensions of labour protection and promotion for government. These provisions and practices played a vital role in finding a common ground between government, employers and workers.

After the nation slowly started to stride forward after a decade long of conflict, informal sector workers from the agriculture, mining, construction and transportation sectors started to demonstrate their dissatisfaction and disagreement on their work and pay issues and several agreements have also been initiated. Similarly, tourism sector workers have also united in defence of their issues and fought for their rights on several occasions. Apparently not every issue was carried forward as far as the social dialogue process but those issues and the mechanism of the raising of labour voices have indeed created a balance in the orthodox mechanism in the labour employee relationships. Up to the present time, there have been a handful of social dialogues in the tourism sector.

There has been no quantitative research or study carried out to determine to what extent IWs are participating or have participated (at least once in their life) in the SD process but the sample areas and visits during the course of this study indicate some implications worthy of mentioning. 90 percent of the IWs have not even heard of collective bargaining whereas they consider SD merely as being one of the post-conflict problem-solving table talks. Only 3 percent or less of IWs have directly participated in an SD process which usually takes place outside their locality. Social dialogue generally takes place outside the work locality because the social dialogue process requires a representative from the labour union, employers' association and government as well if necessary. As the majority of SD stakeholders are based in urban cities, the SD often takes place in urban areas.

³<https://www.ilo.org/public/english/dialogue/download/brochure.pdf> (Social Dialogue by ILO)

⁴Best practices of Social Dialogue; ILO, 2003) <https://www.mol.gov.tw/media/3809754/best-practices-in-social-dialoguilo.pdf>

⁵Informal sector and labour right by Bishnu Rimal, www.bishnurimal.com.np

- **UNITRAV (Union of Trekking Travels and rafting Workers)**

The “Union of Trekking Travels Rafting Workers Nepal” (UNITRAV) is a trade union for those working in the trekking sector, for example guides and porters, as well as many others in the travel, rafting, airlines and cargo sectors in Nepal. It is the registered trade union which is actively working to achieve higher standards of welfare, employee rights and social respect on behalf of all of these workers. This is a union organises both men and women guides and porters in the informal economy. Since, its official registration in 1994 it has been actively involved in also being the voice of trekking guides and porters and has been endeavouring to address the different diverse issues via bargaining, negotiations and social dialogue. UNITRAV is affiliated to the General Federation of Nepalese Trade Unions (GEFONT).

- **NTHCRWU: (Nepal Tourism, Hotel, Casino and Restaurant Workers Union)⁶**

NTHCRWU was established in 1990 with the major objective of securing trade union rights for the workers in this sector. It is affiliated to the Nepal Trade Union Congress (NTUC).

- **All Nepal Tourism Workers Union (ANTHCRWU)**

It is affiliated to the All Nepal Trade Union Federation (ANTUF). This union has been working on the trade union rights of porters and trekking guides for several years now, but is not very active.

- **Trekking Agencies Association of Nepal (TAAN)**

It is an umbrella association of trekking agencies in the country. This organisation was established in 1979 by a number of trekking agency operators with the aim of creating effectiveness and efficiencies in the trekking agencies and regulating the tourism industry. This is a strong lobby group that makes suggestions to the government concerning issues to promote the Nepali tourism industry and develop tourism as a revenue-generating industry.

3.4 LEGAL FRAMEWORK SUPPORTING SOCIAL DIALOGUE IN NEPAL

Informal economy work prevails in the rampant and very low economy but these workers have less access to legal provisions in contrast to formal sector workers. Whenever SD process needs to make reference to provisions or laws specific to IWs, there has always been a

confusion. IWs workers are the most vulnerable workers with a huge risk in terms of their work environment but legally they are addressed through very generic and openly interpreted provisions/laws. The Labour Act 2017 has just three fundamentals: to be open ended and not objective-oriented and to specifically address the tourism sector work. This open interpretation weakens labour rights and creates a fair number of loopholes during its implementation.

CONSTITUTION OF THE FEDERAL, DEMOCRATIC, REPUBLIC OF NEPAL⁷

The new constitution of Nepal, which was promulgated in 2015, enshrines workers’ rights as a fundamental right. This is the first time that workers’ rights have been secured and prioritised in the form of fundamental rights.

Article 17: This article is about the right to freedom, which also ensures freedom to practise any profession, carry on any occupation, and establish and operate any industry, trade and business in any part of Nepal. This article also highlights the freedom to form unions and associations.

Article 18: This article ensures the right to equality and is against discrimination in any forms and of any kind.

Article 29: This article incorporates the right against exploitation. It clearly specifies that no one shall be forced to work against his or her will.

Article 33: This includes the right to employment, stating that every citizen shall have the right to employment and the right to choose employment.

Article 34: This article includes the fact that every labourer shall have the right to fair labour practice. The “labourer” means a labourer or worker who does physical or mental work for an employer in consideration for remuneration. It further considers the right to appropriate remuneration, facilities and contributory social security. In addition, it includes the worker’s right to join a trade union and to engage in collective bargaining, in accordance with law.

Article 43: This article focuses on the right to social security.

Freedom of Association, Social Security and Collective Bargaining has been specifically mentioned under different articles. Under the right of freedom, every citizen is given the freedom to form unions and associations.⁸ The constitution has granted to every citizen the right to employment and choice of employment.

⁶<http://ntuc.org.np/affiliates/details/286>

^{7,8}The Constitution of Nepal 2015

The ensured right of a worker to progress is one of the new kind of rights that was intended to formally legitimise the collective bargaining right of workers and to enhance the possibility of dialogue with the bipartite, tripartite and tripartite-plus partners.

- Labour Act and Trade Union Act⁹

The Labour Act 2017 (2074 B.S.) is applicable to all entities regardless of the number of workers/employees. This Act has been accompanied by several progressive amendments that have ensured the rights of workers. This new Labour Act has identified five kinds of employment; regular employment, work-based employment; time bound employment, cyclical (informal) employment. This Act also makes provision for a safety and health committee. In addition, it also mentions the provision of a collective bargaining committee. The provision for strikes is also a feature of this Act. As per the new Act, strikes can be undertaken by simply giving notice to the management and other security agencies. Section 52 of this Act mentions the eligibility to the provident fund from the first day of employment. The penal provisions for misconduct are another basic feature of this report. The Labour Court and its composition is the other facet of this act.

