

# **The Prevalent Practice of *Kamaiya* Bonded Child Labour in the Mid- and Far-Western Terai of Nepal**

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**“Verily, with the hardship, there is relieve”**

**For Sabita, Sima, and the Girls I met in Nepal**

## Abstract

It was reported, in 2008, that there were more than 11,000 children working as *kamaiya* bonded child labour. Children who work in the *kamaiya* system perform domestic chores, take animals to pasture, collect grass/hay, and participate in other farm activities. Many of them work over twelve hours per day. The *kamaiya* system was commonly known as an agriculturally based bonded labour system which were pervasive among Tharu indigenous people in the mid- and far-western Terai of Nepal. In July 2000, the Government of Nepal made a landmark decision to outlaw the *kamaiya* system and issued the Bonded Labour Prohibition Act in 2002 which was intended to provide comprehensive regulation prohibiting bonded labour. However, in the mid- and far-western Terai districts, children have been continuously affected by such practice.

The fact that the practice of *kamaiya* bonded child labour in the mid and far-western Terai is still widely practiced a decade after the abolition of *kamaiya* system raises an essential question about what preserves the practice. This study is an attempt to understand the complex factors that contribute to the prevalent practice of *kamaiya* bonded child labour in the mid- and far-western Terai of Nepal. In doing so, I use qualitative approach. I analyse relevant legal and policy responses, and discuss socio-economic situation of freed-*kamaiya* households. I also conducted a brief field research to gain more insight about the socio-economic situation.

The study reveals that although various legal and policy frameworkss with regard to the pertinent issue have been put in place, the implementation remains a big challenge. This may then affect the socio-economic dimensions. Moreover, the interplay of different factors such as poverty and household vulnerability; the elusive promise of education from the employers; and the widespread societal acceptance of such practice, have likely been preserving the *kamaiya* bonded child labour practice.

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Oslo, 14 May 2012

Purwaningrum Maelanny

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## **1. Introduction**

### **1.1 Background**

#### **1.1.1 Child Labour, Human Rights Issues and Modern Slavery**

Child labour is a contested concept. There are various discussions surrounding the conception of child labour, *inter alia*, the debate about “child labour” or “child work” term, the controversy over the definition of a child, the contention on whether or not working for family farm is regarded as child labour, and so forth. Some also argue that the relativity of childhood notions influenced the way a community perceives child labour (Veerman in Humbert, 2009: 14). There is no agreed opinion on what child labour is and how it should be tackled (Doftori, 2004: 49).

Whilst the debates are still going on, there are a growing consensus that child labour involves mainly the questions of children working in early age, long working hours, hazardous working conditions and insufficient access, attendance or progress in school (Anker & Melkas in Doftori, 2004: 49). Child labour is considered as hazardous when it has adverse implications on children’s health, growth, psycho-social development and educational opportunities (UNICEF, 2007: 24 & ILO, 1999: 8). Child prostitution and bonded child labour are regarded as the most obvious examples of intolerable and exploitative forms of child labour by UNICEF (1997), and as unconditional worst forms of child labour by International Labour Organization (ILO) (2002).

ILO (2008) estimated that there is around 115 million children in hazardous work. The largest number is in Asia and the Pacific. However, the largest proportion of children in hazardous work relative to the overall number of children in the region is sub-Saharan Africa. The report also stated that 59 per cent of children in hazardous work aged 5–17 are in agricultural sector, with 30 per cent in services and 11 per cent in industry.

Child labour is a global concern. Since late 1980s, the international community has increasingly recognised the need for action to address child labour (Humbert, 2009: 1). This was marked by different international initiatives, to name some of them, the adoption of the United Nations (UN) Convention on the Rights of the Child (CRC) in 1989 which was then followed by the World Summit for Children in 1990; the

Programme of Action for the Elimination of the Exploitation of Child Labour in 1993<sup>1</sup>; and the Special Session of UN General Assembly on A World Fit for Children in 2002.

Unsurprisingly, after the Convention on the Rights of the Child (CRC) was opened for signature in 1989, the language of children's rights does start to enter child labour issues. (Cullen, 2007: 3). The main provision on child labour in CRC stipulates in the Article 32. It is also worth noting that Article 32(2)(b), unlike most child labour standards, requires that states also regulate the conditions of children's employment. ILO Convention 138 (C 138) of 1973 was intended to be a universal treaty covering all child workers by continuing the labour regulation approach of the early conventions, setting minimum age for employment. However, it also creates three main categories of work (Cullen, 2007: 2). The first is the general category, for which the minimum age is at least 15 or the school leaving age. The second is light work. Children over 13 (12 in developing countries) can work alongside education for a limited number of hours. The final category is hazardous work, where the minimum age is 18 (16 if adequate protective measures are provided). ILO Convention 182 (C 182) of 1999 follows the children's rights approach of the CRC. Unlike the blanket abolitionist approach of C 138, C 182 requires states to eliminate the worst forms of child labour, as enshrined in the article 3 (Cullen, 2007: 4).

Child labour issue shows the interrelatedness and interdependency of human rights (Arat, 2002: 14). These principles were emphasized by the Vienna Declaration and Programme of Action of 1993. The fulfilment of children's rights depends on the realization of other human rights norms, for example, labour rights of their parents, right to education, and non-discrimination principle. In some other cases, it might also involve the protection of land rights, minority rights, and/or indigenous peoples' rights. Moreover, the bonded child labour practice does not only violate the promotion and protection of children's rights, but also denies child's fundamental freedom, even amounts to slavery-like practice or modern form of slavery.<sup>2</sup>

Modern or contemporary slavery takes many forms, including sexual slavery, child slavery, chattel slavery, debt bondage, domestic servitude, contract slavery, reli-

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<sup>1</sup>UN Commission on Human Rights, Programme of Action for the Elimination of the Exploitation of Child Labour, forty-ninth session, 10 March 1993, E/CN.4/1993/79.

<sup>2</sup>As stated by UN Human Rights Bodies, the Working Group on Contemporary Forms of Slavery, as well as studies and the findings of special rapporteurs on pertinent issue, June 1991.

gious slavery and state slavery (Bales in Androff, 2010). Child slavery, in particular, can take the form of child soldiers, child domestic workers or sexual slavery. These forms of slavery have received significant attention in the media and the literature (Androff, 2010: 213).

Amongst all the forms of child slavery, I will focus on debt bondage and domestic servitude. Bonded labour is a slavery-like practice resulting from indebtedness (Cullen, 2007: 17), usually in the form of forced agricultural labour (Ray in Androff, 2010: 214). The employer offers loans in exchange for labour, often that of the child or children of the debtor. These loans, which are often relatively small, are usually theoretically to be paid off by the work of the children (Tucker in Cullen, 2007: 17). A deceptive structure of debt, costs and low earnings preclude the chance for bonded labourers to exit from debt. This characterizes much of modern slavery in South Asia (Upadhyaya, 2004). Furthermore, in domestic servitude, children are being forced to serve as domestic workers in a household. They are held at force, isolated from the outside world, never allowed outside. They are strictly controlled within the households, and are forced by violence to provide service (Androff, 2010: 214).

Bonded child labour practice in the far and mid-western Terai of Nepal goes beyond the issue of child labour. It entails the incidence of child slavery that cross cuts various issues, such as, poverty, access to education, backwardness, lack of law enforcement, and marginalization. This study will be developed from the assumption that social exclusion and economic aspects are among the main factors that preserve the practice of *kamaiya* bonded child labour in Nepal.

### **1.1.2 *Kamaiya* Bonded Child Labour Practice in Nepal as a form of Modern Slavery**

Bonded labour issue is pervasive in the South Asian countries. It is among the oldest forms of forced labour that accounts for the greatest number of forced labourers in the contemporary world (CWA, 2007: 3). Around 15 million South Asian people, out of 27 million globally, are reported in a bonded system (Bales in Giri, 2009: 1). The incidence of bonded labour often involves children. In Nepal, some forms of bonded child labour are extensively practiced, for example, in agricultural sector, brick kilns industry, carpet weaving industry, commercial sexual exploitation, and domestic work (CWA, 2007: 23-24). The practices of bonded labour in Nepal include not only debt bondage but

also other forms of bondage which exist as forced, coercive and hazardous labour (GEFONT/ASI, 2007: 16). Overall, IPEC (2001) reported that 33,000 bonded child labourers were working in the country, while Child Workers in Nepal (CWIN) has placed the total number at 40,000 (CWIN, 2004: 103).

One of the most well-known form of bonded child labour in Nepal is the *kamaiya* bonded child labour. Children working as *kamaiya* labourers may not be directly bonded, but they work in contexts that reflect the economic situation of their families and encompass elements of bonded labour relations (Sharma et al., 2001: 10). Children who work in the *kamaiya* system perform domestic chores, take animals to pasture, collect grass/hay, and participate in other farm activities. Their day can begin as early as 4 a.m. The majority stop work between 5 and 7 p.m., although some children reported working late into the night. Seventy percent of the child labourers, which were identified by ILO rapid assessment of *kamaiya* bonded child labour, work over twelve hours per day (Sharma et al., 2001: 7). Modes of payment to the child labourers vary between receiving food while at work as well as either food or cash to take home, or receiving food only, in some cases includes receiving cash in advance annually (Sharma et al., 2001; CWA, 2007).

Historically, the *kamaiya* system was commonly known as an agriculturally based bonded labour system which were pervasive among Tharu indigenous people in the mid- and far-western Terai of Nepal. The *kamaiyas* were obliged to provide underpaid and even unpaid farm labour for excessively long hours, under compulsion of the annual *kamaiya* contract – this can tie families into bondage for generations. There were around 20,000 *kamaiya* households in the five Terai districts of Dang, Banke, Bardiya, Kailali and Kanchanpur (Sharma et al., 2001: 10). On July 2000, the Government of Nepal made a landmark decision to outlaw the *kamaiya* system, and issued Bonded Labour Prohibition Act, in 2002 which was intended to provide comprehensive regulation prohibiting bonded labour. However, in the mid- and far-western Terai districts, children have been continuously affected by such practice.

It is argued that the condition for becoming a *kamaiya* ‘did not generally concern caste, colour, religion or tribe, but focused on weakness, gullibility and deprivation of people, making a direct relationship between labour bondage, wealth and abuse’ (Bales, 2004: 11). According to Rankin (1999: 44; cf. Robertson and Mishra, 1997 in Giri, 2009),

the class convergence of Tharu and non-Tharu *jamindar* (landlords) was more significant than the shared ethnic identity of Tharu *kamaiya* and Tharu *jamindar* albeit Tharu landlords used to claim that they were better masters to their bonded workers than their non-Tharu counterparts.

The *kamaiya* individuals may be used not just by landlords as bonded workers, but also by local politicians, moneylenders, rich city dwellers and by hoteliers as cheap labourers (Rankin, 1999; Sharma et al., 2001).

In 2001, ILO-IPEC rapid assessment stated that fully 17,000 *kamaiya* children were bonded (Sharma et al., 2001). In 2006, a Nepali Times, a national newspaper, reported there were about 33,000 child bonded labourers under this system in 6 districts of mid- and far-western Terai (Nepali Times, 2006). Friends of Needy Children (FNC), an NGO which focus on bonded child labour issue, on the other hand, placed the number at 11,043 based on survey which was conducted in the above mentioned districts (FNC, 2008). Moreover, in recent years, there has been an increase of bonded child domestic workers in urban areas which are originated from *ex-kamaiya* family who often find themselves in conditions of dire poverty (Lamichane in Giri, 2009).

In many cases, the family offers their children's labour in exchange for loan under annual agreement in times of family hardships. Children likely work for their parents' former landlords or to a city dweller via a distant relative with the hope of contributing some household income (Giri, 2004). In 2001, ILO household survey outlined that majority of *kamaiya* children were employed within the villages, whereas 25.6 percent were employed outside the villages. It was also repeatedly reported that the majority of children working outside their villages were employed as domestic child labourers or in the informal service sector in urban areas of Nepal (Sharma et al., 2001). Indeed, Tharu children from the mid and far western Terai region made up a large percentage of domestic child labourers in the key urban areas of Nepal. In Kathmandu, fourteen percent of domestic child labourers were Tharus from this region (Sharma et al., 2001); in Pokhara, 24 percent of domestic child labourers were of Tharu origin (Sharma, Thakurathi and Sah, 1999).

With regard to prohibition of child labour, the Government of Nepal has ratified UN Convention on the Rights of the Child, ILO Convention 138, and ILO Convention 182. Domestically, besides forming a separate Ministry of Women, Children and Social

Welfare, the Children's Act was introduced in 1992 to provide 'a comprehensive national legal framework for the rights of the child' (Nepal CRC Report, 2004). Furthermore, the Child Labour (Prohibition and Regularization) Act (1999) not only defines different types for work, but also prohibits the employment of children under the age of 16 in hazardous sectors (Nepal CRC Report, 2004). However, the enforcement and effective implementation of child labour laws are weak. The implementation of any rules and regulations is likely to clash with the diverse domestic values and norms concerning children and childhood. Nepal is the country where communal customs and familial interdependence play a significant part in the community which often precede national laws and the Government seems to have failed to take into account children's duties and responsibilities towards their families when ratifying or accommodating international laws (Blanchet, 1996; Rankin, 1999 in Giri, 2009: 606).

