

Nepal Rapid Reference Cards



Prepared by
Lawyers Without Borders

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CLEAR II

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Minimum Age for Employment: International and Domestic Law Rapid Reference Card™ • Nepal

MINIMUM EMPLOYMENT AGE GENERALLY

Nepal must have a minimum age for employment I-C 2(1)

For member states of ILO Convention No. 138 (“the Convention”), the **minimum age shall not be less than the age of completion of compulsory schooling or less than 15 years** I-C 2(3)

- **In some instances, a minimum age of 14 years may be acceptable** as indicated in this section and where certain requirements are met..... I-C 2(4)-(5)
- **Nepali Law:** Nepal’s minimum age is **14 years**, with compulsory schooling until grade 8 N-CL 2(3)(1)

The minimum age should be the **same for all sectors**..... I-R II(6)

Member states of the Convention should **aim to raise the minimum age for employment to 16 years** I-R II(7)

- Where it is not feasible to immediately fix a minimum age for all work in agriculture and related activities in rural areas, **one should at least be fixed for plantations and other work mentioned I-C 5(3)** (see below)..... I-R II(8)

SCOPE OF THE CONVENTION

The Convention does not apply to work done by:

- Children **in schools for general, vocational or technical education** or in other training institutions..... I-C 6(a)
- Persons **age 14 or older**, where such work meets certain conditions and is an integral part of, **(a) a course of education** or training for which a school or training institution is primarily responsible, **(b) a training programme** in an undertaking approved by the competent authority; or **(c) a guidance or orientation programme** designed to facilitate the choice of an occupation or of a line of training..... I-C 6(a)-(c)

Despite any exceptions made (see “Exceptions” to the right), the Convention shall be applicable at a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; plantations and certain specified agricultural undertakings I-C 5(3)

EXCEPTIONS TO THE CONVENTION

Under the **Convention**, certain **exceptions by employment type** may be made I-C 5(1)

- Exceptions to the prohibition of employment, for such purposes as participation in artistic performances, may be allowed I-C 5(1)
- Limited categories of employment in which special and substantial application problems arise may be excluded from application of the Convention..... I-C 4(1)
- Nepal shall specify the branches of economic activity or types of undertakings to which the Convention will apply and report any such categories excluded, as set forth in this section..... I-C 4(2), 5(2)

Under the **Convention**, the competent authority may make certain **exceptions by age** and prescribe the hours and conditions of such work I-C 7(3)

- Hiring of persons **13 to 15 years of age** may be permitted for **light work** which is **(a) not likely to be harmful** to their health or development and **(b) not to prejudice their school attendance** or participation in certain vocational orientation or training programmes I-C 7(1)(a)-(b)
- Employment of persons **at least 15 years of age** who have not yet completed compulsory schooling may be permitted if meeting the above requirements I-C 7(2)
- In certain instances, the minimum age of employment for such activities may be lowered, as set forth in I-C 7(4)

CONDITIONS OF EMPLOYMENT

Unless otherwise stated, the bullet points below refer to Nepali law on children under the age of 16

Under I-R IV(13)(1), **special attention** should be given to:

- (a) fair remuneration**
 - Employers must not discriminate based on sex, race, religion, caste, or tribute; must provide equal remuneration and benefits for the same work N-CL 3(10)(1)
- (b) strict limitation of daily and weekly work hours and prohibition of overtime**
 - ≤ 6 hours per day and ≤ 36 hours per week N-CL 3(9)(2)
- (c) a minimum consecutive period of 12 hours’ nights rest and customary weekly rest days**
 - No work between 6 PM to 6 AM N-CL 3(9)(1)
 - Must have 0.5 hour of leisure time after 3 consecutive hours of work; must have one day of leave per week N-CL 3(9)(3)

(continued on next page)

KEY:

I-C refers to ILO Convention No. 138 On The Minimum Age For Admission To Employment, which Nepal ratified on May 30, 1997

I-R refers to ILO Recommendation No. 146 Concerning Minimum Age For Admission to Employment (1973)

N-LA refers to Nepal’s Labour Act, 2048 (1992)

N-CL and **N-CR** refer respectively to Nepal’s Child Labour (Prohibition and Regulation) Act, 2056 (2000) and Child Labour (Prohibition and Regulation) Rules, 2062 (2006)

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CONDITIONS OF EMPLOYMENT (continued)

(d) annual holiday with pay of at least 4 weeks, not shorter than that granted to adults