What is significant is that the Labour Act has introduced several progressive amendments. The previous Labour Act of 1992 had few provisions requiring the necessity for change as per the favorable contextual situation. The Trade Union Act 1993 A.D. also incorporated the collective bargaining procedures. This Act has yet to be amended to include further benefits for the Nepali trade union movement. The two Acts are Acts specifically dedicated to the protection of workers. The collective bargaining rights of the workers at different levels have been provided for. The Trade Union Act 1993 has incorporated the specifically defined mechanisms of collective bargaining, grievances handling and disputes settlement. The Labour Act has provided for the two mechanisms in labour dispute resolution, the procedures for individual complaints and complaints about the collective disputes. Both complaints processes have sufficient avenues for the bipartite and tripartite discussions.

Clearly there are no such legal frameworks specially and exclusively for informal workers, legally the mention of informal worker has been enshrined in the new Social Security Act 2017 and amended Labour Act 2017 A.D. Its implementation has therefore yet to be seen.

SPECIAL PROVISIONS RELATING TO TOURISM WORKERS¹⁰

The Labour Act 2017 has introduced special provisions relating to the tourism workers. It clearly mentions three provisions. They are as follows:

- 1) The duties of the employers towards the tourism workers shall be as follows:
 - a) provide sufficient quantity of medicine and medical treatment items for first aid when sending workers to the workplace;
 - b) rescue or try to rescue in case of an accident or serious health problem of any worker.
- 2) The worker, when working in the workplace shall be provided either field, food and other similar allowances or remuneration at the rate of 1.5 times of the ordinary remuneration as per his/her choice between these two benefits.
- 3) The employer operating any hotel, motel, restaurant, jungle safari or any other similar kind of business shall distribute service fees collected pursuant to collective bargaining as prescribed.

- Contributions Based Social Security Act 2017 A.D.¹¹

The contribution based Social Security Act has for the first time been enacted in Nepal. The Act has a provision to ensure the rights of the workers based on the concept of contributory social security and to provide social security based on the contributions made. This Act has the provisions to enlist the self-employed and the employee from the informal sector. To ensure their participation and involvement, the coordination with cooperatives and other institutions has been mentioned. Moreover, several plans can be formulated as per this Act. Furthermore, the Social Security Act specifies a number of schemes including a medical and health protection scheme, a maternity protection scheme, an accidental protection scheme, an old-age protection scheme, a dependent family protection scheme, and an unemployment protection scheme. The contributions/based Social security Regulations and the Directives have further paved the way for the rights of workers.

⁹<http://www.lawcommission.gov.np/np/> (Labour Act 2017,Trade Union Act 1993)

¹⁰<http://www.lawcommission.gov.np/np/> (Chapter 13 ,Labour Act,2017)

¹¹<http://www.lawcommission.gov.np/np/> (Social Security Act,2017)

- National Employment Policy 2014¹²

The National Employment Policy has basically focused on the industrial labour relation for encouraging employment/friendly investments. The main focus of this policy is maintaining a sound industrial relation through the establishment of harmonious relations between the trade unions and employment providers. To achieve the objectives, the policy has been designed with the constant encouragement of the trilateral and bilateral consultation and partnership between the government, employers and workers for increased productivity. The promotion of social dialogue for developing industrial relations, resolving the disputes and to institutionalise it at the policy making level has been included in the policy.

- Social dialogue in Labour Act

The Labour Act 1992 had provided for enterprise/level trade unions, including the right to collective bargaining, and the current Labour Act 2017 has also given this right to social dialogue at the industrial level. Those organisations that have more than ten workers are entitled to a collective bargaining committee falling into three different categories.¹³ This includes the enterprise level. Enterprises in the tourism sector are large in number and they have the power to start collective bargaining. However, informal workers are unaware of their rights unless they belong to or are otherwise connected with trade unions.

- Tourism Act 1978¹⁴

This Act has been amended time and again as per the contextual necessity. This Act has defined the operational definitions of the guides and workers. The mountain guide here means the person who has to help or assist the climbers above the base camp. The high altitude worker means the worker who transports essential goods to and from, above the base camp. Local worker means porter who transports goods to and from the base camp. Tourist guide means a person who holds a license to work as a tourist guide with the tourist upon charging remuneration. The first amendment of the Act made modifications: high altitude worker instead of high altitude guide and local worker instead of porter.

Chapter five of this Act has a provision relating to tour guides. A licence is one of the necessary aspects in order to become a tour guide. To obtain a licence, an examination and a training course is considered important. The validity of their license is 5 years. However, having a license means they are merely certified and legally accredited to be a guide but that doesn't make them a formal worker. Guides and porters working without a licence is considered illegal. It is compulsory to apply for a licence if one carries out this type of work. An entire group of tourism sector workers in Nepal falls under the category of cyclical and IWs.

- Tourism Policy 2008¹⁵

This policy has addressed the pertinent issues such as rural tourism, adventure tourism, education tourism and health tourism and has prioritised the insurance of tourism entrepreneurs. This policy has aimed to diversify the tourism products and services, taking tourism to new areas. The leading role of the private sector is referred to. The focus is on a partnership approach; public-private-people partnerships. It emphasises rural tourism, community-based tourism and homestay tourism. It includes the formation of tourism coordination committees and crisis management committees and the activation of a tourism council.

Trekking areas have been classified into three categories. Firstly, general trekking areas with a network of good trails and which offer basic services and facilities to tourists. Secondly, guided trekking areas already open for tourists but with minimal infrastructural requirements such as trails, and basic services and facilities such as hotels and lodges. Only group trekkers handled by trekking agencies will be allowed to visit such areas under fixed annual quotas. Lastly, the controlled trekking in the high-Himalayan region, which are far removed from modern civilisation and have very sensitive natural environments, and ancient indigenous cultures. Only group trekkers handled by trekking agencies and accompanied by a government deputed liaison officer will be permitted to visit such areas.