Nowadays, *kamaiya* children are also known as *kamlahari*. This practice cross cuts the elements of modern slavery. It entails the practice of bonded child labour as well as child domestic labour. In such conditions, children are denied full freedom to pursue their lives and their own development with dignity. They are forced to work for little or no wages, undermining their freedom as economic agents (Wiener, 2009: 139).

## 1.2 Research Question and Objective

The fact that the practice of *kamaiya* bonded child labour in the mid and far-western Terai is still widely practiced a decade after the abolition of *kamaiya* system raises the essential question about what preserves the practice. Hence, my research question is formulated as follow: "After the abolition of *kamaiya* bonded labour system in the year 2000, why does the *kamaiya* bonded child labour practice prevail in the far- and mid-west Terai of Nepal?"

The prevalent practice of *kamaiya* bonded child labour (*kamaiya* children) is the main issue in this study. I shall analyze the factors that contribute to the prevalence of such practice. It will not only discuss socio-economic factors, but also examine the legal enforcement and policy implementation related to the issue.

The study is developed from the following hypothesis:

*Social exclusion* and *economic aspects* are assumed to be the main factors that preserve the practice of *kamaiya* bonded child labour in Nepal.

## **1.3 Methodology**

### **1.3.1 Research Method**

The research will mostly be conducted using qualitative approaches. In order to answer the research question, I will analyze legal and policy frameworks and their implementations, as well as discussing the socio-economic aspects. I will be reviewing relevant official documents, various literatures and research. Moreover, I will also use interpretative approach in analyzing interview results from the field research. The information from field research is expected to give insight on the socio-economic situation and to complement statistical data. Brief field research was carried out between May and June 2011 in 7 villages in 3 districts (Dang, Bangke, and Bardiya districts) of mid- and far-western Terai, Nepal. The location were selected based on their accessibility, resources availability, and severity of the issue in the area. During the field research, interviews and discussions were conducted, through individual talks as well as group discussions with freed *kamaiya* bonded child labourers, peers, teachers, and community leaders. During interviews and discussions, I was accompanied by a Nepali assistants. They assisted in practical matters, as well as with overcoming the language barrier by working as an interpreter. In addition, the interview with former *kamaiya* bonded child labourers aims at including children's voice in this study.

### **1.3.2 Theoretical Approach**

There is a growing understanding on the complex nature of child labour issue. It needs a comprehensive response that cuts across policy sectors (UCW, 2010). It is thus essential to look at the issue through a holistic analytical framework in order to understand the root causes. A simple model that fulfil this criteria was developed by Gilligan (2003, 32). This model consist of *supply/push* - *demand/pull* and *micro - meso/macro* factors and determinants of child labour (poverty, macro-economic, and sectoral policy integration; social protection; child labour policy framework; regulatory enforcement; societal acceptance of child labour; education as an alternative to child labour; gender-based discrimination; household vulnerability; and demand for child labour).

The model will help to understand the interplay between the identified determinants of child labour. Supply/push factors push children into labour market, while

demand/pull factor create demand for child labour. Moreover, different level of determinants—macro, meso, micro—shows that some factors occur at the level of the individual child, family and community or individual enterprise, also national. The dichotomy is not intended to show absolute categorization but to understand the complex interaction among different factors. Some factors might fit into both categorization while others might fit only to one category.

However, given my political science background and the nature of human rights study, I will mainly focus on discussing legal and policy frameworks and its impact to other factors.

## 1.4 Terminology Clarification

### 1.4.1 Child Labour

The definition of child labour which will be used in this study is based on the ILO Conventions and Recommendations on child labour, *inter alia*, ILO Convention No. 138 on the minimum age for admission to employment and work, ILO Recommendation No. 146, ILO Convention No. 182 on the worst forms of child labour, and ILO Recommendation No. 190.

Table 1.1. Summary of the ILO Conventions on Child Labour

	<b>The minimum age at which children can start work</b>	<b>Possible exceptions for developing countries</b>
<b>Hazardous work</b> Any work which is likely to jeopardize children's physical, mental or moral health, safety or morals	<b>18</b> <b>(16 under strict</b>	<b>18</b> <b>(16 under strict conditions)<sup>4</sup></b>

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<sup>4</sup>Ditto.

should not be done by anyone under the age of 18.	<b>conditions)<sup>3</sup></b>	
<b>Basic minimum age</b> The minimum age for work should not be below the age for finishing compulsory schooling, which is generally 15.	<b>15</b>	<b>14<sup>5</sup></b>
<b>Light work</b> Children between the ages of 13 and 15 may do light work, as long as it does not threaten their health and safety, or hinder their education or vocational orientation and training.	<b>13–15</b>	<b>12–14<sup>6</sup></b>

(Source: ILO Website, 2012)

#### 1.4.2 Bonded Child Labour

The term ‘bonded child labour’ which is used in this study is defined as, *first*, a child (younger than 18 years old, as defined by the United Nations Convention on the Rights of the Child, 1989); *second*, working to pay a debt taken by him/herself or his/her family members or guardians, and/or working to meet any social obligations with or without his/her consent; *third*, under conditions that restrain his/her freedom and development, make him/her vulnerable to physical and other forms of abuse and deprive him/her of his/her rights (CWA, 2007: 3). Moreover, in the context of *kamaiya* system, children who work as *kamaiya* labourers may not be directly bonded, but work in contexts that reflect the economic situation of their families and encompass elements of bonded labour relations (Sharma et al., 2001: 10).

In addition, this study will also take into consideration the nature of the work carried out by *kamaiya* children in relation to worst forms of child labour. According to

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<sup>3</sup>Defined in Article 3.3 of ILO Convention 138 and Paragraph 4 of ILO Recommendation 190: For types of work defined as hazardous, national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

<sup>5</sup> If the country concerned has ratified ILO Convention 138 with this temporary derogation.

<sup>6</sup>Ditto.

the spirit of the UN Convention on the Rights of the Child as that of ILO Conventions Nos. 29, 138 and 182, the worst form of domestic child employment exists if, (i) the child is sold, (ii) is bonded, (iii) works without pay, (iv) works excessive hours, (v), works in isolation or at night, (vi) is exposed to grave safety or health hazards, (vii) is abused, (viii) is at risk of physical violence or sexual harassment and, (ix) works at a very young age. The presence of any or a combination of these elements would render the work of *kamaiya* children one of the *worst forms of child labour* in Nepal (Sharma et al., 2001: 12).

### **1.5 Structure of the Study**

This study is divided into 5 chapters. Chapter 1 provides background, research question and objective, also methodology. Chapter 2 explains in greater detail the *kamaiya* system, its historical development. It also discusses the *kamaiya* bonded child labour practice in the present time through the lens of the rescued children. Chapter 3 presents relevant legal and policy responses to the issue. Chapter 4 analyzes the legal and policy implementations and socio-economic dimensions. It also discusses findings from the field research. Chapter 5 presents concluding observations and remarks.

## 2. Overview of *Kamaiya* System

The Nepali dictionary defines the word '*kamaiya*' as "a hard tiller of land, a male or an obedient person, one who earns along with his/her family in other's land by borrowing in cash or kind from the land owner or a peasant equivalent to him/her"(GEFONT/ASI, 2007: 17). Similarly, according to the *Tharu* ethnic group's dialect, in its local wisdom, the word '*kamaiya*' originates from '*kam*', which refers to 'work'. In a *Tharu* parlance, the term is used as a synonym for hardworking hired farm labour (OMCT, 2006). However, the aforementioned definitions do not reflect the complete reality of the phenomenon. Karki (2001:70) addresses this when he defines the *kamaiyas* as "rural labourers forced to work by an existing socio-economic and political relationship in demeaning conditions, and used as virtually unpaid labour for the cultivation of land and other domestic activities." The *kamaiya* system thus refers to the human power exploitation for agricultural and other related works (GEFONT/ASI, 2007: 17).

In common practice, the *kamaiya* system does not only entail adult male labourer. His spouse is known as *Bukrahi*. She accompanies him in farm works. She is also responsible for domestic chores of the master. *Kamaiya* children, who generally work as animal herders, are known as *Gaibar* if they herd cattle. Those who herd buffalos are called *Bhainsbar* and those who take care of goats are called *Chegar*. Similarly, female children working as domestic servants of the landlords are known as *Kamlahari* (Sharma and Thakurathi 1998:1-3). On the surface, the *kamaiya* system is a contractual agreement for a year which begins at the *Maghi* festival (approximately on the 14th of January) between the landowner and an agricultural labourer, where labour is exchanged for payment in nominal cash or kind. Theoretically, at that time, both parties may agree or refuse to enter the contract. They both have the choice to make the agreement, but in practice bonded labourers do not have this freedom of choice. They are forced by social, economic, political and other compulsions to accept the agreement with any conditions dictated by their masters (OMCT, 2006; INSEC, 1992). The *Kamaiya* system also allows landlords to buy and sell one or more *kamaiyas*. The debt attached to a *kamaiya* passes on to his son and grandson in case of his death prior to the complete repayment of the loan (OMCT, 2006; Guneratne, 2002; Kvalbein, 2007; Lowe, 2001, Karki, 2001).

## 2.1 Historical Development

### 2.1.1 *Kamaiya* System before 1950's

There is no agreement on the origin of *kamaiya* system. Many studies have traced it to the 'sharecropping' or 'long-term farm labour' practice in the South Asia during the Moghul empire (ca. 1500-1700 AD). A patron-client relationship between the landowner and the sharecroppers/farm labourers has been preserved since that era. (Lieten and Breman in Giri, 2009: 602; OMCT, 2006: 4). Some argue that labour arrangements involving a *kamaiya* as a yearly agricultural worker existed in the traditional Tharu society, but it did not take the form of lifetime bondedness prior to the 20th century (Lowe, 2001).

As Rankin (1999) puts it, such traditional labour system involved a peasant cultivator (*kisan*) and a labourer (the *kamaiya*), whereby in exchange for the latter's labour, the cultivator undertook to feed, clothe, and house him and his family. *Kisans* and their *kamaiyas* were traditionally linked by a shared ethnicity and often ties of kinship, and both participated in common moral economy. Relations between a *kamaiya* and his patron were often mediated by debt. The *kamaiya* was not necessarily landless; on occasion, a Tharu man entered into a *kamaiya* contract in order to obtain a loan. He was obliged to work for his master until the loan was repaid, but members of his family did not automatically become *kamaiyas*, and were free to work to raise the money to repay the loan. They were also opportunities for a *kamaiya* to repay his debt and end his *kamaiya* status (Rankin in Guneratne, 2002: 96).

The traditional labour system was distorted by certain actions taken by the Nepali state. When present-day Nepal was founded in 1768 by absorbing dozens of small kingdoms or principalities, the practice of land grants as various forms of personal rewards started to become institutionalized. As a payment, reward or compensation, the monarchist governments offered large tracts of land to military officials, noble members or the defeated chiefs of the principalities (Rankin, 1999; Lowe, 2001). Those who received the land rented it out to tenants under *adhiya* and *kut* systems in which tenants would have to contribute at least half of their products to their landlords (Robertson and Mishra in Giri, 2009: 603).

Particularly in the Terai region, appointed Tharu headmen, known as *chaudhari* (tax collectors) were granted domain over particular territories to extract agricultural

surpluses from the peasantry through revenue farming (Robertson and Mishra, 1997; Giri, 2009). However, the use of *chaudharis* was gradually replaced by *jamindars* (landlords) ‘as a means of extending a land-based system of patronage as well as expanding the areas of land under cultivation’ (Rankin, 1999: 34). *Jamindars* were increasingly drawn from high-caste Nepali-speaking people from the hills who had connection at court (Robertson and Mishra, 1997: 16). Certain *jamindars* were responsible for paying a certain amount of collected land tax to the government. Since *jamindars* had the authority to provide property ownership certificates, they used their administrative power for their personal benefit and gradually established their property ownership on wide areas of land through such practices, and become big landlords who provided a support base for the Rana regime (Karki, 2001: 7).

In addition, large tracts of land in the Terai were given away by the King as rewards to favoured courtiers or generals to ensure their loyalty to the Crown (Robertson and Mishra, 1997: 16). The land granted in this way called *birta* land and the recipients called *birtawalas*. They had power to collect revenue from the Tharu people who worked the land and in return they paid tribute to the Crown. This system was operated during the Shah kings and then later the Ranas. In 1952 this system accounted for about 700,000 hectares of land or 36 per cent of the total cultivable area of Nepal (Robertson and Mishra, 1997: 34)

When Jang Bahadur Rana came to power in mid-19th century, he started a family-based oligarchy system, and sought an active policy to isolate Nepal from external influence. By doing so, the extended Rana families could enjoy the extravagant lifestyle from the land tax revenue (Rankin, 1999). During Jang Bahadur and his family’s 104-year-long reign, the land grant system and taxation rights were consolidated, leading to ‘the “process of feudalisation” of agrarian relations and strengthening the private landowners’ economic capacity by diverting revenue away from the state treasury’ (Karki in Giri, 2004).