- Required types of leave: public holiday, home, sick, obsequies, special, and educational..... *N-CR 3(7)(a-f)*

(e) social security coverage, including employment injury, medical care and sickness benefit, regardless of work conditions

- The employer must deduct 10% from the child's monthly remuneration, add an equivalent amount, and deposit both in a Provident Fund in the child's name..... *N-CR 3(18)(1)*
- The employer shall obtain insurance for every child in accordance with the prevailing laws *N-CR 3(20)*
- If suffering from illness and requiring medical treatment, the child shall have ≤ 2 months remuneration *N-CR 3(7)(19)*
- If a child suffers an injury while working that hinders the child's ability to work, the child is entitled to a lump sum of R15,000 depending on the injury..... *N-CR 3(23)(1)*
- If the child requires treatment for an injury suffered while working, the child shall get additional sick leave with full salary for the period of treatment..... *N-CR 3(23)(2)*
- Treatment expenses for injuries suffered while working must be paid by the employer..... *N-CR 3(23)(3-4)*

(f) satisfactory standards of safety and health as well as appropriate **instruction and supervision**

- Employer must ensure everyday cleanliness *N-CR 4(25)(a)*
- Good ventilation and temperature *N-CR 4(25)(b)*
- Avoid collection of pollutants..... *N-CR 4(25)(c)*
- Arrange for adequate drinking water *N-CR 4(25)(d)*
- Accessible toilets, separated by sex..... *N-CR 4(25)(e)*
- Provide a fire extinguisher *N-CR 4(25)(f)*
- Subsidized canteen inside workplace..... *N-CR 4(25)(g)*
- Do not make a child transport > 5 kg *N-CR 4(25)(h)*
- Teach safety and security measures *N-CR 4(25)(i)*
- Arrange shifts to allow rest between work hours. *N-CR 4(25)(j)*
- Minors over age 16 but under 18 must have directives about working areas or vocational training *N-LA 5(32)(A)(1, 3)*

ENFORCEMENT

Necessary measures, including penalties, shall be taken to ensure the enforcement of the Convention *I-C 9(*

Special attention should be given to **(a) enforcement of provisions on hazardous types of work** and **(b) prevention of employment of children during hours when instruction is available**, insofar as education or training is compulsory *I-R V(15)(a-1)*

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ENFORCEMENT (continued)

Members states of the Convention should **strengthen** as necessary **labour inspection** and related services, for instance through special training of inspectors *I-R V(14)(1)(a)*

- **National laws or the competent authority shall prescribe the registers that shall be made available by the employer**, which shall contain the names and ages/dates of birth, certified wherever possible, of persons who employees who are under 18 years of age *I-C 9(3)*
- To facilitate **verification of ages**, member states should **(a) maintain an effective system of birth registration, (b) require employers to keep and make available relevant records, and (c) issue licenses** to children working in situations where checking employer records is impracticable..... *I-*

Nepali law: Enterprises employing a child must:

- Obtain a certificate of qualification *N-CL 3(17)*
- Maintain a registration book containing certain specified information *N-CL 3(13)(1), N-CR 4(26)*
- Submit certain specified information to the labour office 15 days after employing the child..... *N-CL 3(8)(1), N-CR 2(5)*

HAZARDOUS EMPLOYMENT

Under the Convention, minimum age for employment **likely to jeopardise the health, safety or morals** of young persons shall not be less than **18 years** *I-C 3(1)*

- Such employment **may be permitted at age 16** where the health, safety and morals of young persons are protected and adequate instruction/training is provided *I-C 3(3)*
- Such types of employment shall be determined by national laws, regulations or competent authority..... *I-C 3(2)*
- Where the minimum age for work likely to harm the health, safety, or morals of children is below 18 years, immediate steps should be taken to raise it to 18 years..... *I-R III(9)*
- In applying Art. 3 of the Convention, international labour standards should be considered, and the list should be regularly re-examined and updated if necessary *I-R III(10)*
- **Where, by reference to Art. 5 of the Convention, a minimum age is not immediately fixed, one should nonetheless be applied to types of work that are hazardous** *I-R III(11)*

Nepali law: Minimum age is 16 years for types of work deemed hazardous

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ILO Convention and Recommendation on the Worst Forms of Child Labor Rapid Reference Card™ • Nepal

DEFINITION OF TERMS

Child applies to all persons:

- Under the age of 18, in international law I-C 2
- Under the age of 16, in Nepali law N-CA 1(2)(a)

