



**The Response of the Government of Nepal
On
Queries by the Working Group on Business and Human Rights on Human
Rights- Compatible International Investment Agreement (IIA's) through
Letter dated on 3rd February, 2021**

The United Nations Human Rights Council in June 2011 endorsed the United Nations Guiding Principles on Business and Human Rights (UNGPs) which provides the framework for duties and responsibilities of governments and business enterprises to prevent and address business-related human rights abuses.¹ The Government of Nepal has always prioritized to capitalize on this global trend to promote human rights-friendly development and businesses in its plans and policies. Investors are not exempted from Human Rights obligations insured by the Constitution and other relevant Legislations. The Principles are based on a 'Protect, Respect and Remedy' framework. The framework states the duties to protect against human rights abuses by third parties, such as business, through their policies, regulation and adjudication. The companies have the responsibilities to respect human rights, that is, to avoid infringing on the rights of others.

The Constitution has secured citizen's rights including freedom to establish and operate any industry, trade and business in any part of Nepal (Article 17 (2) (f)), the freedom to form unions and associations (Article 17 (2) (d)), right regarding labor (Article 34), right to appropriate remuneration, facilities and contribution-based social security (Article 34 (2)), right to clean environment (Article 30), right to employment (Article 33) and right to constitutional remedies (Article 46). The Constitution under its directive principles and state policies also envisions that the government has the responsibility to fulfill its obligation under international human rights treaties. In addition to the above, in case of violation of these rights, the victims have the right to get Compensation.

¹https://www.researchgate.net/publication/343263565_Strategic_Roadmap_for_Nepal_Integrating_United_Nations_Guiding_Principles_on_Business_and_Human_Rights_into_Domestic_Law

The rights relating to employment and social security are incorporated as fundamental rights. This inclusion entails obligations for the state and business enterprises for ensuring the welfare of employees and achieving decent work for all. The provisions under the Social Security Act further elaborate on the amount that were to be submitted to the Social Security Fund (SSF) as provident fund and gratuity under the Labor Act and Regulations. In 2018, the government introduced a mandatory obligation for all sectors to implement a contribution-based social security scheme under the Contribution Based Social Security Act, 2017 and its regulation. Similarly the Social Security Schemes Operation Directives, 2018 provides four schemes:-

1. Medical Treatment, Health and Maternity Protection Scheme
2. Accident and Disability Protection Scheme
3. Dependent Family Protection Scheme
4. Old Age Protection Scheme

The Acts enacted for the implementation of fundamental rights like the Labor Act, Consumer Protection Act and Right to Employment Act among others are some critical developments in linking human rights obligation in a business sector.

The Labor Act, 2017 provides that the provision of the act shall be the minimum standard that must be adhered in the matter concerning labor. It also contains provision regarding settlement of dispute with entity registered in foreign country which undertakes sales and market activities in Nepal, as it allows labor hired by such foreign entity to file complaint before Labor Office or Labor court if such entity violates the terms and condition of the employment agreement. It also has provision in regards to Labor audit that must be done by entities in regards to their compliance of this Act, regulations and prevailing laws. As per the Act, the Labor Court shall consist of a chairperson and two members. Any decision or order of the Department or Labor Office can be appealed at Labor Court within 35 days of such order or decision.

The Right to Employment Act, 2018 has ensured the right of every citizen to employment and right to practice appropriate labor. Right to choose employment and the right of person engaged in employment not to be removed from employment without any reason except in accordance with law is also ensured by the Act.



The Consumer Protection Act, 2018 has prohibited several activities among which are unfair trade and business activities. The Government of Nepal is responsible towards the protection of the rights of the consumers and control activities related to unfair trade by formulating plans and policies. On the part of the remedies for examples it provides that such complaints for realization of compensation are to be filed at the Consumer Court.

The Environment Protection Act, 2019 has also prescribed for mandatory Initial Environment Examination and Environment Impact Assessment to ensure that environment is not adversely impacted while carrying out any business activity.

The Foreign Investment and Technology Transfer Act, 2019 is the prevailing law that governs foreign investment and technology transfer in Nepal while creating investment friendly environment to attract foreign capital, technology and investment in the sectors of import substitution, export promotion, through increase in productivity, and of infrastructure development and production of goods or services.

Nepal has recognized the importance of prioritizing the development of robust Intellectual Property protection and enforcement systems. As a result, in 2017, the Government of Nepal formulated its IP policy with the objective to make IP a national priority, emphasizing the valuable role IP plays in global socio-economic development. The Ministry of Industry, Commerce, & Supplies' Department of Industry looks after patent and trademark issues while the Ministry of Culture, Tourism, and Civil Aviation oversees copyright issues.

The Government of Nepal has also developed National Action Plan (076/77-081/82) on Human Rights. Among many thematic areas covered by the 5th National Human Rights Action Plan are Labor and employment, Nepal's international obligations, environment and sustainable development are some of the significant areas. It provisioned that industries, business enterprises should adopt principles norms and values of the UN Business and Human Rights while operating any business or industries.

Similarly, The Government of Nepal (GoN) has enacted of Special Economic Zone Act in 2016. The investors in SEZ are granted permission and administered in all respect of export and import under strictly simplified One Window Policy or one stop service. They have liberal tax regime with exemption to varying degrees in income tax, excise duty, VAT and others taxes and duties.



They have facilities of repatriation of investment, immigration, banking, export-import facility, foreign workers employment etc. The Act provides the minimum basic standards to be followed by the investors as per the laws of Nepal.

International Investment Agreements

Nepal has signed six bilateral investment treaties (BIT) with the following countries: India, Finland, Mauritius, United Kingdom, Germany and France. Among which only four are in force. Nepal's BIT with India and Mauritius have not yet come into force.

There is no specific provision of integration of human rights in these agreements. The only remote relevance can be found from the preamble of the bilateral investment treaty with Finland which states that the objective set out in the treaty can be achieved without relaxing health, safety and environmental measures of general application. However, the implementation of BIT's are not exclusive of national laws including the Constitutional guarantees and other special laws related to human rights.