For a long time, this policy was essential to satisfy the local chiefs, warrior class and to finance the war with Tibet and British India (Rankin, 1999). When the expansionary drive of Nepali rulers was halted by British India in 1818, the whole land policy was geared towards extracting revenues for the ruling elites while allowing landlords to reign freely in the villages (Lowe, 2001). This feudal system rendered extensive powers to landowner over the peasants who cultivated their lands and were able

to set whatever levels of rent suited them. The villagers living on their land had the status of serf and the landlords could demand unpaid labour and other services from them (Robertson and Mishra, 1997: 35).

Revenue collection policies during late 19th and the early 20th century had created a new landlord class —*jamindar* and *birtawal*— very unlike the peasant cultivators (*kisan*) who had provided a livelihood and a degree of security to their *kamaiyas* (Rankin in Guneratne, 2002: 96-97). The introduction of *jamindar* and the granting of *birta* lands showed an expansion of the farmed area of the Terai and depletion of the Tharu's traditional forest lands. The growing number of landless Tharu who were used as labour to clear this land and make wider cultivation possible (Robertson and Mishra, 1997: 16).

Until the first half of the 20th century, it is further argued, Nepal's most productive and sought after agricultural land lying in the Terai region was still rather sparsely cultivated (Rankin, 1999). Because of a malaria epidemic, hill people were unable to settle on a large scale in the region inhabited by the indigenous Tharu community, who could tolerate tropical diseases and wild animals all year round (Rankin, 1999). The collapse of Rana regime in 1950s was followed by malaria eradication programme supported by the World Health Organization (WHO). It subsequently led to mass migration from the adjacent hills (Robertson and Mishra, 1997: 16). Powerful landed families from the hills were able to increase their holdings in the newly opened forests and further marginalise the Tharu, which has been living in the Terai for the last 600 years. Although a small portion of Tharu became landlord themselves, and adopted the ways of the majority high-caste society, the vast majority of the Tharu were left in an increasingly vulnerable position and ripe for exploitation (Robertson and Mishra, 1997: 17).

### **2.1.2 *Kamaiya* System after 1950's**

There is some evidence to suggest that the *kamaiya* system developed initially from a survival strategy used by the Tharu people to help insure against the risk of sedentary farming. Over the years, the hill–Terai migration not only displaced the Tharu people, but also drastically changed the demographic and ecological settings, not to mention converted the system into a highly exploitative one (Robertson and Mishra,

1997: 17). In fact, the Tharu people who are thought to be the first inhabitants of Terai region, were the first group of people to start falling into the system of debt bondage (Rankin, 1999). In 1912, for instance, the great majority of landowners in the mid- and far-western Terai area were believed to be Tharu people, but by the late 1960s, some 80 percent of the Tharu people were tenants, and 90 per cent of the landlords they worked for were mostly settlers from the hills (Lowe, 2001).

Given the widespread disparity in the land ownership, the King, with pressure from donor agencies, introduced Land Reform Act in 1964 (Robertson and Mishra, 1997: 35). In the beginning, it was thought that a revolutionary policy would positively reduce economic inequalities in rural areas, particularly in the Terai region. The Act had some success in protecting the rights of the tenant farmers, but the large landholders continued to take advantage of several loopholes in the law (Robertson and Mishra, 1997). The *jamindars* reportedly made a clever move to transfer the rights of their land to their extended family members in order to free themselves from the control of land reform policy. For instance, only 1 per cent of 600,000 hectares of land reserved for redistribution was distributed, and no more than 300,000 farmers received tenancy rights certificates out of 1.8 million eligible (Robertson and Mishra, 1997). In 1966, the *jamindar* system itself was abolished but its power structure, so firmly established over the centuries, continues even today (Giri, 2004). As a result, within a few generations, around ten thousands of Tharu peasants became *kamaiya* workers cultivating other people's land; women became *bukrahi* (or helper) and children worked as *kamlahari* (maids or domestic workers) until they were old enough to take over their parents' work (Lowe, 2001).

According to Sharma and Thakurathi (1998:12) very little was known about the socio-economic conditions of *kamaiyas* at the national level. INSEC (1992:86) claims that, in fact, not all *kamaiyas* were bonded labour. They could be classified into two categories; *kamaiya* with *saunki* (debt) and *kamaiya* without *saunki*. The *kamaiyas* with *saunki* were more vulnerable than *kamaiyas* without *saunki*. This was because they could be bought and sold for the *saunki* by their masters whereas in some cases *kamaiyas* without *saunki* might have at least the freedom of choosing their masters at the *Maghi* festival. Another classification was whether the *kamaiya* owned his own house or patch of land on which it was built. The most exploitative cases occurred when the *kamaiya* was both in debt and without land of his own, which in such case he was obliged to live on the

landlord's property (Robertson and Mishra, 1997: 19). However, researchers argue that both types of *kamaiyas* were forced to work as bonded labour by the socio-economic conditions of their society and family. This was because no matter whether they had *saunki* or not, once they came into contractual agreement with their landlords they fell into a vicious circle of bonded labour system which had been providing bare subsistence for generations (OMCT, 2006: 4).

In most cases, the debt owed by a *kamaiya* was relatively small, below NR 2,000 (US\$36.00), but with no cash income, it was virtually impossible to repay. The debt was inherited and passed down from father to son (Robertson and Mishra, 1997: 19). The *kamaiya* system allowed the selling and buying of one person to another. The *kamaiya*, thus, represented a tangible asset which the landlord could sell to others. These transactions were often carried out between landlords during the traditional time of the *Maghi Festival* (Robertson and Mishra, 1997: 18). The debt increased to pay for medicine, additional food and any other necessities. Often the landlords inflated the debt still further and charged the *kamaiya* for any day's work which they missed through sickness or any damages to a piece of equipment or domestic animal for which the *kamaiya* was held responsible was added to the debts, often without the *kamaiya*'s knowledge (Robertson and Mishra, 1997: 18).

The wage or remuneration for the *kamaiya* was too low to meet the need for a square meal for a family, around 9 to 12 sacks of rice, a sack being equivalent to 75 kilograms. Consequently, a *kamaiya* was compelled to borrow from the landlord to cover expenses for food, medical expenses, social obligations, and other unusual circumstances. These additional borrowings added to the debt (GEFONT/ASI, 2002: 18). The *kamaiyas* were usually given a payment in rice after the harvest; this payment was known as *bigha*. In addition they were given a portion of other grains, salt and oil, again handed over in one lump sum to supplement the rice (Robertson and Mishra, 1997: 18). The total amount was gauged to be just enough for survival and sometimes slightly less. Besides, the *kamaiyas* were often forced to borrow food and money to deal with socio-cultural obligations from the master. Once they borrowed money and food grain from the landlords, the *kamaiyas* fell into the trap of a debt-bonded labour system (ILO, 1995: 14).

In practice, most *kamaiyas* did not have freedom of choice. They were forced for various reasons to accept the terms and conditions dictated by their masters (OMCT, 2006: 9). The *kamaiyas* did all the ploughing and heavy field work. They usually worked

for a 12-hour continuous period receiving meals in the field. During harvest and ploughing periods, however, they often continued through the night working 20-hour per day for weeks at a time. In the off-season they were either given work or were loaned or hired out to their landlord's friends or relatives (Robertson and Mishra, 1997: 20). They were not free to work for wage labour elsewhere. Landlords used verbal threats and humiliation to intimidate the *kamaiyas*. Although the *kamaiyas* were reluctant to report physical abuse, it is clear that violence was also used (Robertson and Mishra, 1997; Lowe, 2001).

### **2.1.3 The Movement against *Kamaiya* System, the Abolition in 2000 and the Aftermath**

The movement against the *kamaiya* system intensified in 1990 (OMCT, 2006: 13). One of the factors stimulating a concerted *kamaiya* movement is the restoration of multi-party democracy and the open political environment that existed in the country after 1990. The *kamaiyas* managed to get external support from NGOs, IGOs and some political parties (OMCT, 2006: 27). The *kamaiya* movement before the 1990s can be seen as amorphous, poorly organised, and spontaneous collective behaviour and action (Karki 2001:123). However, there were series of sporadic resistances and uprisings in the region before 1990 as well. Most of them were localised and isolated from the broader movements for socio-economic and political transformation (OMCT, 2006: 13). Most of these movements met a tragic end suppressed by government forces with the support of local ruling elites and feudal (OMCT, 2006: 27)

Until 1990, none of the state-led land and reform policies and programmes considered the *kamaiyas* as a potential target group, evident by the fact that they were never be the beneficiaries of the Land Tenancy Rights, Landless People Resettlement Programmes and the like (Karki, 2001: 74). The Government of Nepal acknowledged the existence of the *kamaiya* bonded labour system only in 1995 (GEFONT/ASI, 2007: 37). By accepting the *kamaiya* system as a bonded labour system in 1995, the Ministry of Land Reform and Management of Nepal prepared a household list of 15,152 *kamaiya* families from five districts in 1996 (GEFONT/ASI, 2007: 37). This census was heavily criticized by NGOs, claiming that the figures underestimated the number of *kamaiyas* (OMCT, 2006: 5; Kvalbein, 2007: 60). It then was revised to 18,400 in the year 2000

(GEFONT/ASI, 2007: 37). However, not much was done by the government at that time to rehabilitate the *kamaiyas*. Consecutively, different entities continued to pressure the government to end the system.

Karki (2001) classifies the movement against the *kamaiya* system into three broad categories, they are, movement from within, movement from above, and culmination of both movement within and above. The *movement from within* was marked by various resistances and strikes by the *kamaiya* families which scattered all over mid- and far-western Terai. This movement was small in its size, highly localised, and lacks support. The *movement from above* entailed a wide range of campaigns against the *kamaiya* system and interventions to address the *kamaiya* problem, conducted by national and international agencies. These agencies advocated for an open national governance system, influence national policies, mobilised financial resources both at the national and international level (for example bilateral and multi-lateral donors) and government departments which could help the *kamaiyas*. The *culmination* of the movement happened in 2000. Intense and prolonged pressure from the *kamaiyas*, national and international human rights groups, civil society actors and others finally led the Nepalese parliament to declare the system of *kamaiya* illegal and all *kamaiya* were to be liberated (Upadhyaya, 2008: 25). All previous contracts between *kamaiya* and their landlords were declared null and void, and debts cancelled (GEFONT, 2007: 31).

Immediately after the government declaration of the *kamaiya* liberation, the government formed a national committee to deal with problems associated with the *kamaiyas* at the central level and sub-committees in *kamaiya*-majority districts to identify and rehabilitate the liberated *ex-kamaiyas* (GEFONT, 2007: 37-38). The committee then updated a survey of *kamaiya* households, which was taken in 1995 (Kvalbein, 2007: 60). The *ex-kamaiya* households were grouped under four categories in light of the possession of huts and land (OMCT, 2006: 25).

**Table 2.1. Categorisation of Ex-Kamaiyas by the Government of Nepal in 2000**

Group	Category	Total Household	Card Type
A	Homeless and landless families	8022	Red
B	Families with a house and a small plot	5428	Blue

	of unregistered land		
C	Families with a house and a plot of registered land of up to 2 kattha	1877	Yellow
D	Families with a house and more than 2 kattha of registered land	3073	White

Note: 30 kattha = 1 ha. = 1.5 bigha

(Source: Ministry of Land Reform and Management (MoLRM) in GEFONT, 2007; OMCT, 2006)

The government promised to give up to five kattha of land to landless *kamaiyas* of category A and to register the land for *kamaiyas* of category B. Distribution of land had taken place, but there were many still waiting while living in temporary camps (Kvalbein, 2007: 60). Many liberated *kamaiyas*, particularly those who were homeless and landless, spent months in filthy camps, facing difficulties coupled with sickness and lack of bare necessities (GEFONT, 2007: 43).

The slow response to rehabilitate liberated *kamaiyas* was seen by many observers as the lack of ability— or a political will — of the government (OMCT, 2006: 24). The movement then took a different turn from February 2001. According to Kathmandu Post on 4 February 2001, at least 7,000 *kamaiyas* forcibly occupied public land including the land owned by the Cotton Development Committee (CDC) of the government in Bardiya. However, more than 300 riot police cordoned off the area forcing the *ex-kamaiyas* to leave. Soon after the *ex-kamaiyas* were chased away, the riot police set fire to their huts and the CDC tractors destroyed the crops they had planted to make sure that the *ex-kamaiyas* would not dare to occupy the land again (Kathmandu Post, 4 February 2001 in OMCT, 2006: 25).

In 2002, the government undertook another round of registration for *ex-kamaiya* after being criticised that many *ex-kamaiyas* were left out in previous census. In June 2002, Nepal's Ministry of Land Reform and Management released a new data of *ex-kamaiya* households.

**Table. 2.2. Distribution of Ex-Kamaiya Households as of June 2002**

District	Category A	Category B	Category C	Category D	Total
Dang	302	403	397	324	1,426
Banke	1,118	803	135	260	2,316
Bardiya	6,469	5,082	1,115	1,833	14,499
Kailali	3,758	5,217	189	598	9,762
Kanchanpur	3,923	495	33	55	4,506
Total	15,570	12,000	1,869	3,070	32,509

Source: MoLRM, 2009 in Buddhi Ram, 2011: 74

Also in 2002, the *Kamaiya* Labour (Prohibition) Act, prohibiting some *kamaiya* forms of bonded labour was finally adopted. Prior to the Act, courts were reluctant to take action on bonded labour, despite some recognition that it existed. However, since 2002, no one has been prosecuted for the use of bonded labour (Upadhyaya, 2008: 27). The Act does not provide mandatory rehabilitation and some parts of the act, such as monitoring through national and district level committees, have not yet been implemented (Upadhyaya, 2008: 22).