Worst Forms of Child Labour (WFCL) includes:

- All forms of **slavery** or similar practices, such as child trafficking, debt bondage, serfdom, and compulsory labour, including compulsory recruitment of children for use in armed conflict I-C 3(a)
- Using, procuring or offering a child for **prostitution**, or to produce **pornography** or similar performances I-C 3(b)
- Using, procuring or offering a child for **illicit activities**, such as production or trafficking of drugs I-C 3(c)
- Work likely to **harm health, safety or morals** I-C 3(d)

Engaging children in any of the first three types of work listed above should be deemed as a **criminal offense** I-R 12

DETERMINATION OF WFCL

- The types of work defined as WFCL shall be determined by **national laws or competent authority**, taking into consideration relevant international standards I-C 4(1)
- WFCL determination shall be periodically examined and revised as necessary I-C 4(3)

Nepali law concerning bonded labour:

- Defined as labour or service **rendered for a creditor, without wages or for nominal wages** N-B 1
- All bonded labour is **prohibited** N-B 2(3-4)

Nepali law concerning children under the age of 16:

On slavery

- No child may work against his or her will N-CL 2(4)

On prostitution and pornography

- No immoral professions N-CA 2(16)(1)
- No photographs taken for the purpose of engaging a child in an immoral profession N-CA 2(16)(2)

On child labour for illicit activities

- No engagement in the sale, distribution, or smuggling of intoxicating substances or drugs N-CA 2(16)(4)

On harm to a child's health, safety, or morals

- No labour that is more than what the child's physical capacity can bear N-CA 3(25)(a)
- No work that may hurt the child's religious or cultural traditions N-CA 3(25)(b)
- No begging, except while observing religious or cultural traditions N-CA 2(13)(1)

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DETERMINATION OF WFCL (continued)

- No exhibition or distribution of photographs or descriptions tarnishing the character of a child N-CA 2(16)(3)
- No hazardous work (see below)

HAZARDOUS WORK

In determining WFCL, consideration should be given to work:

- Which exposes children to **abuse** I-R 11(3)(a)
- In **dangerous environments** I-R 11(3)(b, d)
- Involving **dangerous tools or heavy loads** I-R 11(3)(c)
- Under **difficult conditions** I-R 11(3)(e)

For these hazardous types, national laws may authorize work from the **age of 16** if health, safety, and morals are protected, and specific instruction or training is provided I-R 11(4)

Nepali law: No child under the age of 16 may be engaged in:

- Business related to **tourism** N-CL Sch. 1(a)
 - Tourism
 - Residence
 - Motel
 - Hotel
 - Casino
 - Bar
 - Pub
 - Resort
 - Skiing
 - Guiding
 - Water rafting
 - Cable car complex
 - Pony trekking
 - Mountaineering
 - Hot air ballooning
 - Parasailing
 - Golf course
 - Polo
 - Horse riding
- **Service-oriented business** N-CL Sch. 1(b)
 - Workshop
 - Laboratory
 - Animal slaughterhouse
 - Cold storage
- **Public transport** N-CL Sch. 1(c)
- **Construction** N-CL Sch. 1(c)
- Production of **certain products** N-CL Sch. 1(d)
 - Manufacture of cigarettes
 - Manufacture of *biri*
 - Carpet, weaving, dying
 - Wool cleaning
 - Fabric weaving, dying, washing, and printing strips
 - Leather tanning
 - Cement manufacturing and packing
 - Production, sale, and distribution of matches, explosives, and other flammable materials
 - Production of beer, liquor, and other drinks; soap; bitumen; pulp and paper; slate; pencils; and lubricating oils
 - Collection of garbage

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KEY:

I-C indicates articles of ILO Convention No. 182 On The Worst Forms Of Child Labour (1999), which Nepal ratified on January 3, 2002

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HAZARDOUS WORK (continued)

- Processing and electroplating
- Photo processing and work relating to rubber, synthetic, plastic, lid, and mercury
- Work relating to production, transmission, or distribution of **energy** N-CL Sch. 1(e)
 - Water resources, air, solar power
 - Coal, natural oil or gas, bio-gas
- **Mines**, mineral substances, exploration, process, and distribution of **natural oil or gas** N-CL Sch. 1(f)
- **Rickshaws**, carts pulled by humans N-CL Sch. 1(g)
- Work involving **dangerous machines**, such as cutting machines, hydraulic presses, presses operated by other devices, milling machines, lignite machines, or circular sleton printing machines N-CL Sch. 1(h), N-LR 4(43(2)
- Work done **underground, underwater, or at excessive height** N-CL Sch. 1(i)
- Work involving contact with **chemical substances** N-CL Sch. 1(j)
- Other work, prescribed by prevailing laws N-CL Sch. 1(k)