- Travel and Trekking Agency Rules, 2005¹⁶

This policy has been amended five times as per the necessity of the travel and trekking agencies. Each amendment was followed by the active participation

¹²<http://www.lawcommission.gov.np/np/> (National Employment Policy, 2014)

¹³Article 116 Section (1), Labour Act 2017

¹⁴<http://www.lawcommission.gov.np/np/> Tourism Act, 1978

¹⁵<http://www.tourismdepartment.gov.np/uploads/default/files/3d9c19372f95e73d9f5aea831e819761.pdf>

¹⁶<http://www.tourismdepartment.gov.np/acts-regulations>

and meaningful inputs of labour representatives and employer's representatives. This rule has clearly mentioned the guidelines and activities to be carried out by the travel and trekking agencies. This includes the licence-obtaining activities, provisions related to environment cleaning and waste management, code of conduct, and transferring of goods and purchasing.

- National tourism strategy (2016-2025)¹⁷

The strategy has set the following 11 special strategies for the overall development of the tourism sector: branding target, marketing target, focused program-mess and development target, tourism economy, improvement of business investment target, human resource development, infrastructure development target, improvement of tourism quality, reforms in institutional and management, conservation of cultural heritage and zero carbon target.

- Tourism Vision 2020¹⁸

The Tourism Vision 2020 comprises six different objectives. The first is to improve the livelihoods of people across the country by developing an integrated tourism infrastructure, increasing tourism activities and

generating employment opportunities. The second is to bring tourism into the mainstream of Nepal's socio-economic development. The third objective is to expand tourism products and services in new potential areas. The fourth objective is to publicise, promote and enhance the image of Nepal in international markets, the fifth is to enhance flight safety and aviation security by extending air connectivity and improving the capacity and facility of national and international airports. The last objective is to attract new investments in creating new tourism facilities, products and services.

There is no specific legal framework that refers only to social dialogue within the tourism industry but all of the policies and strategies mentioned above are supposedly developed to ensure the promotion of workers' rights in the industry. The tourism sector is also aware of all these provisions. However, the implementation phase is proceeding at a snail's pace. Nevertheless, their own initiative measures towards betterment of workers have also been regularly observed and efforts have been made towards positive outcomes and collaboration.

¹⁷http://tourism.gov.np//files/publication_files/129.pdf

¹⁸<http://tourism.gov.np/>

4. EXAMPLES OF SOCIAL DIALOGUE IN NEPAL'S TOURISM SECTOR¹⁹

There have been three kinds of social dialogue approaches used by the trekking guides and porters in both the province no 3 and 4 (Kathmandu and Pokhara): bipartite, tripartite and tripartite-plus. Kathmandu, Pokhara and Rasuwa are the main areas which have access to the trail of Annapurna conservation area and the Langtang valley of Nepal. Social dialogue has been carried out on different kinds of issues, which has included and given priority to the trekking guides and porters.

Several meetings, agreements and commitments have been carried out with great regularity between the employers' associations, the workers' unions and government when certain issues arise. The bipartite, tripartite and tripartite-plus has been adopted as the practice of social dialogue towards resolving issues. The problems and challenges in the trekking area faced by the workers are discussed through the diverse forms of social dialogue.

- The meetings held recently on January 30, 2019 in Kaski, Pokhara were for the purpose of resolving the problems related to the price disparity on food in the Annapurna conservation area that created disputes among the trekking guides/porters and hotel owners in the area. The meetings were held in the presence of TAAN (Trekking Agencies Association of Nepal) western regional association, the National Trust for Nature Conservation-Annapurna Conservation Area project (NTNC-ACAP), the tourist police, the business associations concerned and other stakeholders (such as community groups). The meeting was resolved through a common consensus towards resolving the disputes. The minutes were signed in the meeting, signifying hope towards its implementation. The tripartite-plus approach was adopted.
- On October 1, 2018 the agreement was signed between the three unions (NTHCRWU, ANTHCRWU and UNITRAV) and TAAN in the Nepal Tourism Board Hall. The bipartite approach was adopted. The agreement had nine specific policy implications:
 - 1) A 20% increment in workers' wages from January 1, 2019.
 - 2) An accidental insurance increment.
 - 3) The provision of one lakh Nepali rupees (Approx. 1000\$) by the company concerned in the case of the accidental death of a worker during their working tenure.
 - 4) The provision of festival expenses to workers as per the criteria of the Government of Nepal.
 - 5) The implementation of the social security act.
 - 6) The allocation of 10 percent of the money from TIMS cards to be put in the workers welfare fund.
 - 7) To stop illegal tourist trekkers.
 - 8) The improvement of workers' behavioural pattern. The workers need to be sincere and professional and in the event that they are found to be misguiding tourists and being irresponsible, they will not be provided with work.
 - 9) To enhance the capability and ability of workers through payment for training from the fund of Trekkers' Information Management System (TIMS).
- On September 19, 2018 Annapurna Rural Municipality and TAAN Western Regional Association held a meeting to give consideration to the current scenario of the Annapurna trekking region. The decision of this meeting was to resolve the issues of workers and hotel owners. The issues were related to accidental insurance, an increment in the daily wages for porters and the quality of the accommodation during trek. In a similar agreement, the most discussed and popular agenda of not expanding the road beyond "Jhinudanda" in Annapurna rural municipality for the next 30 years was also agreed.
- On September 30, 2018, an agreement paper was signed between Ghandruk rural municipality, TAAN Western Regional Association, ACAP, ANTHCRWU and the tourist police. The coupon system for workers was widespread along the Annapurna trekking route. The money for food was taken beforehand and coupons were given to trekking guides and workers. This coupon issue had created disputes in which unions had adopted the strategy of uniting, which later led to social dialogue. The agreement included stopping the coupon system for eating, in favour of adopting a payment system for food. The tripartite-plus approach was adopted.

¹⁹Information collected from the Key Informant Interview and Focused Group Discussions (FGD).