The rehabilitation process has been beset by widespread anomalies. As of February 2003, 7,801 labourers had received three to five *katthas* of land while 2,986 had received less than three *katthas* of land<sup>7</sup> (Upadhyaya, 2008: 23). It was found that many *kamaiyas* have got land certificates, but no land at all<sup>8</sup> (OMCT, 2006: 25).

Moreover, the Ministry of Land Reform and Management coordinated a programme with NGOs and government agencies to rehabilitate *kamaiyas*, to allocate land, to distribute timber for house construction and to provide vocational training. Timber for house construction was given to 161 families, and over 7,900 families received the government's housing grant of Rs 8,000 (approximately US \$107), provided to all ex-*kamaiyas* identified as landless. The *Kamaiya* Labour (Prohibition) Act 2002 provided that, upon completion of housing construction, the government would provide an additional grant of Rs 2000 (approximately US \$27) for income generating activities,

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<sup>7</sup>The Nepal Ministry of Land Reform estimates that a minimum of three *katthas* of land is required for one family's subsistence.

<sup>8</sup>According to news commentary published in the Nepal Samacharpatra of 18 September 2004, of the 868 *Kamaiya* families residing in a captured airport in Kailali, 104 have had land certificates, but not land. Also see, Lamichhane 2003:90

which included chicken, goat or pig farming. As of December 2004, in Kailali district only 74 out of 2,436 households had received the money for income-generating activities (Upadhyaya, 2008: 23).

Although widely hailed as one of the most progressive decisions of the governments formed in the 1990s, it was made without proper arrangements for housing, food security and other arrangements required for rehabilitation (OMCT, 2006: 24). The biggest challenge to the government and IGOs, and NGOs involved in the campaign against the *kamaiya* system was to create an environment in which alternative rural livelihoods could be ensured. Weaknesses in the rehabilitation phase, including the length of time between release and the receipt of rehabilitation and the fact that bonded labourers were released without empowerment support, has left former *kamaiyas* vulnerable to entering into new forms of exploitative working practices including bonded labour (Upadhyaya, 2008: 24). Some have reportedly entered into exploitative share-cropping arrangements while others have pledged the free labour of their children for access to tenancy (GEFONT, 2007: 42).

Despite the release of large numbers of *kamaiya* bonded labourers, measures taken by the government have been undermined by poor coordination between government departments, corruption, and a lack of policy coherence (GEFONT in Upadhyaya, 2008: 24). Rehabilitation efforts have not reached all released *kamaiyas*. Though the government targeted to distribute the land to all ex-*kamaiyas* by the end of June 2009, based on a survey conducted by Districts of Land Reform and Management, in 2009 there were still around 6,922 *kamaiya* households (25%) who did not receive land which had been promised more than a decade after their freedom.

**Table 2.3. Land Distribution to Ex-Kamaiya (as of 15 June 2009)**

District	Eligible HHs to receive land	Total Rehabilitated HH	HHs haven't received land
Dang	705	705	-
Banke	1,921	1,921	-
Bardiya	11,551	7,451	4,100
Kailali	8,975	6,153	2,822
Kanchanpur	4,418	4,418	
Total	<b>27,570</b>	<b>20,651</b>	<b>6,922 (25%)</b>

Source: DoLRM, 2009 in Buddhi Ram, 2011: 76

However, there were also many positive results. Labourers who did receive adequate land and support for houses around urban centres, were able to obtain a degree of economic autonomy, raising chickens and goats and producing vegetables for sale and were able to send their children to school. The level of literacy has increased among the released *kamaiyas*, the numbers of children attending school have also reportedly increased, as has access to health care and access to clean water (GEFONT, 2007; Upadhyaya, 2008).

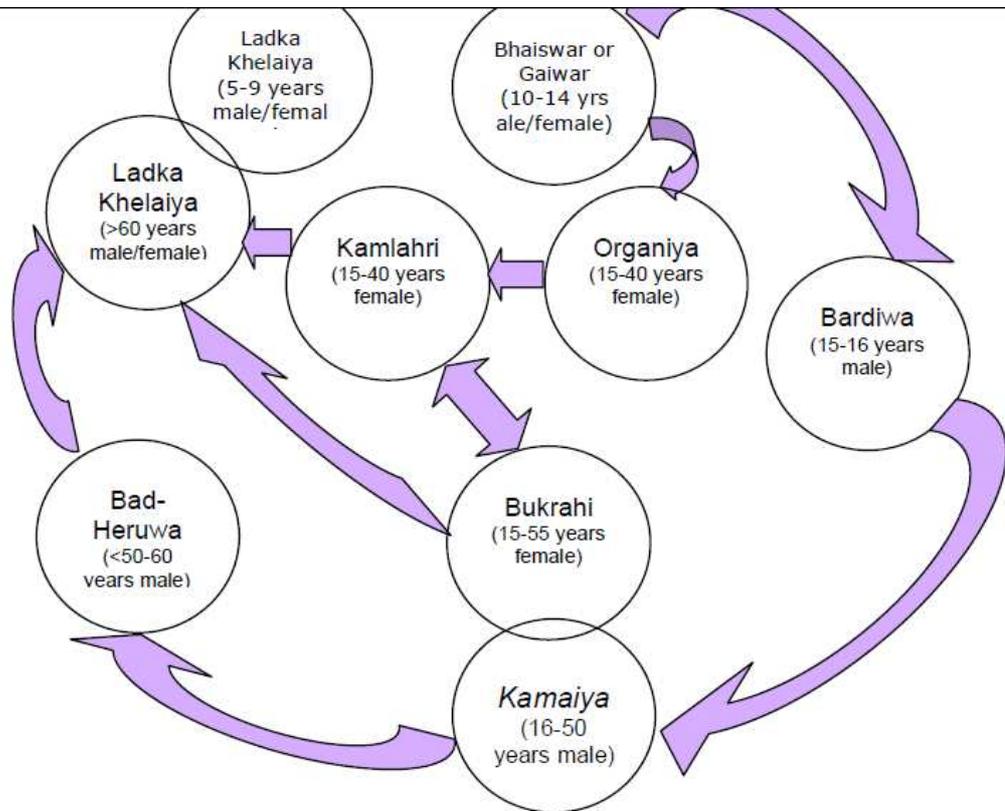
## **2.2 Kamaiya Bonded Child Labour**

### **2.2.1 Kamaiya Children before Liberation**

In the *kamaiya* system, it was common for children from a *kamaiya* family to also work for the same landlords as their parents. Girls generally worked as domestic servants while boys looked after the livestock as animal herders. Working for the master amounted to apprenticeship training for children, it ensured that they became effective *kamaiyas* as they grew older. There were about 13,000 children working under the *kamaiya* system in the five districts (Sharma and Thakurathi 1998). A large proportion of them was unaware of any wage payments system and did not get paid at all. They were not paid either due to debt incurred by the parents, or because their work was appended to the adult family labours, or they simply worked in exchange of food and clothing. The division of labour among the *kamaiyas* depended upon the age and sex of the *kamaiyas* (OMCT, 2006: 8).

Children at the age of 15 were considered fully active economically. Karki (2001) illustrates the division of labour and life cycle of *kamaiyas* in the following diagram developed in the light of his intensive interaction with the local people during fieldwork in Bardiya in 2001.

**Diagram 2.1. Division of Labour by Gender and Life Cycle in the *Kamaiya* System**



(Source Karki, 2001: 80)

As shown in the diagram, a person entered into the cycle of bondage as *Ladkakhelaiya* as young as 5-9 years old while taking care of masters' children, who were normally younger than *Ladkakhelaiya*. As they grew, the assignment continued to change. At ten years of age, they became a *Bhaiwar* or a *Gaiwar*. At around 15 years of age, they were given responsibilities of taking care of oxen and other farm responsibilities. The role took on other forms when a *Kamaiya* grew older, generally until 50 years of age, they were assigned to take care of plants at the homestead and were called a *Badheruwa*. Sometimes, older *Kamaiyas* were also assigned to take care of cattle and buffaloes,. They were also called *Gaiwar* and *Bhaiwar*. Similarly, these older *Kamaiyas* (both males and female) who took care of their masters' children were called *Ladkakhilaiyas*.

### **2.2.2 *Kamaiya* Children After Liberation**

A year after liberation, many *ex-kamaiya* children were still working for their landlords or in roadside tea-shops and hotels in the bazaars and bigger cities (Lowe, 2001:

5). The children of *kamaiyas* were still used as collateral for loans taken by their parents, or were still required to work for the same employers as their parents under exploitative sharecropping arrangements. (ILO-IPEC, 2001: 10). The number of children working in these arrangements may, perversely, actually have increased since the freedom declaration (Lowe, 2001: 5).

It was repeatedly reported that the majority of children working outside their villages are employed as domestic child labourers or in the informal service sector in urban areas of Nepal. Indeed, Tharu children from the mid and far western region do make up a large percentage of domestic child labourers in the key urban areas of Nepal (ILO-IPEC, 2001: 18). In Kathmandu, 14 % of domestic child labourers are Tharus from the region; in Pokhara, 24 % of domestic child labourers were of Tharu origin (Sharma et al 2001 and Sharma, Thakurathi and Sah 1999 in ILO-IPEC, 2001: 18).

There is no official record on the total number of *kamaiya* bonded child labour. Most of the available data are based on sample survey and estimation. In 2001, ILO rapid assessment estimated the total number of *kamaiya* bonded child labourers in the mid and far western Terai reached 17,000 children who work either in or outside the village in which their families reside. With more than 30 % of the total *kamaiya* population aged 5 to 18 working away from their households (ILO-IPEC, 2001: 23). In 2004, Child Workers in Nepal (CWIN) placed the total number at 40,000 (CWIN, 2004). In any case, studies indicate that most bonded child labourers come from large, landless families and that most of them are working in agriculture or as child domestic workers (CWA, 2007: 23).

Some NGOs which focus on rescuing *kamlaharis* have conducted informal surveys on their own. Society Welfare Action Nepal (SWAN), a local NGO, estimated a national figure of 20,000 to 25,000 from the five Tharu districts of mid and far western Terai. (Nepali Times, 2006). Furthermore, Friends of Needy Children (FNC) estimated 11,043 *kamlaharis* in six districts in mid and far western Terai (FNC, 2008).

The tasks performed by the *kamaiya* children are highly gender specific. A majority of girls working inside the household and a vast majority of boys engaged in farm work outside the household. Girls employed as domestic worker are popularly known as '*kamlahari*'. Most *kamlaharis* are working as domestic child labour, looking after children (*ladkakhelauna*) or engaged in domestic chores. A small proportion of them is also engaged in agricultural work outside the household, particularly required in the peak farm seasons of planting and harvesting. On the other hand, boys are mainly

engaged in farm work and/or animal grazing and are popularly known as ‘*chhegar*’ (goat), ‘*gaibar*’ (cattle), and ‘*bhainsbar*’ (buffalo) (ILO-IPEC, 2001: 25).

Most of *kamaiya* children work excessive hours. Their days can begin as early as 4 a.m. and stop work between 5 and 7 p.m. although some children reported working late into the night. Around one in five children sampled in the ILO-IPEC assessment said that they started working before reaching their 10th birthday (ILO-IPEC, 2001: 8 & 29). For example a 13-year-old ex-*kamlahari* informed me:

*I worked as a kamlahari when I was 6 years old. I used to do all the household work. Master used to give only food and clothes (Sushi).*

Another ex-*kamlahari* added:

*I used to clean dishes, wash clothes and other house holdwork. I went to bed at 11 p.m and had to get up early in the morning at 4 o'clock (Yama).*

Children in this arrangement are also prone to mistreatment. Many cases have shown that *kamaiya* children are vulnerable to abuse, physically and psychologically. Generally, scolding or shouting is taken as a normal part of life, be it at home or at work, but many seem to feel humiliated when they are slapped, or worse, badly beaten. On top of scolding and slapping some girl workers face sexual mistreatment from their employers or from some predators in the neighbourhood. (Giri, 2010: 163). A 18-year-old ex-*kamlahari* shares her experience:

*Being a kamlahari was very burdensome for me. If I didn't wash the clothes clean enough for my master, then I had to do it again. If the dishes were not clean then my master would beat me. When I wanted to visit my family at home, my master didn't allow me to. Due to my family poor economic condition I was forced to live my life as kamlahari. (Ara)*

There are wide range of remuneration types received by the *kamaiya* children. IPEC documented the remuneration types in the Table 2.4. A large share of the *kamaiya* wage child labourers work without pay. Many are not paid because their parents are engaged in sharecropping contracts, or because the wages of children are implicitly included in parents' wages. For those who are paid, the wages are meagre.

