

# Chapter 3

## 3.1 Status of Implementation of the Labor Act at Tea Gardens of Province 1

### Background

After the Labor Act took effect on July 16, 2017 there was widespread hope that the minimum wages of organized and unorganized laborers would be assured of minimum wages and that their social security would also be taken into account. The inclusion of the right to work in the Constitution was also reason that the problems related to labor would be addressed. The Constitution guarantees reasonable wage to every worker and the law has provisions for contribution-based social security. However, despite these provisions the problem faced by laborers remains as it was due to the lack of effective implementation.

As result little has changed in the conditions of workers at tea gardens of Taplejung, Bhojpur, Dhankuta, Terhathum, Panchthar, Ilam, Jhapa and Morang districts in Province 1. Nepal has 12,066 hectares of land under tea cultivation, and about 9236 tea gardens with Ilam alone having over 5,500 tea plantations in the district.

The situation for tea sector laborers has not changed despite the enactment of the law and the fixation of minimum wages by the government because of non-compliance by tea garden and factory owners of the provisions. The industry owners had said that the new labor law could not be enforced in the tea sector. Tea garden and factory owners had said that they would not be able to implement

the provisions of the new law in the tea sector, and the law remains practically unimplemented. The industry opposed the law saying that each additional worker would add an additional 35 percent to the cost. Before the enforcement of the new law, tea sector workers were receiving a daily wage of NRs. 278, five percent provident fund, five percent allowance and 13 days of public holidays, 12 days of casual leave, seven days of sick leave and a bonus equivalent to the wage of 26 days annually.

The new law requires employers to set aside 10 percent for provident fund, 8.33 percent for gratuity, and 1.67 percent for insurance, and provide 14 days of public holidays, 18 days of casual leave, 12 days of sick leave and a bonus equivalent to the wage of 26 days to all types of workers – permanent, temporary, seasonal and daily wage. This would make the total annual amount payable NRs. 1,19,540. The Government had announced that the law would also apply to tea workers in the 2018/19 budget, but implementation has not taken place owing to opposition by garden and factory owners and the inadequate official efforts to ensure compliance.

### Tea Labor and Wages

Tea workers are deprived of their wages and other facilities such as insurance, allowances and other protection measures. Typically, tea workers of

Jhapa and Ilam district are put to work without formal contracts or appointment letters. Generally, when the Government revises wages and facilities for all workers, factory and garden owners also add to the workloads before making revisions. Many workers have already moved to other sectors and those that remain fear losing their jobs if they raise a voice against management to secure their rights. Even workers who have worked in the tea gardens for over half a decade still face difficulties in meeting their daily needs. Further, many workers are unable to change work – when opportunity comes by – for fear of losing the accommodation at the tea garden. Even workers at the tea garden leased by the Government in Ilam had not been able to receive the official minimum wage causing them to protest for nine months in July 2018. The new wages were eventually implemented but took effect only from the date of agreement with the management. The workers have been disappointed with the owners of tea gardens and factories but have remained unable to do much because many of them also reside on land belonging to the tea plantations that they could lose if they began working elsewhere.

### Objectives

The objectives of this study are

- To collect information on status of implementation of policies, laws and programs of the Government in relation to tea sector workers.
- To understand the financial effects on tea workers as a result of non- or ineffective implementation of government policies and laws, and
- To draw attention of management of tea gardens and government agencies on the problems faced by people working in the tea sector.

### Research Methods

Information for this write up was gathered through multiple approaches,

including site visits (tea estate, factories, worker living quarters, etc.); and interviews with representatives of labor unions, workers of tea estate and factories, activists, representatives of tea estate management, etc. Information was also obtained from published articles, relevant books, the Constitution of Nepal, and existing policies, laws, and regulations. The literature review also included national and international provisions on minimum wages, international covenant on economic, social, and cultural rights, etc.

The study was limited to the status of implementation of the legal wages, including daily wage and other facilities in tea gardens of Jhapa and Ilam; and the nature of their work, their protests, and other facilities they had been provided.

### Analysis and Findings

The tea laborers received the officially approved wages only nine months after it was enforced in July 2018, and were not paid for the nine months before it took effect for them. Government has specified the minimum wage to be NRs. 385. However, the workload of many workers also increased alongside the new wage. The management of the tea gardens have set new rules for daily collection of tea leaves: 20 kgs for hand picking and 50 kgs for picking with machines. The workers are not paid if the condition is not met, or are paid at a reduced rate. Before the new law took effect, the workers had to pick 16 kgs of tea leaves per day.

Majority of the laborers were unable to meet the target of daily collection set by the management and this had barred them from receiving their minimum daily wage. Around 100 workers quit their job after the new rules took effect and have moved to different professions. Most of the workers at the tea gardens did not want to disclose their identities while speaking to this reporter fearing reprisal from management. One such worker said

the management continuously threatens to fire them from their jobs, particularly when they raise the issue of rights.

The Labor Act, 2017 provides for 45 days of sick leave. However, the tea workers did not have this facility. "If the laborer does not use his/her sick leave, there is no provision of accumulating it for later use," a worker said. He added, "if a laborer is not present at work regularly for a month, he/she is expelled by the management." The Kanyam Tea Estate had 64 permanent staff and 50 seasonal laborers.