IMPLEMENTATION

Nepal shall take measures to **(a) prevent WFCL, (b) remove** children from WFCL and provide for their **rehabilitation** and social integration, **(c) ensure free education** and, when possible, vocational training for children removed from WFCL, **(d) identify and reach out to special risk children**, and **(e) consider the special situation of girls** I-C 7(2)(a-e)

Nepal should **maintain information on the nature and extent** of child labour, including disaggregated data and data about violations of national provisions against WFCL I-R 1

Nepal should ensure that the competent authorities which have responsibilities for implementing such national provisions **cooperate** with each other I-R 1

National laws or the competent authority should determine the **persons to be held responsible** in case of noncompliance with national provisions against WFCL I-R 1

Nepal should **prosecute and register** those involved in child trafficking, or in the use, procuring, or offering of children for illicit activities, prostitution, or pornography I-R 1

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IMPLEMENTATION (continued)

Measures that Nepal may take to eliminate child labour include:

- **Informing, sensitizing and mobilizing** the public, political leaders, and the judiciary I-R 15(a)
- Involving and training **employers' and workers' organizations and civic organizations, government officials, and schoolteachers** I-R 15(b, c, j)
- **Special supervision** of enterprises that have used WFCL, and consideration of **revoking of permits** to operate in cases of persistent violation I-R 1
- Prosecuting nationals who commit offences under national provisions against WFCL, **even when offences are committed in another country** I-R 15(d)
- **Simplifying** legal/administrative procedures I-R 15(e)
- Monitoring and giving publicity to **best practices** on the elimination of child labour I-R 15(g)
- Publicizing legal or other provisions on child labour in different **languages or dialects** I-R 15(h)
- Establishing **complaint procedures**, provisions to protect those who expose violations of the Convention, and helplines, points of contact and ombudspersons I-R 15(i)
- Improving **educational infrastructure** I-R 15(j)
- Job creation and vocational training for **parents** of children working in WFCL and sensitizing parents to the problem of children working in such conditions I-R 15(k)

Nepal should take part in international cooperation and assistance, including **mutual legal assistance** I-R 16(b)

CHILD LABOUR IN NEPAL - STATISTICS

2.1 million children aged 5-14 are engaged in child labour in Nepal. 57% are female, and 43% are male.

Sectoral distribution

- 1.) Agriculture: 88.8%
- 2.) Industry: 8.1%
- 3.) Services: 3.1% (includes domestic service, transportation, recycling, portering, hotels and restaurants)

Specific industries known to utilize child labour heavily include **brick-making, carpet production, embellished textiles (zari), stonework, domestic service, and entertainment (especially the commercial sex trade).**

Sources:

U.S. Department of Labor, "Findings on the Worst Forms of Child Labor" (2015)

Nepal Central Bureau of Statistics, "Annual Household Survey" (2013/14)

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Interviewing and Report Writing Rapid Reference Card™ - Nepal

REPORT WRITING: GENERAL GUIDELINES

- **Focus on the Five W's:** Who, What, Where, When, and Why
- **Contact Information:** Note contact information for victims, suspects, and witnesses
- **Include All Results:** Write down all results of your investigation (fingernails, footprints, etc.)
- **Keep Writing Simple:** Try to start sentences with a person, place, or thing; keep it simple
- **Use Detailed Description:** Thoroughly describe events (e.g. chain of custody)
- **Use Active Voice and Avoid Slang**
- **Avoid Generalizations and Hunches**
- **Check Your Spelling and Grammar**

REPORT WRITING: CHECKLIST

Technicalities

- Reporting agency and/or district
- Names of officers
- Signature of reporting and supervising officers
- Locations of report filings
- Case number, case status, and related cases

Incident Details

- Location and time of arrival and incident
- Immediate statements of central parties
- Number of people arrested
- Description of incident site and rough map

Type of Crime & Common Details

- Any sick or injured people
- Alarm sounded
- Forced entry

Interviews of Parties

- Full name, address, and signature of all witnesses interviewed
- Relationship of parties involved in incident

REPORT WRITING: CHECKLIST (CONTINUED)