**Table 2.4. Mode of Remuneration of *Kamaiya* Children**

Place	Boys		Girls		Total	
	No.	Percent	No.	Percent	No.	Percent
Included in crop share	25	19.8	24	21.1	49	20.4
Included in fathers' wage	1	0.8	6	5.3	7	2.9
Food plus cash/crop based	82	65.1	56	49.1	138	57.5
Food plus attach with fathers wage		-	3	2.6	3	1.3
Food only	6	4.8	19	16.7	25	10.4
Food and schooling	1	0.8	4	3.5	5	2.1
Schooling only	1	0.8		-	1	0.4
Others	10	7.9	2	1.8	12	5.0
<b>Total</b>	<b>126</b>	<b>100.0</b>	<b>114</b>	<b>100.0</b>	<b>240</b>	<b>100.0</b>

(Source: ILO/IPEC, 2001)

In the ILO rapid assessment, the annual wage of *kamaiya* bonded child labour was in the range of two to three quintal of rice per annum, which amounts to an annual wage of Rs. 1,000 to 2,000 (ILO/IPEC, 2001: 28). Whereas Buddhi Ram (2011) found that some children who work fulltime received Rs. 1,000-1,500 per month and Rs. 4,000 per annum for those who work and received education support. However, in the recent times, the promise of education has become a magnet for the *kisan* (and maybe also for parents) to make an annual contract that does not really benefit many or most *kamaiya* children. They are either not allowed to attend school at all or are given so much work that they eventually have to drop any ambitions of becoming educated (Giri, 2010: 161).

There are different experiences regarding promise of schooling, a 16-year-old ex-*kamlahari* explains her ability to combine education and work:

*I used to work as kamlahari in Kathmandu. I started to work since I was 8 years old, for 8 years. My masters treated me well and sent me to school. I used to have time for studying at home. But, I wasn't paid for my work. (Suni)*

However, another ex-*kamlahari* has a different story:

*In order to pay for my parents' loan to the master, they sent me to work at master's house. My mother asked me to go to master's house but I refused. I said I want to go to school and my master promised me to send me to school but in the end he never sent me to school. He also gave me a lot of work. (Gane, 16)*

ILO (2001) points out that the incidence of bonded child labour in the mid and far western Terai reflects the level of social discrimination, poverty and exploitation that the *ex-kamaiyas* and their children are facing (ILO-IPEC, 2001: 17). Child labour problem among children of the *kamaiyas* seems mainly due to large family size and landlessness. Almost two-thirds of households supplying child labour are landless, and from almost half of these households, more than two children are reported working (ILO-IPEC, 2001: 23). In an agricultural society, landlessness inevitably results in ensuing and deepening poverty (ILO-IPEC, 2001: 37).

ILO (2001) also explains three interrelated aspects of bondage in the *kamaiya* bonded child labour practice. *First*, debt-bondage occurs when parents of child labourers have taken loan from their employer. Generally, children cannot be withdrawn from work until the loans are fully repaid, and the child works in debt-bondage to pay off parental debts. *Second*, the result of one or both of the parents seeking employment from a landowner. In this case, children usually work along with their parents for the same employer. *Third*, bondage also ensues with *kamaiya* households leasing land from landowners. To continue leasing contracts, landowners require the *kamaiya* family to supply child labour. The phenomenon of linking land leasing and child labour is increasing, especially since the liberation of *kamaiyas* in July 2000. Although it was not possible to collect primary or even proxy information on the extent of this phenomenon, there is indication that burden of the land lease-child labour linkage seems to be high among *kamaiya* girls (*kamlaharis*) (ILO-IPEC, 2001: 36).

### **3. National Responses to *Kamaiya* Bonded Child Labour Issue**

As highlighted in the inter-agency report of the Hague Global Child Labour Conference in May 2010, the complex phenomenon of child labour needs a comprehensive response. This response cuts across policy boundaries, which includes, schooling, health care, labour market conditions, enforcement of core labour standard and legislation, social protection, basic services access, income distribution, social norms, and cultural practices. This chapter explains different national and international commitments made by Government of Nepal with regard to *kamaiya* bonded child labour issue, as well as various policy responses and institutional mechanisms.

#### **3.1 Legislative Framework**

##### **3.1.1 Relevant Legislations on the Abolition of *Kamaiya* System**

Internationally, Nepal has ratified various international human rights conventions that commits itself against exploitative forms of labour, among others. Nepal is a signatory to the Slavery Convention and its Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. As a state party to this Convention, Nepal has assumed the obligation to take all practical and necessary legislative and other measures to bring about progressive abolition or abandonment of institutions and practices relating to slavery and slave trade including debt bondage and serfdom (GEFONT/ASI, 2007: 33). Nepal is also a member state of ILO, and, as such, is bound to honour, incorporate and implement letters and spirit of ILO conventions, particularly the Forced Labour Conventions No. 29 and 105.

Nepal Constitution (1990) outlaws the practice of forced or bonded labour. The current Interim Constitution of Nepal (2007) adds additional vigour to the spirit of the previous constitution, articles 29 and 30 provide a number of provisions prohibiting forced and bonded labour and regulating other labour practices (Interim Constitution of Nepal, 2007; GEFONT/ASI, 2007). Similarly, the *Kamaiya* Labour (Prohibition) Act, (2002) was enacted after the abolition of the *kamaiya* system to provide a legal back up to the freed of *kamaiyas*. In addition, the Civil Rights Act, 1956 and the Civil Code, 1964 also have provisions both banning and/or regulating certain forms of labour practices.

Kamaiya Labour (Prohibition) Act (2002) defined the term *kamaiya* as those who provide *kamaiya* labours ‘*bhaiswar*’, ‘*gaibar*’, ‘*bardikar*’, ‘*chhegarbar*’, ‘*haruwa*’, ‘*charuwa*’, ‘*hali*’, ‘*haliya*’, ‘*gothala*’, ‘*kamlariya*’, ‘*bukrahi*’ or under other similar systems. Key provisions in the Kamaiya Act include the following (Kamaiya Act, 2002): *first*, persons working as *kamaiya* workers at the time of the commencement of this Act shall be freed; *second*, no person shall keep *kamaiya* labourer after the enactment of this Act; *third*, *kamaiya* workers need not repay the *saunki*; *fourth*, bond or agreement (written or verbal) relating to the *kamaiya* loan shall be cancelled; *fifth*, any property obtained by the creditor as a mortgage/security while supplying *kamaiya* loans must be returned to the concerned person within three months from the date of enactment of this Act; *sixth*, a defaulter should pay a fine ranging between NRs 15,000 to NRs 25,000 to the government. He should also pay a worker double the amount of minimum wages fixed under this Act for each day of compulsory or forced work. Those who fail to return mortgaged property shall pay a fine of NRs 10 to 15 thousand along with the property. Those who employ a person without pay or with a pay lower than the minimum wage shall pay a fine of NRs 1 to 3 thousand and double the amount of the minimum wage for each day of work to the worker concerned. In the case of a person holding a public post, the amount of penalty will be double the normal one. The same is applicable to a defaulter who acts in contravention of the Act more than once.

The single aim of the Kamaiya Act is to eliminate the *kamaiya* system. Focusing only on the *kamaiya* system, it however does not address other forms of exploitative labour that are akin to *kamaiya* labour (GEFONT/ASI, 2007; Upadhyaya, 2008). The Kamaiya Act is also weak in terms of holding the perpetrator to account. Combination of dominant higher class influence, and insufficiency of administrative and legal mechanisms is likely to be the reason. Some might argue that this is why most of policy-makers, high level bureaucrats and some political leaders have not discontinued maintaining *kamaiyas* in one way or another (GEFONT/ASI, 2007; Upadhyaya, 2008). In other words, the Kamaiya Act has failed to hit the class interest of these categories of people. The failure in implementation is also caused by insufficiency of administrative and legal mechanisms.

### 3.1.2 Relevant Legislations on the Elimination of Child Labour

Nepal has made a number of important legal commitments to the protection and advancement of the interests of child workers. Nepal ratified the UN Convention on the Rights of the Child in 1990, ILO Convention No. 138 (Minimum Age) in 1998, and Recommendations No. 146; ILO Convention No. 182 (Worst Forms) in 2002 and Recommendations No. 190.<sup>9</sup> Nepal also signatory of the SAARC's Colombo Resolution on Children, the Declaration of the Rawalpindi Ministerial Meeting on Children (Abolition of child labour), Male Summit (SAARC Decade of the Rights of the Child), Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, and the Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia. (UCW, 2003: 34; Gilligan, 2003: 48)

The Constitution of Nepal (1990) seeks to protect the interest of children by conferring on them certain fundamental rights. Article 20 of the Constitution prohibits traffic in human beings, slavery, serfdom or forced labour in any form, and also prohibits the employment of minors in factories, mines or any other hazardous worksite. Article 26 obliges the state to protect the rights and interests of children, and to protect them from exploitation (Gilligan, 2003: 49). The Children's Act (1992) and Labour Act (1992), enacted in pursuance of the constitutional mandate, make the employment of children below the age of 14 years illegal. The Children's Act also established conditions of employment and provides for the establishment of a Central Child Welfare Board and 75 District Child Welfare Boards. Businesses employing children 14 years and over must register the child with the District Child Welfare Board (Gilligan, 2003: 49). The Child Labour (Prohibition and Regulation) Act, endorsed by both houses of parliament in 2000, makes important amendments to the Labour Act (1992), listing specific occupations as hazardous and prohibiting the use of children below 16 years of age in these occupations (UCW, 2003: 34).

In 2000 the government raised the minimum age for hazardous work, which was set at 14 in 1992,<sup>10</sup> to 16, by adopting the "Child Labour (Prohibition and Regularization)

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<sup>9</sup>Nepal is also signatory of UN Declaration of Human Rights (1948) and International Covenant of Civil and Political Rights (1966)

<sup>10</sup>Children's Act (1992), Chapter 2, Section 17(a) and Labour Act (1992), Chapter 2, Section 5(1)

Act.<sup>11</sup> This act prohibits children below 16 years from employment in risky occupations including public transportation, construction, tourism-related activities, and industries such as carpet weaving, cigarette, cement, etc, which involve contact with chemicals and thus harmful to children’s health. It regulates that children below 16 years are not allowed to work before 6am and after 6pm, that they may not engage in work exceeding six hours per day and thirty-six hours per week, and that they must have one day’s leave per week, and half-an-hour rest every day after every three-hour work period (de Groot, 2010: 12). The Act provides heavier penalties for violations (Gilligan, 2003: 49). Penalties for violating the law include imprisonment (USDOL, 2010: 545).<sup>12</sup>

**Table 3.1 Summary of Major Provisions against Bonded Child Labour in Nepali Law**

Laws/Acts	Year	Provision
Interim Constitution of Nepal	2007	Right against exploitation; right against human trafficking, slavery or bonded labour and forced labour; right to proper work practices; and right to trade unions, among other civil, political, social and economic rights
Kamaiya Labour (Prohibition) Act 2002	2002	Freedom of all <i>kamaiyas</i> with the cancellation of <i>saunki</i> and nullification of bond or agreement; return of mortgage/ security; and punishment for maintaining <i>kamaiyas</i>
Child Labour(Prohibition and Regulation) Act	2000	Restriction on Child Labour
Public Prosecution Act	1992	Human trafficking cases are dealt with as a public offence
Labour Act	1992	Fixation of working hours and minimum wages; overtime payment, layoff, health

<sup>11</sup>Child Labour (Prohibition and Regularization) Act (2000), Chapter 2, Section 3(2) and Schedule

<sup>12</sup>Child Labor (Prohibition and Regulation) Act, No. 14, (2000), chapter 1, section 2(b)

		and safety; and other welfare and social security measures
Children's Act	1992	Protection of children's rights and interest
Trade Union Act	1992	Right to organisation and collective bargaining
The Constitution of Kingdom of Nepal	1990	Right to organisation; recognition of labour force as a main social and economic strength; protection of labour rights; prohibition of all forms of forced labour; and restriction on employment of minors in hazardous works, including any contraventions punishable by law
Traffic in Human (Control) Act	1986	Definition of human trafficking as a crime, punishment to defaulters
Muluki Ain (Civil Code)	1964	Provision against the practice of forced labour; restriction on enslavement; fixation of wages by mutual agreement; and compensation to the worker in case of non payment
Civil Rights Act	1956	Right to equality; right against discrimination; right to personal liberty; right to life; right against forced labour and prohibition of child labour

### 3.2 Relevant Policy Responses to the *Kamaiya* Bonded Child Labour Issue

Nepal has been involved in the follow up of the ratification of ILO C182 in 2002. ILO/IPEC implemented the Time-Bound Programme (TBP) in order to assist the country in implementing the Convention by identifying the worst forms of child labour and developing specific plans for their eradication. It led to seven sectors being identified as a worst form of child labour that should be eliminated (ILO/IPEC 2006), which include, domestic labour, porting, bonded labour, trafficking (for sexual or labour exploitation),

rag picking, carpet sector, mining and stone quarries. Since then, the child labour issue has also been raised in the Government's Development Plans and attempts have been made to formulate strategies (de Groot, 2010: 12-13).