Many workers were on the job from 8 A.M. to 5 P.M. and many of them were unable to receive their minimum wage for not being able to meet the daily picking target set by the management. The management of the tea garden had also not provided appointment letters to the laborers. In Jhapa and Ilam districts, the reduction in the wages for laborers not meeting the daily targets was done by dividing minimum daily wage by the leaves plucked in kgs, to come to a per kg rate for reduction. Accordingly, a worker who collected 40 kgs (against the target of 50 kgs), received NRs. 70 less than the daily minimum wage.

Overall, only about 10 percent of the workers were receiving the daily minimum wage. Using machines for collecting tea leaves was particularly difficult for women workers because of the weight of the machines. The workers also said they did not receive money during festivals in 2019.

Seven tea estates including Kanyam, Saktim, Chilimkot, Barne of Jhapa, Tokala, Baradashi were leased by the government to Triveni Sanghai Group for a period of 50 years in 2000. The tea workers had been protesting for higher wages with management even before the Government leased the properties. The non-resolution of the problem had led to resignation of 473 workers from Kanyam before the property was leased out. In

2020, there were 65 permanent workers, including 11 males at Kanyam.

The situation was not different in Ilam that had 100 permanent workers before the management was handed to the private company. In 2020, there were 22 permanent workers at the company. According to Saraswati Chaulagain a worker at Ilam, "few workers received a pension but the majority of them had resigned due to exploitation by the management."

The issues workers faced included the use of machines to pluck tea leaves in the rainy season. This is a time when the machine could be damaged by rain; it is also a time when the workers could get electric shocks when the machine is wet, said another worker Goma Pradhan.

The Labor Act 2017 requires employers to bear the health expenses of workers and their families. There is a provision of providing health insurance of NRs. 100,000 for the spouse of the worker and NRs. 700,000 as life insurance of the worker. Likewise, the law also requires formation of security and health committee for the workers with the participation of management. Such a committee had not been formed and the management did not even pay for minor treatments.

The Government of Nepal's Gazette published on August 16, 2018 has specified the basic monthly income of tea laborers as being NRs. 6,469 and allowances of NRs. 4312. It has also specified the daily wage of NRs. 385 and hourly wage of NRs. 31, including the allowances. The Gazette has also mentioned the need to provide provident fund and gratuity to workers. But the implementation is not ensured and monitored by the government.

### **National Laws on Worker Rights**

Article 34 of Constitution of Nepal says there shall be fair work practices for all workers. It defines a worker as someone who works mentally and physically for the employer and adds that there shall

be fair wages, facilities and social security based on contribution for workers, who are also given the right to form and participate in trade unions.

As per the education series published by INSEC in December, 2009, landless workers working in the agricultural sector on wage are agricultural workers. Those who sell their labor in agricultural sector are categorized— former bonded laborers, and workers of agricultural farms. Agriculture census of Nepal 1991 has categorized agricultural workers in three categories; workers working on wage, workers working in own farms, and workers working on kind rather than on wage.

Government began specifying the daily wage of farm workers on January 13, 2000 when it set it at NRs. 60 for eight hours worked in a day. This was revised over time to NRs. 80, NRs. 100, NRs. 120, NRs. 200 and NRs. 253. Similarly, the Gazette of February 1, 2016 fixed NRs. 253 as daily wage for tea workers and an extra NRs. 30 for the workers and guards at the factories. The same Gazette had the provision of monthly wage of a worker to be a minimum of NRs. 6375, with not provisions for extra allowances for salaried staff.

The tea garden management said that it had made payments as specified by the government. Indira Gurung, manager of Ilam Tea Garden said the company was providing wages and facilities as mentioned in the laws. She added that no workers were forced to do heavy work and work over time. Subash Sanghai of Sanghai Group also said that his company had been providing all the facilities as required by the law.

But the tea workers were disappointed with the privatization of tea gardens. They said they could neither be

assured of minimum facilities nor could they protest against the management for better work conditions. Tara Parajuli, a lawyer, said effective implementation of laws, policies and rules made by the Government could address the problem as nobody was above those law. She said taking legal action could help end the exploitation of workers at tea gardens.

## Conclusion

Tea workers of Kanyam, Ilam, Saktim and Chilimkot tea gardens were working with lesser facilities, even though the wages were in accordance with the law. Many said after the implementation of the new law, their workloads also increased with the new wages. The workers said it was difficult for them to meet daily targets and had to face wage reductions when they did not meet the target. Many workers still felt that their management had not been fully complying with the law and feared leaving their jobs as that would also mean losing living spaces at the tea gardens.

## Recommendations

The main recommendation is conducting the monitoring by the government for ensuring compliance as per the Constitution of Nepal and Labour Act. Similarly, the government should engage the management and employee for resolving the issues of labour rights. Human rights activists and media can assist in the process by bringing issues faced by workers to public debate, and also informing workers of their rights. Attention is also needed to ensuring social security of workers alongside regular revision of wages based on the cost of living and the market situation.