- The demand by trekking guides and porters has been addressed time after time in the presence of the Ministry concerned. The then Ministry of Labour, Ministry of Cultural, Tourism and Civil Aviation, Department of Labour, Department of Tourism, Nepal Tourism Board, TAAN and All Nepal Tourism Workers Union (ANTHCRWU) held a meeting relating to several demands by workers and the staff in the trekking sector. This meeting reached the conclusion that a workers' welfare fund should be established. The Trekkers' Information Management System (TIMS) had envisaged this fund. Furthermore, the decision taken during this meeting was to formulate directives. The committee members concerned were also mentioned, which also included the representatives of the union working in the trekking sector. The second decision was to amend the travel and trekking rules in accordance with the necessity at the time. This meeting was held on February 7, 2017. The tripartite approach was adopted.
- On February 8, 2017 the agreement was carried out between TAAN and trade unions. The lockout by the unions was considered and later the social dialogue took place that led to the signing of an agreement. This included wage and bonus schemes, the establishment of a workers' welfare fund, workers identity cards, accidental insurance, festival expenses, a budget list, a guide licence, specifications regarding the weight of the luggage to be carried, expedition related wage and bonus, scholarships, social security regulations by government, registration of workers. The bipartite approach was adopted.

4.1 SOCIAL DIALOGUE PROCESS (LEADING TO THE 2017 AGREEMENT)

Date: February 2016

Issues: Wages and Bonus schemes, establishment of workers' welfare fund, workers' identity cards, accidental insurance, festival allowances, wages with respect to the weight of luggage and implementation of social security regulation by government.

Context: A window of opportunity presented itself after a worker was injured on the way to Annapurna Base camp 2. This unfortunate event highlighted the need for a wages increase, accidental insurance and identity cards for workers and sparked local workers - with the help of the trade union - to start discussions with the employers and their association (TAAN). When the employers association wanted to settle the case at a distance by granting a very minimal compensation there was a public outcry and local workers and union leaders subsequently took the issue to the regional level. A week-long work protest eventually pressured TAAN to accept the agreement.

Process: Representatives of TAAN and the labour unions gathered together on neutral territory to sort out the issue. The meeting started with formal greetings and an issues orientation by labour union members, TAAN came up with the BATNA (Best alternative to a negotiated agreement), whereas union leaders presented some additional issues and expectations as their bargaining threshold. The meeting continued till the next day and finally, in the second half of the next day, both parties agreed a compromise. Thus, the agreement was made.

ENABLING CONDITIONS: THE FOUR FUNDAMENTS OF "DIALOGUE, OWNERSHIP, INCLUSIVENESS AND ACCOUNTABILITY" WERE THE MAJOR ENABLING CONDITIONS APPLIED BY BOTH PARTIES.

Dialogue	TAAN listening to trade unions and for the benefit of workers (rather than just profit maximisation and cost minimisation). Labour unions also realising the limits and issues of TAAN and the agreement done for the workers and their families living in low economic conditions, uphill.
Ownership	The ownership of TAAN for the issues from 'ground zero' and the common ownership of trade unions for the issues of workers. Workers and their issues treated as a common responsibility and key stakeholders in tourism sector.
Inclusiveness	Everyone's voice was heard and represented. Labour union presenting issues and representing the voice of local informal workers and giving it a face at regional level.
Accountability	Both parties being accountable for risks and future risks, applying risk-preventing and accident-preventing mechanisms. Accountable for current situation of workers and their life quality and future growth.

5. FINDINGS FROM FIELD

5.1. STUDY SUBJECT

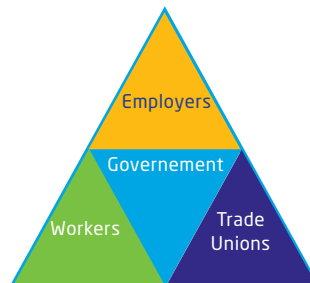
A number of agreements have been made in the SD process for the tourism sector as well as a degree of progress. But the meaningful participation and representation of workers and their issues is still lacking and on the part of the workers, they still need to be empowered and made aware of the SD process. On the other hand, the response and ownership of government in the SD process is abysmal with several reports of government's procrastination of the SD process. The employers' association also needs to be more responsible and prompt in dealing with workers' issues and it's resolution through the SD process.

Despite a certain amount of progress in SD and agreements effected, the majority of this was facilitated and initiated either by employers' associations or by the trade unions themselves. 80% of the total SD that took place in the tourism sector was initiated and facilitated by trade unions. 20% of the total SD that happened in the tourism sector was initiated and facilitated by employers associations.

However, the initiating party of SD is irrelevant if the individual worker is able to meaningfully participate in the SD process. However, where an individual worker has fleeting access to SD and when his/her voices cannot be heard, then the effectiveness of SD and its sustainable changes is doubtful. Workers themselves either seek help from trade unions or from government.

The empowerment of an individual worker (especially IWs) in the tourism industry is an absolute necessity. The findings of the interviews, focus group discussions and observations are presented in this section in order of the four stakeholders which have been analysed for this report: employers, government and trade unions and workers²⁰. But before we look into the findings per stakeholder we will have a look at the general

structure of social dialogue, bargaining power and agenda-setting.



The following marked locations were identified and visited to gather data for this report. These places are:

Rasuwa: The downhill of Langtang Trek which also supplies the majority of porters for Everest Trek too

Kaski: The tourist hub of Nepal, Pokhara. This is a starting point of trekking routes (Annapurna Base Camp, PunaHill, Ghandruk, Landruk and many more)

Kathmandu: The first step to Nepal, Central offices of Trekking Association, Nepal Tourism Board, Ministry of Culture, Tourism and Civil Aviation and Labour Unions



5.2 GENERAL STRUCTURE OF SOCIAL DIALOGUE PROCESS, BARGAINING POWER AND AGENDA SETTING

Based on our research visits and focus group discussions, these are the agreed-upon general processes of social dialogues, the determination of bargaining power and the setting of an agenda.

²⁰Although workers are represented by trade unions, their perspective has also been conveyed separately in this section.