In the National Planning Commission's Tenth Plan (2002-2007) the objective was to eliminate "most of the worst forms of child labour existing in various sectors in Nepal", and that "provision will be made to eliminate the worst forms of child labour within next five years and all forms of child labour within next 10 years" (Nepal National Planning Commission, 2002). Based on the fundamental idea that future manpower would be unproductive if children are deprived of education and good nourishment, the Plan envisaged that programmes related to the elimination of child labour should be integrated with poverty alleviation programmes. The capacity of employees of concerned ministries, departments and offices related to the implementation of programmes aimed at child labour elimination should be enhanced, and a high level Central Coordination Committee should be constituted in order to coordinate the programme related to child labour elimination. With regard to freed-*kamaiya* issue in particular, the Plan sets out several main steps which will be taken by the government, *first*, provision will be made to provide the access of means to the marginalized class to increase the employment opportunity, *second*, programmes will be launched for uplifting those emancipated after the abolition of *kamaiya* practices through skills development programme, *third*, arranging for the proper rehabilitation of the freed *kamaiyas*, *fourth*, protection of land ownership and increasing the access of the real agricultural labourers to farmland (Nepal National Planning Commission, 2002).

In 2007 the Government concluded that "the legal, policy, institutional and operational efforts to protect and promote child rights continue to be ineffective" and thus proposed the implementation of policies "to create a favourable environment for the control of child labour of all types and eliminate worst forms of child labour on priority basis" in the Three-Year Interim Plan (2007-2010). According to this Plan "necessary legal, policy and institutional arrangements will be put in place and responsibility and awareness of the family will be increased in order to realize the goal" (Nepal National Planning Commission, 2007). Rehabilitation, resettlement, and livelihood development programme for freed-*kamaiyas* are still widely proposed (Nepal National Planning Commission, 2007).

In line with other policy documents, the tenth Poverty Reduction Strategy Paper also proposes measures to protect children from illegal recruitment and to strengthen inspection mechanisms, in order to gradually eliminate child labour through improving school quality and access, raising enrolment rates, increasing literacy rate and promoting technical and vocational education (GoN, 2002). Nepal's National Master Plan on Child Labour 2004-2014 defines child labour as "work or activity carried by children below the ages as defined by the constitution of the country and as explained in the Children Act and Labour Act" (MoLTM, 2004a: 2). It calls for eliminating the worst forms of child labour by 2009 and all forms of child labour by 2014<sup>13</sup>. The Master Plan commits Nepal to improving existing rules and regulations on child labour and links the elimination of child labour to improvements in the accessibility and quality of schooling (UCW, 2003b: 35). The government is currently in the process of revising this plan, and has published preliminary results in its draft National Master Plan on the Prevention and Elimination of Child Labour 2011–2020. The draft national plan adjusts the Government's timetable. Under this draft plan the goal is to eliminate the worst forms of child labour by 2016 and eliminate all forms of child labour by 2020 (USDOL, 2010a: 546).

In the education sector, the law guarantees the right to free primary education for children between the ages of 6 and 12, however, education is not compulsory in Nepal, (Nepal National Planning Commission, 2007 and USDOL, 2010b). Besides free primary education, the Government also plans to make primary education compulsory (Shiwakoti *et al.* in Ringdal, 2011: 60). The Compulsory Primary Education programme in Nepal aims to reach all part of the country by 2015 and to make schooling compulsory by law by 2012 so that children between 5 and 10 years old must complete five years of education (Shiwakoti *et al.* in Ringdal, 2011: 60). However, in practice, the costs of teacher fees, books and uniforms are prohibitive for many families, and some children are not sent to school (USDOL, 2010a: 545).

Moreover, the Government's School Sector Reform Plan aims to expand access to education and to provide alternative schooling and non-formal education to vulnerable populations. Out-of-school children (which include child labourers) are the primary beneficiaries identified in the plan (Ministry of Education, 2009). The Interim Three-Year

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<sup>13</sup>Ministry of Labor and Transport Management, *National Master Plan on Child Labor, 2004-2014*, Kathmandu, 2004,10.

Plan addresses hazardous child labour through a social awareness and reintegration campaign. It expands education opportunities to working children and provides skills training to youth older than 14 who may be especially vulnerable (US Embassy, 2011). The Government is currently revising the interim plan and expects the new interim plan will also include a goal of eliminating child labour (USDOL, 2010a: 547)

The Government of Nepal relies largely on donor funding for programmes to address child labour (USDOL, 2010: 547). There are a wide range of group involved in this efforts. According to the first comprehensive analysis of child labour related programmes in Nepal, each year a total of US\$62.6 million are allocated to the implementation of 29 international donor agency (multilateral, bilateral or international NGO) programmes directly or indirectly relate to the issue of child labour (ILO-IPEC, 2001b). Allocations to core child labour programmes (i.e., child labour, trafficking or bonded labour), however, are much less – an estimated US\$18.3 million annually. In addition, it is estimated that about 240 NGOs with a stated objective of helping children are registered throughout the country. Community development and community-based organisations, university and research institutions, and the media are also active partners and important stakeholders in addressing child labour (UCW, 2003: 35).

In addressing bonded child labour, the Government participated in a USDOL-funded project to assist former bonded child labourers and their families from 1 September 2006 - 15 December 2010 (USDOL, 2010: 547). The project took a multi-dimensional and comprehensive approach to addressing the problem at hand, it addressed withdrawal of children, providing education, vocational and skills training, employment for families and unionization. It brought together multiple stakeholders including government, NGOs, trade unions, employers' organizations, community organizations. This project successfully withdrew 1,821 children from bonded labour, increased school enrolment rates, provided families with training for generating on farm employment. The project also provided technical assistance to the Government in drafting its Master Plan on bonded labour. However, evaluation of this project also has raised questions about post project support and long term sustainability (ILO, 2010).

### **3.3 Institutional Mechanism for Coordination and Enforcement**

The Ministry of Labour and Transport Management (MoLTM) is officially leading the responsibility of enforcing child labour legislation. MoLTM leads the National Steering Committee on child labour eradication which comprises of other government departments (USDOL, 2010). MoLTM is the primary national agency responsible for enforcing child labor laws. MoLTM's Department of Labor is responsible for the labor inspectorate nationwide. MoLTM is responsible for enforcing laws that prohibit bonded labor laws in agriculture (USDOL, 2010).

In addition, a Central Child Welfare Board (CCWB) has been set up in order to protect and ensure children's rights. On a district level, the CCWB works through the District Child Welfare Boards (DCWBs), which are officially set up in all 75 districts, but often in practice comprise only one person (who is in many cases also concerned with other duties) (de Groot, 2010: 15). District Child Welfare Boards (DCWBs) have limited legal authority to enforce child labor laws and may issue civil fines. These DCWBs are the entities that receive complaints of forced child labor violations. However, the Government maintains no data on the number of cases reported (USDOL, 2010). Both the CCWB and the DCWBs are part of the Ministry of Women, Children, and Social Welfare. In practice, both MoLTM and the CCWB (under the MOWCSF) are provided with insufficient resources (in terms of both finances and manpower) that would enable them to fulfil their responsibilities. Besides, the unstable political situation in Nepal is another obstacle to implementation of existing child labour laws (de Groot, 2010: 15).

## **4. Analyses and Findings**

### **4.1 Analyses and Findings of the Legal Enforcement and Policy Implementation**

#### **4.1.1 Legal Enforcement**

A solid legal framework is a fundamental basis for action. It is highly unlikely that the problem of bonded labour and child labour can be tackled without adequate legislation. In order to build a solid legislative framework on the pertinent issues, Nepal has been actively committing itself to various international legal instruments. A wide range of legal commitments related to bonded labour and child labour issues (see Chapter 3) have been incorporated into national legislation. However, the incorporation has left some shortcomings that hinder the legislation to be effectively enforced.

With regard to child labour issue, there are many contributions that a solid legislative framework offers to efforts against child labour; *inter alia*, it translates the aims and principles of international standards into national law; it sets the principles, objectives and priorities for national action to combat child labour, and especially its worst forms; it establishes the machinery for carrying out that action; it offers a clear definition of child labour to be abolished; it sets forth specific rights and responsibilities; it provides sanctions for violators; it provides legal redress for victims; it articulates and formalizes the State's duty to protect its children; it creates a common understanding among all the actors involved; it provides a yardstick for gathering statistics and evaluating performance; and it provides a basis and procedure for complaints and investigations (UCW, 2010). Scrutinizing child labour legislation of Nepal, one may easily point out a considerable amount of contradictions and inconsistencies. This can be a major obstacle for the implementation.

Concerns regarding inconsistencies and contradictions in the child labour legislation of Nepal have been addressed by various literatures and reports (For discussion see Gilligan, 2003; UCW, 2003; ILO-IPEC, 2001b; USDOL, 2010). However, little has been done by the Government to address these concerns. Having in mind various child labour legislations depicted in the chapter 3, the shortcomings are quite striking. Of most concern, the new Child Labour Act (2000) does not cover family-based work, or, *inter alia*, work in private homes, in agriculture and on tea estates. By the same token, The Labour Act (1992) with its focus on the registered enterprise, has no jurisdiction on

all unregistered enterprises and business entities of less than ten employees, where most child labourers are situated. This creates a conclusion that children hired outside formal arrangements are not covered by the Act. Children who work in the informal sector – which account for the majority of Nepali child workers – are therefore not illegal, even if the children in question are below the minimum working age of 14 specified in the Act. This loophole may hamper the effort in addressing *kamaiya* bonded child labour issue, as most of the children are found to be working in the informal sector, for example in the private houses and agricultural sites.

Moreover, there is contradiction between the Children’s Act and the Labour Act on the definition of a “child” and the minimum age for entry to hazardous work. By setting the minimum age for entrance to hazardous work at 16 years, the Child Labour Act is not in line with ILO Convention No. 138 (Minimum Age), which states that a person must be at least 18 years of age before entering into hazardous work.<sup>14</sup> It thus fails to protect children ages 16 and 17 from work that could jeopardize their health and safety. In addition, hazardous work is not defined nor is there a mechanism for having a form of work declared hazardous (Gilligan, 2003: 51). Also, these laws on the age of legal hazardous work are not in line with international commitments in ILO No.182. Strengthening this definition and adjusting the age limit would help to protect *kamaiya* children between the age 16 and 17 who work in the harmful environment.

As for the *Kamaiya* Act (2002), the main issue of this Act is that it solely target the *kamaiya* system without addressing other types of bonded labour relations that exist. It is thus difficult for the act to be used to protect those who work under other types of exploitative bonded labour system in Nepal. Moreover, the Act does not provide for mandatory rehabilitation of the freed-*kamaiyas*.

In Nepal, legislation seems to be an expression of aspiration rather than consent. Law enforcement has been a major challenge in this country. In the context of child labour law, the institutional mechanism for enforcing the law is weak. Labour inspectors are limited in number and investigative powers, meaning that worksite visits are rare and inadequately followed up. District Child Welfare Boards, which has mandate to protect and ensure children’s rights in each district, have no inspection powers and most do not

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<sup>14</sup>This concern was raised in ILO-IPEC, *Supporting the Time-Bound Programme in Nepal, IPEC Core TBP Project*, A technical co-operation programme funded by the United States Department of Labour, Project document, 2001.

yet exist (Gilligan, 2003: 51). Inspection in the formal sector is facing many obstacles, let alone the informal sector. Private houses and agricultural sites, where many *kamaiya* children work, are highly unlikely to be monitored. In this case, the work of NGOs and labour unions is essential.

Weak monitoring system also applies when it comes to the enforcement of Kamaiya Act. Although it is outlined in the Act, monitoring through national and district level committees have not been implemented. Moreover, no system of effective identification has been established (Upadhyaya, 2008: 22). It is evident from the unreliable record and registration process of freed-*kamaiyas*. It thus impedes the implementation of freed-*kamaiyas*' rehabilitation programme.

Enforcement of child labour and *kamaiya* legislation has also been hindered by the weakness of Nepal's judiciary system. Prior to the *Kamaiya* Act in 2002, courts were reluctant to take action on bonded labour, despite some recognition that it existed. Since 2002, no one has been prosecuted for the use of bonded labour (Upadhyaya, 2008: 24). As regard to *kamaiya* bonded child labour practice, there is not enough information mentioning judicial prosecution of such case. However, penalties for illegal employment of children are small and seldom applied (Gilligan, 2003: 51). In addition, *kamlahari* practice, a type of bonded child labour practice among the *kamaiya* children, has been banned by the Supreme Court of Nepal in September 2006. Whilst this ban, the practice still prevails, in particular in the mid and far western Terai region (UNICEF, 2009).

It is also important to point out that legal enforcement highly depends on the societal acceptance. Successful regulatory enforcement is based upon the strength of the policy and its legal instruments, clarity of authorities, availability of resources, and, most importantly, societal acceptance. Enforcing regulations that criminalize large numbers of people who do not accept the moral authority of a policy will lead to its failure (Gilligan, 2003). Therefore, analysing social acceptance of *kamaiya* bonded child labour practice is essential to better understand the issue. It will be discussed in the following section.

Amidst the loopholes, the ban of *kamaiya* bonded labour practice which was enacted into Kamaiya Act has been successfully emancipating a large number of *kamaiyas*. As the government claims that approximately more than 18,400 *kamaiyas* in the mid and far-west Nepal have been liberated (GEFONT in Upadhyaya, 2008: 23). However, rehabilitation of the freed-*kamaiyas*, which has taken more than a decade, is still facing many obstacles.