Interviews of Parties (Continued)

- Gender, ethnicity, physical appearance, clothing, and other identifying characteristics
- Accounts of events
- Injuries, including those not visible
- Emotional state and demeanor
- Alcohol or drug impairment

Other Essential Information

- Vehicles involved
- Evidence collected: audio, photographic, investigation results
- Children present?
- Medical help offered or refused
- Summary of actions and reasons
- Existence of orders/records: protection, probation, warrants, prior convictions
- Victim responses to questions
- Narrative of incidents
- Full name, age, and address of people at site

CONDUCTING THE INTERVIEW: WITNESSES

- **Contact Information:** Contact details should be noted only in the 'List of Witnesses'; Name, Address, Phone number(s)
- **Take Notes:** Date, time and location
- **Ask Permission:** Ask the witness for permission to record the statement. If you can't record, take simultaneous notes of what is said
- **Questioning:** Ask open ended questions.
- **Follow up:** Ask clarifying questions
- **Focus and Don't Interrupt:** Notice how the witness's statement relates to the crime
- **Review:** Review the contents of the statement with the witness
- **Authenticate:** The witness should sign a declaration that the statement is true to the best of their knowledge
- **Encourage:** Ask the witness to follow up with other information and instruct them not to discuss their statement with anyone else

Interviewing and Report Writing Rapid Reference Card™ - Nepal

CONDUCTING THE INTERVIEW: GENERAL TIPS

- **Inform:** The officer must remind the suspect or witness of his or her right to remain silent, right to communicate with an advocate, and right to be free from self-incrimination
- **Language:** If they speak another language the officer must first inform them in a language they understand before engaging
- **Don't Interrupt:** Allow the suspect or witness to complete his or her answers
- **Simple Questions:** Ask simple, open-ended questions
- **DO NOT ask leading questions**

CONDUCTING THE INTERVIEW: SUSPECTS

- **Right to Silence:** If the arrestee at any point invokes his right to silence or the right to consult with an advocate, the officer must cease questioning
- **Record the Interview:** Remind the suspect or witness that you will take audio or video recording of the interview
- **Seal:** Seal and store the tapes/ statements in a secure, prearranged storage area
- **Non-Verbal Cues:** Note details about suspects demeanor and body language For example, a suspects playing with his glasses or another item may be a stalling tactic while thinking up answers
- **Actively Listen:** Ask only one question at a time and wait to hear the full answer
- **Remind:** Remind the suspect of any significant statement(s) which occurred in another interview ask if they want to confirm, deny, or add anything to the statement
- **Bond with the Suspect:** Try to form a bond so the suspect will be more likely to open up
- **Take a Break:** A 15 minute break is recommended every two hours.
- **Use of Force:** The officer may not force the arrestee to answer a question or offer the accused any promises

CONDUCTING THE INTERVIEW: VICTIMS

Making the Victim Comfortable

- Remain with the Victim:** Remain physically present with the victim at all times
- Offer Food and Water**
- Street Clothes:** Wear street clothes, if possible
- Body Language:** Use calm body language
- Be Respectful:** Do not treat victims as criminals
- Perpetrators:** Ensure that the perpetrators do not contact the victim
- Female Officers:** Have a female officer interview female victims if possible

Questioning

- Avoid Unnecessary Questions**
- Active Listening:** Listen attentively, make eye contact with victims, showing that you care
- Prosecution:** Do not pressure victims to participate in prosecution of the case
- Documentation:** Do not start with questions about documentation or legal status
- Telling the Story of Others:** Let the victim start by describing what happened to other victims of the same perpetrator before telling his or her own story

Victim's Statement

- Contact details:** Note the victim's full name, age, address as well as the names and addresses of parents and other relatives in the area
- Work details:** Ask details such as where he/she has been working as a child laborer
- Treatment:** Ask details about how he/she has been treated (e.g. physical violence, limited food)
- Education:** Ask if he/she is going to school and if so, the grade, name, and address of school
- Parental Contact:** Whether the victim has had regular contact with parents. If so, how.

Other Personnel

- Service Providers:** Be ready to contact service providers for victims as needed
- Counselors:** Make a counselor available
- Interpreters:** Use interpreters and screen them to ensure that they do not know the victim
- Privacy:** Before asking sensitive questions, ask if the victim would like to speak to you privately
- Children's Guardians:** Make sure a legal representative and caregiver are present **UNLESS** you suspect that they may be involved in the trafficking