5.2.1 General Framework of Social Dialogue

LEVEL	STAKEHOLDERS	DECISION MAKERS/ ACTORS
Local/Ground Level	Workers	Local Workers / Family Members / Local Level union Leaders
Regional/National Level	Workers	Local Government. Union Leaders / Trade Union Representatives (Sometimes Media and Lawyers)
Local/Ground Level	Employers	Company Representative
Regional Level	Employers	Representative of Employers association eg: TAAN
Government	National	Labour Department representatives or Representatives from Ministry of Labour
Government	Regional	Usually Chief District Officer or Local Development officer. State Minister in new federal system

Government only intervenes when the dispute fails to be solved at local, regional or national level. Government's representation or pro-active involvement in SD is very minimal.

At local level the decision is made by a worker's family or the local trade union leaders acting for the worker. For example: If Mr X (a porter) becomes injured in village Y, either Mr X or his family members or local union leaders take the decision. How much to compensate him for his medicine, setting up procedures to ensure no further accidents and whether or not to take further actions is decided by the victim's family or by local union leaders. At regional level, the decision is made by Local Government. Union Leaders/ Trade Union Representatives (Medias and Lawyers Sometimes) for workers.

In the case of employers, the ground-level company representative establishes or defends a counter decision from the counter party. At regional level, representatives of employers' associations, mostly board members, are the ones who decide.

In the case of government, a local-level decision is made by the labour Department representatives or representatives from the Ministry of Labour. And the regional-level government decision is taken by the Chief District Officer or Local Development officer. Or in the case of a new federal system the State Minister/ authority concerned.

5.2.2 Agenda Setting

LEVEL	STAKEHOLDERS	AGENDA SET BY
Local/Ground Level	Workers	Victim/ Affected party or the first party
Regional/National Level	Workers	Workers family, union leaders
Local/Ground Level	Employers	Company representative
Regional Level	Employers	Company board members
Government	National	Labour Department representatives or representatives from the Ministry of Labour
Government	Regional	Usually Chief District Officer or Local Development officer. State Minister in new federal system or Provincial Police Chief.

They set agendas for the SD while representing the respective stakeholders. At local level, the agenda is set for workers or victims alongside their family and community. Where the worker's issue goes to the regional level, the agenda is still set by the worker's family with coordination with union leaders.

At local level, the employer's agenda is set by the company representative and where the same issue has gone to the regional level, agendas are set by company board members.

In the case of employers, the ground-level company representative sets or defends the counter agenda from the counter party. At regional level, representatives of the employers' association, mostly board member meeting set the agendas.

In the case of government, the local level agenda is set by Labour Department representatives or representatives from the Ministry of Labour. And the regional level government agenda is set by the Chief District

Officer or Local Development officer. Or in the case of a new federal system the State Minister/ authority concerned.

5.2.3 Bargaining Power

LEVEL	STAKEHOLDERS	BARGAINING POWER
Local/Ground Level	Workers	Community support
Regional/National Level	Workers	Trade unions coverage/ Media relations and collective bargaining
Local/Ground Level	Employers	Company representative
Regional Level	Employers	Company board members
National	Government	Central government and cabinet
Regional	Government	Provincial government and provincial cabinet

Structural Provisions for Collective Bargaining at Different Levels

The Labour Act has provided for the different structures and mechanisms for collective bargaining at different levels.

- The Central Labour Advisory Council (CLAC)

The CLAC is formed at the national level. It is the representative body of the three stakeholders i.e. government, employer and employees. It is formed to provide advice to the government on labour-related issues. The representative of the trade unions has to be recommended by the Joint Trade Union Coordination Committee (JTUCC).²¹

The CLAC delivers advice to the government on the issues of labour policy, up-to-date amendments of labour laws, and the ratification and implementation of the international labour related conventions. It also advises on issues related to occupational safety and health, apprentices training as well as the creation and implementation of social dialogue and collective bargaining practices.²²

- Minimum Wage Fixation Committee

The minimum wage fixation committee is a tripartite permanent structure with representation from the government, trade unions and employers association.²³ It is responsible for recommending the specific minimum wage for all workers or sector, enterprise or industry. In Article 106 of the Labour Act 2074, the minimum wage

has to be revised every two years on the recommendation of the minimum wage fixation committee. If the minimum wage fixation committee is unable to develop a consensus and recommend a minimum wage, the Ministry is authorised to fix the minimum wage.²⁴

- Labour Relation Committee

The committee is responsible for discussing the work structure and productivity increment, solve the grievances relating to the discussion with the parties concerned, improve the work environment of the workplace, and function as the occupation health and safety committee until the formation of the committee at the workplace.²⁵

The above provisions can have two positive impacts, the first by increasing the coverage for the informal sector workers and the second by filling the gap between the enterprise level collective bargaining and the national level policy intervention.

5.2.4. Timeline of SD Process

Generally, a complex and relatively big issue only gets resolved by social dialogue. The following are the generic steps leading to social dialogue for informal workers. This process is yet to be properly implemented.

²¹Article 102 Section (3) Labour Act 2074

²²Article 103 Section (1) Labour Act 2074

²³Article 107 Section (1) Labour Act 2074

²⁴Article 106 Section (2) Labour Act 2074

²⁵Article 111 Section Labor Act 2074

ACTION	LEVEL	SP INVOLVED	RESULT
First: Any action / dispute of accident	Local	Local level workers Local level trade union representatives Local level government agencies	If Not Solved*, Now relayed into Second Action
Second: Case Passed from first level	Regional	Workers Regional union leaders Regional, state level or provincial government agencies	If Not Solved* Relayed into third action
Third: Intervention of Employers association	Regional	Workers Regional union leaders Regional, state level or provincial government agencies	Bipartite possibility but still if not solved then relayed to fourth action
	Regional or National	Workers Regional union leaders National, National level or central government agencies	Tripartite possibility could also be bipartite

*Average time taken from step first to fourth is a minimum of 3 months.