#### 4.1.2 Policy Implementation

As mentioned elsewhere, child labour is a complex phenomenon. Addressing child labour requires a policy response that is cross-sectoral in nature and that involves actors both inside and outside government. After having built on adequate legal framework, it is then necessary to develop a comprehensive response, including, education, social protection, labour markets, and strategic communication and advocacy (UCW, 2010). Child labour has been mainstreamed in national development plans of Nepal. The Poverty Reduction Strategy 10th Plan, Interim Plan, and National Master Plan on Child Labour have set strategies to eliminate child labour (See section 3.2). Furthermore, the Master Plan has also identified the existence of *kamaiya* bonded child labour practice as a form of slavery/forced labour and prioritized its eradication as part of worst forms of child labour.

The Plans can be seen as containing quite comprehensive policy responses. They address the issue of child labour in relation to education, aiming to improve school quality and access, to raise enrolment rates, to increase literacy rate and to promote technical and vocational education. They also acknowledge the need to build a strong social protection and healthy labour markets to address child labour issue.<sup>15</sup> Having said that, the enormous number of child labourers in Nepal today implies different reality in practice. Implementing the plans seems to be a huge challenge for the government. This was admitted by the government in 2007 that the legal, policy, institutional and operational efforts to protect and promote child rights continue to be ineffective (Nepal National Planning Commission, 2007). It was then followed by adjusting the timeline for elimination of worst forms of child labour from 2009 to 2016 (USDOL, 2010: 546).

A study (ILO-IPEC, 2002a) on child labour related programmes in Nepal highlights two major constraints in the policy implementation. *First*, child labour programmes are concentrated in districts with road access rather than where need is greatest. In an attempt to map the geographical distribution of child labour-related programmes in Nepal, ILO-IPEC collected information on the activities by district of these 29 different international donor agency programmes (including multilateral, bilateral, and INGOs). The mapping exercise revealed a very weak relation between the

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<sup>15</sup>The strategies are explained in the National Master Plan on Prevention and Elimination of Child Labour 2004-2014

distribution of child labour programmes and child labour rates. Indeed, districts that were found not to be covered by any of the 29 programmes were among the poorest and most remote, where children face of the highest risk of involvement in work. Instead, the programmes were found to focus their efforts on districts with road access. *Second*, although collaboration in this field has been improving, nonetheless, it remains a major challenge.

Furthermore, a decade long Maoist insurgency has become an essential impediment for policy implementation. The insurgency, which occurred between February 1996 and April 2006, was launched by the CPN (Maoist) against the government. The conflict resulted in death of at least 13,000 people and the destruction of physical infrastructure, displacement of people, and serious disruption to the economy (UN Country Team of Nepal, 2010: 3).

Household vulnerability is one of the main factor that push children into labour (Gilligan, 2003: 60). Improving household resistance towards socio-economic challenges is therefore very important. Improving freed-*kamaiyas* household resistance through strengthening *kamaiya* rehabilitation programme will likely contribute to address *kamaiya* bonded child labour issue. *Kamaiya* rehabilitation programme has also been featured in many policy documents of Nepal. However, it has been very slow in the implementation. Many freed-*kamaiyas* are still left out from the rehabilitation programme a decade after their emancipation (see chapter 2). Despite the release of large numbers of *kamaiya* bonded labourers, measures taken by the government have been undermined by poor coordination between government departments, corruption, and a lack of policy coherence (GEFONT in Upadhyaya, 2008: 24).

In addressing bonded child labour, the Government participated in donor funded project to assist former bonded child labourers and their families from 1 September 2006 - 15 December 2010 as part of ILO-IPEC programme. This project claims that it has successfully withdrawn 1.821 children from bonded labour, increased school enrolment rates, provided families with training for generating on farm employment. The project also provided technical assistance to the Government in drafting its Master Plan on bonded labour. However, evaluation of this project also has raised questions about post project support and long term sustainability (ILO, 2010). Thorough assessment regarding freed-*kamaiyas* livelihood situation is necessary to monitor the impact of interventions and to determine the further steps in addressing the issue.

## **4.2 Analyses and Findings of the Socio-Economic Factors**

### **4.2.1 Poverty and Household Vulnerability**

The relation between child labour and poverty has been discussed in many literatures. Poverty is regarded as the cause as well as the result of child labour (more discussion see, Doftori, 2008; de Groot, 2010; UCW, 2010). This section will examine poverty situation in Nepal, in the mid and far-western Terai in particular; and analyse how it affects household vulnerability of freed-*kamaiya* households or vice versa. Then, I will discuss how the situation influences freed-*kamaiya* families' decision to resort to child labour.

#### **4.2.1.1 Poverty and Inequality**

In general, Nepal belongs into the category of Least Developed Countries (UNDP 2011). Nepal's Gross National Income per capita (PPP) is 1,160 USD, with HDI value 0.458 that ranked Nepal 157 out of 187 countries in the 2011 Human Development Report. According to MDG progress report, macro-economic indicators of Nepal, especially over the last two years, show serious weaknesses. The balance-of-payments deficit continues, with weak fiscal discipline, and an unfavourable investment environment. All these combined indicate a weak economy (World Bank, 2010: 6).

Amidst the challenging economic situations, progress in several areas has been achieved. One of them is on poverty reduction. Between 1996 and 2004, the level of poverty was reduced from 42 per cent to 31 percent and, it has continued going down from 31 per cent to 25.4 per cent between 2005 and 2009 (World Bank, 2010: 4). However, within this positive trend, high disparity across the region, gender and social groups is a persistent problem. The 2009 assessment highlights that 95.5 per cent of poor people live in rural areas and the incidence of poverty in rural areas (28.5 per cent) is almost four times higher than that in urban areas (7.6 per cent) (CBS 2009). In addition, the gap between rich and poor is unacceptably high and is also increasing.

Widespread disparity implies that the development does not reach the most vulnerable groups of people in Nepal. Freed-*kamaiyas* may likely be one of them. UNDP (2009) outlines that the people of three higher level caste and ethnic groups—Madhesi Brahman and Chhetri, Newar and Hill Brahman—have a higher HDI value—than that of

Janajatis,<sup>16</sup> both from the Hills and the Terai. Being *Tharus* and belonging to *janajatis* group, freed-*kamaiyas* are left out from development in comparison to the higher castes. Moreover, freed-*kamaiyas*, who mainly work as agricultural labourers and sharecroppers, will likely to shrink deeper into poverty, as UNDP (2009) points out that poverty is highest among agriculture wage labourers, followed by small farmers who cultivate their own land.

The unfavourable condition has hindered many people in disadvantaged situation to escape from poverty. Freed-*kamaiyas* are not only burdened by the slow progress of rehabilitation process, but also hampered by the unfavourable condition that makes them more vulnerable to exploitation, not to mention to recourse to child labour.

While huge discrepancy and poverty might widen the possibility for freed-*kamaiya* families to send their children to work, singling out poverty as the cause does not give a clear picture of the complex nature of *kamaiya* bonded child labour issue. Considering that not every poor household resort to child labour, one need to deeper analyse the reason behind freed-*kamaiya* households sending their children to work. The next section will look at former *kamaiya* households' resistance towards economic and social shocks.

#### **4.2.1.2 Household Vulnerability**

Household vulnerability makes and keeps households poor, deprived of opportunities and marginalized, and is supplier of children to the market (Gilligan, 2003: 60). Vulnerable households are not capable of absorbing unpredictable economic, social, and physical shocks as the result of unstable economic condition in Nepal.

After liberation in 2000, freed-*kamaiyas* faced many difficulties. The rehabilitation programme meets various impediments and has been very slow in uplifting their livelihoods (see chapter 2). Until recently, there are still around 6,922 freed-*kamaiyas* that haven't been rehabilitated (MoLRM in Buddhi Ram, 2011).

Soon after the liberation, freed-*kamaiyas* had to immediately find other occupation to survive. Many of them found it was very difficult as they had very limited options and

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<sup>16</sup>*Janajatis* is a term in the caste system of Nepal which consists of indigenous groups. Tharu ethnic is also categorized in this caste group. *Janajatis* group is placed in the lower-middle of the caste system and is regarded as impure but touchable.

job seeking skills. Based on random sampling of freed-*kamaiya* households, Kvalbein (2007) divides freed-*kamaiyas* occupation into two groups (Kvalbein, 2007):

those who are employed in a sharecropping arrangement and those who work as casual labourers, either in the urban or the rural areas. Casual worker bases their income on revenues from an unpredictable market for casual labour, whereas 41% of the respondents are employed as sharecroppers. Contrary to the fixed income given to *kamaiyas*, sharecropping implies that the income risk is equally shared by the tenant and the landowner. Thus, a sharecropper has to face a risky income. One of the reason to choose this type of contract is that they are less risk averse than those who prefer casual work and may also take advantage of the opportunity to do casual work whenever they are not busy working as sharecroppers. In addition, programme intervention from the government has given former *kamaiyas* more skills and easier access to better paid jobs in the cities.

It is unclear as to whether freed-*kamaiyas* earn better income in comparison to the situation when they were *kamaiyas*. Income may vary from one household to another, it may depend on their skills and access to job market. However, household subsistence seems to be a big problem. Sample household survey in Banke and Bardiya districts by Buddhi Ram (2011) shows that food shortage condition of freed-*kamaiya* households is very critical. In Bardiya and Banke districts, respectively 90 % and 98 % of former *kamaiya* households are in a condition of food shortage.

Furthermore, landlessness is one of the main factors behind household vulnerability in Nepal. To lessen the vulnerability of freed-*kamaiyas*, the government distributes lands as part of the rehabilitation programme. Until June 2009, around 20,651 ex-*kamaiyas* have received land (DoLRM in Buddhi Ram, 2011). Distributed land size is varied from 1-5 kattha. It is also quite contradictory to Ministry of Land Reform's estimation about family subsistence that each family minimum needs three *katthas* of land (Upadhyaya, 2008: 23). Many of the distributed lands are only sufficient to build house and kitchen gardening. Moreover, land distribution for around 6,000 ex-*kamaiyas* are halted because of land shortage (Kathmandu Post, 2011).

Homeless ex-*kamaiyas* have also received housing support from the government. Around 10,000 Nepali Rupees and 32 cubic feet timber were supplied to individual household. In the end of June 2009, nearly 43 % households received cash support and 19 % of them received timber support (MoLRM in Buddhi Ram, 2011). However, many still live in small and poor condition temporary houses or huts, let alone access to basic facilities, for example, electricity, water, and healthcare. (Buddhi Ram, 2011). Describing

the effect of vulnerable households on the children in the surrounding households, a teacher in Kachnapur, Banke district, said:

*Children's condition in this area is very miserable. Due to poverty, they usually work during day time (e.g. carrying loads, pulling rickshaw) or work in the city (nepalgunj) in order to buy foods. (Rama Paudel)*

It is worth mentioning that correlation between child labour and landlessness in Nepal is high. ILO rapid assessments (2001) on child labour in Nepal reported that 50 % of children who were interviewed come from landless families. Household without land possession has limited ability to cope with and be more vulnerable to economic shocks. It is thus worth noting that the situation of landlessness and small land possession experienced by freed-*kamaiya* households may likely be a factor for *kamaiya* children to be bonded labourers. As a 16-year-old ex-bonded labour girl put it:

*In order to pay my parents' loan, they sent me to work at master's house. My mother asked me to go to master's house to work. I was working hard and had a lot of work.*

Given the long period of working as *kamaiya* without exposure to education, freed-*kamaiyas* were also known as uneducated and backward. A study of *kamaiyas* by Sharma & Thakurathi (1998) which was conducted before the liberation showed more than 75 % illiteracy among the *kamaiyas* and their family members. Meanwhile, after emancipation, sample household survey in Banke and Bardiya districts shows improvement in the literacy rate of freed-*kamaiyas*. It reaches 98 % in age range 6-4 years, and 48 % in age range 25-60 years. However, female literacy is significantly lower than male (Buddhi Ram, 2011: 96).

Generally, each freed-*kamaiya* household has only one main breadwinner, the head of the household. Nepal has dominant patriarchal tradition that influence family structure. Female will most unlikely to be found as household head. In case of death of husband, illness, or divorce, the family will be very vulnerable as it loses the breadwinner. A 10-year-old girl who used to work as *kamlahari* in two different districts explained:

*After my father's death, mother cannot support four children. My mother then sent me to the master's house with expectations that I could earn some money and attend school.*

Another ex-kamlahari informed me:

*My father died due to heart attack, so, I had to go to master's house. My mother had to raise 3 kids. She then sent me to master's house when I was 11 years of age. (16-year-old girl)*

Given these conditions, it is reasonable to say that freed-kamaiyas faces high economic and physical vulnerability, and are socially excluded from economic development. Volatile income, food insecurity, landlessness, limited access to basic services, all will add up to create a situation in which the most vulnerable freed-kamaiya households may likely decide to let their children working. However, for bonded child labour practice to persist, households vulnerability is just one of the factor among others. In order to get better understanding, the next section will analyze the role of education in the freed-kamaiyas community.

#### **4.2.2 The Role of Education**

The relation between education and child labour has become clearer these days. Many literatures and researches highlights the possible role of education in breaking the vicious cycle of poverty. Through better education, children will likely to have better earning in the future. This section will examine the condition of education system in the mid- and far-west Terai of Nepal, and the situation of education attainment of freed-kamaiyas and their children also their perception towards education.