5.2.5 Stakeholders in SD process

- Ministry of Culture, Tourism and Civil Aviation
- Department of Tourism
- Nepal Tourism Board (NTB)
- Ministry of Labour, Employment and Social Security
- TIMS (Trekker's Information Management System)
- Trekking Agencies Association in Nepal
- Trade unions (NTHCRWU, ANTHCRWU, UNITRAV)

5.3 SECTOR-WIDE KEY FINDINGS

5.3.1 Government

Government organisation: Nepal Tourism Board
The Tourism Board is established under the Tourism Act, 1978 (Amended 1997). This board is responsible for promoting Nepali tourism destinations in the international market and also as a regulatory body for tourism and trekking activities in Nepal. From the year 2010, the Nepal Tourism Board also has been working as a secretariat place for TIMS (Trekking Information Management System). TIMS has been a regulatory board for the governance of trekkers/ porters and trekking activities/ business. The Tourism Board has been involved in several bipartite/ tripartite discussions between Unions and Employers in the tourism sector of Nepal.

Social dialogue agenda points

1. Seasonal/ informal sector workers and the unsustainable wages.
2. Compensation of wounded or dead trekkers/guides.
3. Individual trekker vs trekking agency.
4. Porter and Tourist relationship and potential business threat.

5. Implementation of social security act for informal sector workers.
6. Empowerment of trekking guides and porters (language, financial literacy, information technology & professional ethics)

With a higher sense of ownership and a close working experience with the tourism sector in Nepal, the Nepal Tourism Board presents the following points in the conflict-resolving mechanism of tourism sector and the social dialogue scenario.

1. Strengthening TIMS
2. Empowering and capacity building of workers.
3. Establishment of strong regulatory mechanisms for informal sector workers.
4. Regulation and monitoring of the licensing mechanisms and mobilisation of only licensed Guides and Porters.
5. Reformation of Tourism act 1978.

5.3.2 Workers

Workers group: trekking guides and Porters from Rasuwa, Kaski and Kathmandu

Porters and guides in the tourism industry are strongly exposed to risks and vulnerability; these workers work via a trekking agency and spend most of their time travelling and carrying luggage in the high hills. The low and seasonal pay scale is indeed an economic hurdle to or sustaining their livelihood.

Key fact* The majority of workers do not have any knowledge or skills relating to Social Dialogue and its process. Conceptually they are not able to differentiate between collective bargaining and Social Dialogue.

Social dialogue agenda points

1. Minimal Pay
2. Death claim and compensation claiming and structural procrastination.
3. Gender discrimination in weight calculation for luggage.
4. Women-friendly trekking route accommodation.
5. Licensed vs non-licensed workers.
6. Language barrier with guests.
7. Lack of training programmes and empowerment mechanism.
8. Uniformity of wages

Recommendations in resolving the conflicts in tourism industry by workers.

1. Training workers regarding professional and communication (Language) skills.
2. Strengthening TIMS.
3. Establishment of a central hotline number (cell) for any urgent actions or rescue operations regarding worker issues.
4. Development of gender policy in informal sector workers focusing more on tourism sector workers as they have to stay overnight and travel frequently for weeks on end.

5.3.3 Trade Unions

Unions: NTHCRWU, ANTHCRWU, UNITRAV

Unions play a significant role in the social dialogue mechanism as they are the primary key stakeholders where workers lodge their issues and incidents. Being a common platform for all informal sector workers in the tourism industry, the unions strength lies in the collective bargaining process and their political coverage. All three of these trade unions have been working in the informal sector for around almost 10 years on several issues and reforms benefitting the workers' rights and comfortable way of life.

Social dialogue agenda points

1. Implementation of the newly introduced Social Security Act among the informal workers in the tourism industry.
2. Ensuring the systematic payment (through financial intermediaries) to workers.
3. Occupational health and safety procedures compulsory implementation.
4. Development of new provisions and federal laws (varying according to the province) for the economic, social and physical safety of tourism sector workers.

Recommendations in resolving the conflicts in the tourism industry by the unions.

1. Strengthening of TIMS
2. Implementation of the Social Security Act (based on contribution) in tourism sector workers.
3. Development of a gender policy in tourism sector workers.
4. Uniformity of wages for all trekking agencies.

5.3.4 Employers

Employers in the tourism sector (trekking agencies) report several business threats created by trekkers and government. Tax burden, business takeaway tendency, worker management, professional ethics among workers and quality of service delivery by workers during a trek are the most urgent ones. When on a long trek with guests, workers themselves establish a good relationship with the guests and on the next visit the guest may well change their agency, on the recommendation of the workers. Frequently, guests and workers have dispute issues and workers return halfway through the trek, which creates additional cost hurdles for the agency. On the other hand, individual trekkers and an individual (without agency or porter or guide) trekking tendency have resulted in a huge downfall in business which they would like to address through a sound government policy. The tax paid by a trekking agency is far more than the tax paid by helicopter companies, yet helicopter companies make more profit and they have more tourists than on a trekking route.

Social dialogue agenda points

1. Establishment of a legal agreement for workers for not moving business from one trekking agency to another.
2. Professional ethics and code of conduct set for workers.
3. Establishment of tripartite discussions with government for the ending of the individual trekking tendency & trekking agency route tax amendment.
4. Promotion of the clothing bank concept for Occupational Health and Safety (OHS).

Recommendations on resolving the conflicts in the tourism industry by employers

1. Amendment of Tourism Act, 1978.
2. Tripartite agreement for worker codes, tax review and ending the individual trekking tendency.
3. Training programmes on communication and ethics for workers.

5.4 ENABLING CONDITIONS FOR THE SOCIAL DIALOGUE PROCESS

Enabling condition for social dialogue for workers are subjected to being the most vulnerable and relatively weak stakeholders during the SD process. These are the barriers that were found to be needed to be overcome by workers to meaningfully organise and participate in SD.

Barriers to effective social dialogue

- Mistrust / low confidence arises at work due to being not heard.
- Poor knowledge and understanding of labour issues and the business environment makes them difficult in the work environment.
- One-sided thinking entails the decisions of one party only.
- Trying to gain more and more (lack of empathy towards the other party).
- Trying to defeat each other rather than negotiating and sorting out the issues.

- Fighting mood with each other rather than cooperation and collaboration.
- Lack of give and take attitude.
- Lack of win-win situation, always going for win-lose attitudes.

Basic enabling conditions

- Democratic foundations can be strengthened by continually listening to workers' issues.
- Representative, accountable and strong workers' and employers' organisations are a necessity.
- Existence of a political will towards negotiation is essential.
- Respect for freedom of association and collective bargaining by both the employers and employee is most important.
- Adequate institutional support (empowerment of workers) via different training programmes and orientation is required.

ENABLING CONDITION	OBSTRUCTING CONDITION
Empowered workers and strengthened unions.	Over-politicisation of trade unions.
Proper documentation of local level decisions and issues.	Oral agreement and settlement efforts that diminish the SD process.
Strong independent and motivated representative workers with a sound technical capacity in accessing relevant information for the social dialogue process.	Dependent on negotiation by workers barely able to represent their case and issues.

5.5 SOCIAL DIALOGUE IN TERMS OF LIVELIHOOD FOR IWs IN TOURISM INDUSTRY

The normal wage rate for high altitude worker (IW) in the tourism industry ranges from \$12 to \$25 with a high range of disparity and less uniformity. Seasonal work availability makes it very hard for workers to generate a sustainable livelihood through the tourism industry.

Bipartite and tripartite discussions have taken place on the several issues of wages, occupational health and safety and insurance but no bipartite or tripartite discussions have ever been signed or organised to address the employment gap of IWs in the tourism arena and the workers' economic scarcity is left unheard by all parties of social dialogues. Being seasonal work, these issues are yet to be considered. Social dialogue has never been constructed for the livelihood issues of IWs in the tourism industry of Nepal and there is an urgent need to establish income-generating activities for non-seasonal work outside the trek seasons.

5.6 ANALYSIS

5.6.1 Key Points

Almost all informal sector workers have no idea of social dialogue and its process.

Trade union leaders know about the concept of Social Dialogue but trade union leaders have yet to make the workers understand the process and fundamentals of social dialogue.

Collective bargaining is generally perceived as social dialogue.

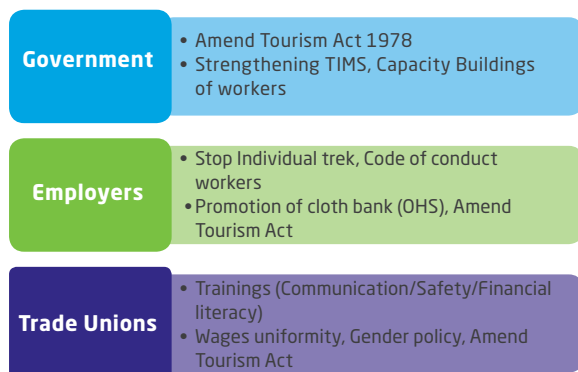
Average I/Ws in the tourism sector live from a wage of under \$13 per day. (Generally they pay their accommodation and food themselves)

Death or accident compensation is procrastinated by an average of 3 months.

The majority of Bipartite and Tripartite agreements are pressurised by strikes and lockouts (as a final alternative when voices are not heard) from trade unions. This means that employers and government are less sensitive towards workers' issue.

Undeclared work is highly prevalent in the tourism sector. It is typical for so called small employers with fewer than 20 employees. It is most common in coffee shops, bars, restaurants, and small family/owned hotels. The most common victims of undeclared work are young workers and women. Their salaries are not registered, with no benefits or taxes paid.

The figure below presents the key points of all three parties of social dialogue



5.6.2. Gender perspective

In terms of wages and remuneration, there is no such gender discrimination among I/Ws (trekking guides and porters) in the tourism sector, but the trekking route and accommodation is not found to be gender friendly.

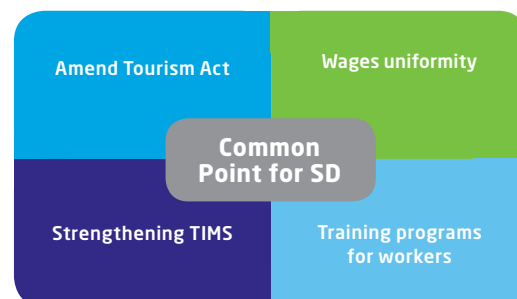
Female I/Ws have subtle complaints about the weight of heavy luggages (as they are allocated the same weight as men). Apart from that, there is no direct implication of gender discrimination in wages. However, female I/Ws are not able to go for long treks due to the night stay hurdle and sociological factors. The majority of the female I/Ws are women who have been working for their family, especially young children. There is no minimum age limit for workers and the age range was found to be from 14 to 63 years.

Three Sister Foundation Union in Pokhara has all/ female trekking guides and porters, encouraging women to work in this sector. In addition, this foundation looks upon diverse aspect of issues and opportunities for women.

This report strongly advocates gender/friendly tourism infrastructures and promotes OSH procedures for all workers.

Cross Sectional analysis

The agreed upon common points for social dialogues are the most probable causes for future social dialogues. (Bipartite, Tripartite and Tripartite-Plus). Tripartite-plus includes other stakeholders than government, unions and employers.



Trade unions, employers, workers and all parties mutually agreed upon the above points for potential issues in social dialogues.

5.6.3 Key Points

Social partners need to put additional efforts into the process of harmonisation of the education system with the needs of the labour market. It is clear that a huge number of school leavers do not have appropriate practical skills after the education process. Jointly, social partners need to react and need to invest additional effort to intensify the Ministry of Education's and also other relevant institutions' improvement of the current situation.

One of the tasks for the further period for social partners should be a joint declaration/statement sent to Government to ask for better conditions for workers and employers in the tourism sector. With this, social partners will become a real partner of Government in a process of creation of legislation and other conditions for doing business in this field.

5.6.4 Social Dialogue agenda points

1. Seasonal/ informal sector workers and the unsustainable wages.
2. Compensation of wounded or dead trekkers/ guides.
3. Individual trekker vs trekking agency.
4. Porter and tourist relationship and potential business threat.
5. Implementation of social security act for informal sector workers.
6. Empowerment of trekkers and guides (language, financial literacy, information technology & professional ethics).
7. Minimal Pay.
8. Death claim and compensation claiming and structural procrastination.
9. Gender discrimination in weight calculation for luggage.
10. Women/friendly trekking route accommodation.
11. Licensed vs non/licensed workers.
12. Language barrier with guests.
13. Lack of training programmes and empowerment mechanism.
14. Uniformity of wages
15. Implementation of the newly introduced Social Security Act in the informal work of the tourism industry.
16. Ensuring the systematic payment (through financial intermediaries) to workers.
17. Occupational health and safety procedures compulsorily implementation.
18. Development of new provisions and federal laws (varying according to the province) for the economic, social and physical safety of tourism sector workers.
19. Establishment of legal agreement for workers for not moving business from one trekking agency to another.
20. Professional ethics and code of conduct set for workers.
21. Establishment of tripartite discussions with government for the ending of the individual trekking tendency & trekking agency route tax amendment.
22. Promotion of clothing bank concept for OHS.
23. IWs in the tourism sector are engaged in a purely seasonal job offering a periodic employment. Government, trade unions and employers must also focus on adjacent income/generating activities for them during non-touristic times.
24. Uniformity of wages is a key point to be noted for future social dialogues
25. Training and other adjacent empowerment sessions for workers.

6. CONCLUSION

On the base of visits, focus group discussions and interviews, the necessity of social dialogue has been addressed. These conclusions have been derived to promote the social dialogues in tourism industry. I/Ws in tourism sector have been facing a lot of issues and problems in their work environment and they can only be solved through the meaningful participation of all the actors in social dialogues. These conclusions are presented under the three fundamentals of social dialogues.

NEGOTIATION

1. Workers duly lack the technical aspect of negotiation skills.
2. Employers have a significant competitive advantage in negotiation skills.
3. Local/level workers have no idea of the concept of social dialogue and the negotiation mechanism.
4. Trade union leaders and local level workers lack the proper documentation skills, which make them weak in further negotiation evidence collection.

CONSULTATION

1. Consultation, however, is the primary step of social dialogue but is often considered as the second step. Only if the issue remains unsolved at local level does further consultation take place at regional level, providing enough opportunity for manipulation to the detriment of workers.
2. The pre-information or awareness-creating consultation for I/Ws before the trek departure is lacking.
3. The legal consultation on trade union's activities and issue lodging is lacking.

4. Trekking agencies lack the consultation meetings with trade unions before any changes can be made to the working module for workers, thus leading to a potential dispute and a consultation gap between union and businesses.
5. Joint activities by social partners to tackle the informal economy are very important for the further period.

INFORMATION SHARING

1. Proper documentation of every decisions and bargaining points are not made in a written form.
2. Usages of information technology and instant messaging services must be scientifically structured and institutionalised in trekking tenure. Due to geographically uneven terrain and lack of a mobile network, IT intervention might be less accessible but workers, trade unions and even employers must be sensitive in these issues.
3. Lack of key enabling environment for all three parties in information sharing. A huge information and communication gap has been creating a significant gap in organising social dialogues.
4. All three parties have to be sensitive to each other's issues. The communication between all social partners must be improved.

Key Point: The Social Dialogue process and steps are a contextual phenomenon, which depends on scenario and power dynamics. This might not be formal on every occasion and there are several cases that are settled on a personal basis.

7. RECOMMENDATIONS

1. The perception of social dialogue between all three parties must be changed. Social Dialogue is perceived as an ultimate tool for conflict or dispute settlement and this must be changed. Social Dialogue is not just to be used for conflict settlement but also to proactively and peacefully create a common ground of mutual voices between all three parties.
2. The existing laws, policies and OSH procedures minimally address the specific issues of the IWs of the tourism sector so the reformation of existing policies (Tourism Act) must be done inclusively.
3. One of the tasks for the further period for social partners should be a joint declaration/statement sent to Government to ask for better conditions for workers and employers in the tourism sector. With this, social partners will become a real partner of Government in a process of creation of legislation and other conditions for doing business in this field.
4. Joint activities of social partners to tackle the informal economy are very important for the further period. According to various reports, the informal economy is a huge problem in the tourism sector and activities of social partners should be more focused on this.
5. The livelihood aspects of informal workers needs to be considered as the trekking guides and porters work on a seasonal basis.

ANNEX 1

LIST OF INTERVIEWS AND FGD

ORGANIZATION	PERSON INTERVIEWED	POSITION
Nepal Tourism Board	Mr. Deepak Raj Joshi	Chief Executive Officer
Trekking Agencies Association of Nepal	Mr. Nava Raj Dahal	Central President of TAAN
Trekking Agencies Association of Nepal	Mr. Hari Bhujel	President TAAN Western Regional Association, Pokhara
NTHCRWU UNITRAV All Nepal Tourism Workers Union	Mr. Dipendra Pandey Mr. Suman Parajuli UpendraUpreti	President (District) President General Secretary
Focus Group Discussions and Interviews with Workers	Rajendra Tamang, Buddha Bahadur Tamang, Pemba Dharke Negi, Lakhpa Singhi Negi, Suppa Lopchan, Sunima Tamang, Sharmila Tamang, Dawa Pema Tamang, Sabita Lopchan, Furpaki Negi, Ser Bahadur Tamang, Sonam Ghale, Sunib Sherpa, Nema Chowang, Pemba Rinjen, Dawa Tashi Negi, Gyaljen Ghale, Karshang Gyalmo Ghale, Kippa Chirring Lopchan, Chirring Gyalmo Ghale, Giri Raj Gharti	Trekking Guides and Porters in Rasuwa Province 3 Trekking Guides and Porters in Pokhara Province 4
	Prem Raj Dahal, Ram Krishna Timalina, Aman Singh Dulal, Bishnu Dev kota, Pashang Sherpa, Shiva Acharya, Manisha Parajuli.	Three Sister Foundation Union
	Khim Kumari Thapa, Santi Kala Rai, Indra Kala Rai, Dawa Kripa Tamang, Durga Laxmi Rawl, Laxmi Bharati	
Nepal Trade Union Congress, Pokhara	Kamal Sapkota	Vice-Chairperson, Open
UNITRAV, Pokhara	Bijay K.C.	President

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