As mentioned, the laws guarantee free primary education for all children in Nepal. However, there are various fees that parents have to pay in practice, for example, costs of teacher, books and uniforms. This most likely hinders school attainment for children from disadvantaged families. Moreover, availability of schools is also a problem in many areas. This is true particularly in the Terai region. Nepal's Department of Education (2009) points out that this area which accounts for nearly 50 per cent of the country's population,

has only 30 per cent of total schools. As a result, there is considerable overcrowding in Terai schools.

Furthermore, education facilities are also difficult to access. In the Terai, many schools are temporarily inaccessible due to flooding in the rainy season. Such difficult condition may then influence the quality of education in the school. UNDP (2009) highlights that the less accessible a school, the more likely that its overall environment will be less conducive to teaching–learning, teachers will be less qualified, and the school will remain open for fewer days. In addition, the school are frequently closed because of *bandha* (strikes) called by political parties and their sister organizations or armed groups.

Consequently, it is reasonable to argue that all these impediments of schooling likely contribute to lower the demand for schooling from freed-*kamaiya* families. Their vulnerable household income may hardly afford additional expenses for schooling, such as, uniform, books or transport fees. Schooling might also be seen as the loss of income from child labour without immediate and intangible benefit for the families.

A slightly different situation was found during my field research in three districts in mid- and far-western Terai region, I found that freed-*kamaiya* families try to reconcile the need for additional income and education. Many former bonded child labourers were sent to work because the employers promised to send them to school. This might imply that freed-*kamaiya* parents have understood the importance of education. They saw the promise of education from the masters/employers as an opportunity for their children to enjoy schooling while earning income from the work of their children. This finding is also supported by Giri (2010) who found that freed-*kamaiya* parents appear to perceive education as important tool for uplifting their social status and enabling them to come out of poverty by challenging the existing stereotypes about their cultural and economic backwardness.

However, in practice, the promise of schooling from the masters/employers seems to be an elusive dream. From the interview and discussion with rescued bonded child labourers only a few of them informed that they had chance to attend schooling. A 16-year-old girl was lucky enough to enjoy education while working as *kamlahari*. She said:

*I used to work as kamlahari in Kathmandu for 8 years. My masters treated me good and sent me to school. I used to have time for studying at home although I wasn't paid for my work.*

Other rescued children have different experiences. Two ex-*kamlaharis* informed me:

*Their masters promised to send them to school but in the end the girls rarely attended school because of so many household works. (two ex-kamlaharis in Neulapur, Bardiya District)*

Another girl who used to work as *kamlahari* since she was 6 years old added:

*I used to do all the household works. Master used to give only food and clothes. Sometimes I got chance to go to school which made me very happy.*

From the interviews, it can also be inferred that many former bonded child labourers and children of freed-*kamaiyas* are aware of the importance of education. Many of them showed their enthusiasm of going back to school and encouragement for parents and other children to go to school.

*Parents should send their children to school. Children should go to school and learn many things. If they don't go to school, they have to work in their master's house in the future. So, everyone must go to school! (A 3rd grade primary school girl)*

Another girl added:

*This is the time for us to go school. If we don't send children to school they have to live a life like *kamaiya* in the future. So, every child should go to school. (A 19-year-old girl)*

Many of former bonded child labourers during my field research were catching up their education as they used to be working without getting the chance to study. A 12-year-old ex-bonded child labourer who just got chance of schooling told me:

*I was 10 years old when an NGO rescued me from my master's house. I was provided with 9 month non-formal basic course and was enrolled at 2nd grade in the school.*

The awareness of freed-*kamaiyas* community on the importance of education can also be seen from sample survey which was conducted in Banke and Bardiya that children of freed-*kamaiyas* aged 6-14 years have high literacy rate and low school drop out in the primary level (Buddhi Ram, 2011). However, disparity in the enrolment rate between boys and girls is quite worrying (UNDP, 2009). This concern is shared by some children that I interviewed.

*Girls have to do all household works and don't go to school. Parents send their son to school but ask their daughter do all the house hold works. (An 8th grade primary school girl)*

Another one added:

*There is discrimination between son and daughter in our families. Parents send their son to school but ask their daughter to carry out household works without sending them to school. Daughter does not get their right to read and write and enjoy their freedom. (An 8th grade primary school girl)*

Furthermore, school might also be the right place to monitor child labour practice. Teacher can play significant role in this scenario. A teacher in Banke district, who runs her own initiative in monitoring child labour in her community, informed me:

*I usually monitor children presence in the class. If I found any children absence from classes, I then checked their houses to find out any reasons, problems, or to see if parents sent their children to work. (Rama Paudel)*

Awareness of the importance of education in the freed-*kamaiyas* community has been encouraging. Parents and children value education highly. However, the quality and quantity of education facilities, and the realization of free primary education still need a lot of improvement in order to provide equal access to education for all children. Moreover, many freed-*kamaiya* households involve in the annual contract with the employers because of the promise of education for the children. In reality, children hardly manage to work and to study at the same time, or even they are not allowed to attend schooling. In order to understand the reason behind the employers' behaviour, the next chapter will discuss social acceptance and demand for child labour.

### 4.2.3 Social Acceptance of Child Labour

In Nepali society, communal customs and familial interdependence play a significant part in the community. Bonded child labour practice clearly cannot be separated from this context. It, thus, essential to this study to understand how Nepali communal customs and family interdependence shape the society perception towards the *kamaiya* bonded child labour practice.

The conception of childhood may vary in many societies. Doftori (2004: 68–9) argues that ‘Western children’ have their ‘own identity as social group’ whereas Nepali children do not have the same status as they are not recognized as ‘actors in their own rights’. Nepali children, on the other hand, are stuck with the ‘family childhoods’ derived from the community norms that basically deny their ‘autonomy and agency’. Consequently, dealing with this conception is a priority for national and international legislations to take effect on Nepali children.

As the globalisation has touched almost every corner of the world, different conception of childhood from other societies, particularly industrialized society, has gradually transferred to Nepal. Giri (2009) highlights that with the support from UN Universal Primary Education (UPE) campaign, more and more children, especially in urban settings, are embracing the possibility of enhancing their individual rights. As they start to spend more time at school than working with or for their families, their contribution to the household economy naturally decreases. However, children in the rural areas, generally, experience different condition.

In many Nepali rural areas, particularly in the poor families, children are an important part of the family, especially in a socio-cultural sense. They have a duty to be obedient and respectful to their elders and to take the responsibility to contribute to household maintenance (Giri, 2009: 606; de Groot, 2010). In the situation where no work means no food, work is considered as a shared responsibility of all household members to perform family duties by putting in maximum time and effort (Giri, 2009: 607). Moreover, work is also seen as the part of the maturation process in which children participate with peers and older relatives (Baker and Hinton in de Groot, 2010: 70)

This perception applies in the freed-*kamaiyas* community. Before the liberation, parents and children were bonded to the same landlord. They shared responsibilities in handling the work, parents usually dealt with agricultural work, and young boy took care

of animals, and daughter carried out household chores (see chapter 2). Since the ban of *kamaiya* system, various difficulties have been besetting their new lives as freed-*kamaiyas* (see section 4.2.1.2). As a result, there seems to be a trend of adults entering the cities or migrating to India for labour, and children going to their parents' former landlords or to a city dweller via a distant relative with the hope of contributing some household income (Giri, 2004).

Although many freed-*kamaiyas* seem to have adopted the new conception of childhood that embrace schooling as an essential part of child's upbringing, the critical household condition is likely to trump all other concerns. In this scenario, some *kamaiya* children tend to understand while others cannot avoid it. However, children who are sent to work at a very early age are most likely to refuse. A 16-year-old former bonded child labourer, who was sent to work before her 10th birthday, told me:

*When my mother asked me to go to master's house, I refused. I said that I want to go to school. My master then promised to send me to school but he never did.*

Accepting the role of children as contributor to household welfare, Nepali society, in general, perceives child labour as unavoidable or even beneficial or charitable. Providing work for children, including, employing child labourers is, therefore, acceptable. ILO rapid assessment on child domestic labourers in Kathmandu (2001) reported that there was "...a widespread perception among the employers that they are benefactors, securing a better future for the (domestic child labourer). On all (domestic child labourer) households researched, the employers would tell the same story of how a child, lost and found, has now obtained a better life.

Furthermore, Gilligan (2003) argues that there is a considerable empirical evidence that many political, bureaucratic and non-governmental elites employ domestic child labourers (or have employed bonded child labourers). Some of the literature reports accusations of political and bureaucratic interference with the implementation of child labour laws, including trafficking. By the same token, a Tharu community leader that I interviewed supported the argument by saying: ... *I am aware of many governmental officials who employ kamlaharis in their houses.* This obviously may undermine the enforcement of the laws and the development of social movement against child labour.

Lack of awareness and understanding of the laws is also part of the problem. Many parents do not realize that they are not allowed by the law to send children to work. Employers may likely deny the fact that their act contradicts with the laws.

The acceptance of child labour in the society may further create demand for child labour. Regardless of the employers' intention, employing child labour is always attractive, as children tend to be easier to deal with, uncomplaining, and undemanding, not to mention lower or no wage (Gilligan, 2003: 64). In the context of *kamaiya* bonded child labour, combination of parent's vulnerability, employer's and broker's economic gain as well as justification of helping disadvantaged children may likely contribute to the persistence of the practice. In addition, the unregulated informal nature of the labour makes it difficult to monitor.

### **4.3 The Interplay among Factors**

In analysing various factors that preserve the *kamaiya* bonded child labour practice, one could see how they interact one another. Each factor may fit in the supply side or demand side, however, some factors fit in both sides. The relations among them are often causal.

Factors in the macro/meso level most likely affect other factors in the micro level. It can be seen on how poverty, legal and policy implementation, and social acceptance influence other factors in the micro level. These factors are also likely to play double role by creating supply and demand for child labour.

In the supply side, the lack of legal and policy implementation in rehabilitating freed-*kamaiyas* has affected some of the most vulnerable freed-*kamaiya* households to resort to child labour. One of the reason is that many freed-*kamaiya* families have been experiencing difficult situations such as volatile income, landlessness, food insecurity limited access to basic services since the liberation. The inability of some freed-*kamaiya* households in absorbing socio-economic shocks and the absence of reliable social protection have pushed them into destitution. In addition, freed-*kamaiyas*' effort to uplift their livelihood condition has likely hampered by widespread poverty and inequality in the region.

Moreover, the false promise of free primary education have likely failed to create a condition where schooling can be the alternative to child labour. Freed-*kamaiya*

households struggle for their subsistence and hardly afford additional expense for schooling. The awareness of freed-*kamaiya* families about the importance of education, on the other hand, is likely being utilized by the employers to attract them to enter bonded child labour arrangement in which schooling is one of the offer. This may likely shape a promising image to the freed-*kamaiya* families that by entering this arrangement they can send their children to school while gaining additional income. In case of special circumstances; for example broken family, death, or illness of the breadwinner; entering bonded child labour arrangement may be seen as the chance to lessen family burden. However, in reality, children hardly manage to work and to study at the same time, or even are not allowed to attend schooling.

Furthermore, social acceptance of child labour also has a role to supply child labour. Social norm dictates Nepali society to perceive children as contributor to household welfare, particularly during difficult times. It shape family perception of child labour as unavoidable, thus, recourse to child labour.

In the demand side, social acceptance of child labour plays significant role in creating demand for child labour. Generally, employing child labour is deemed as charitable act in Nepali society. Besides the attractiveness of child labour—easier to deal with, uncomplaining, and undemanding, not to mention lower or no wage—permissive behaviour toward child labour may likely generate demand for child labour. In addition, the lack of rigorous legal enforcement and awareness of the laws prohibiting such act have also worsen the situation.

It is reasonable to argue that the interplay between supply and demand factors have resulted in preserving the *kamaiya* bonded child labour practice. The interplay suggests that addressing one or some factors is not enough, as they are interconnected one to another. It also re-emphasize the need for holistic approach, since for example, addressing the lack of legal and policy implementation is unlikely to succeed without shifting the perception of child labour in the society.

## 5. Conclusion

The fact that the practice of *kamaiya* bonded child labour in the mid and far-western Terai is still widely practiced a decade after the abolition of *kamaiya* system raises the essential question about what preserves the practice. This study is an attempt to understand the complex factors that contribute to the prevalent practice of *kamaiya* bonded child labour in the mid- and far-western Terai of Nepal. In doing so, I analysed relevant legal and policy responses, I also discussed socio-economic situation of freed-*kamaiya* households.

On the legal and policy sectors, the government's commitment on addressing the issue of *kamaiya* bonded child labour is shown through various legal instruments and policy papers. However, they are not flawless. A considerable amount of inconsistencies can be found in the child labour and bonded labour legal framework. On top of that, the implementation remains a big challenge. Some issues, such as, lack of resources, weakness of institutional mechanisms that includes judicial system, and uneven distribution of programme interventions, not to mention widespread societal acceptance of the pertinent practices, have been heavily hampered the implementation. In addition, a decade long Maoist insurgency has also hampered the progress .

On the socio-economic dimension, the existence of bonded child labour practice in the freed-*kamaiyas* community suggests that it cannot be separated from the post-liberation situation of freed-*kamaiyas*. Freed-*kamaiya* households are likely to suffer from widespread poverty and discrepancy in the country. The slow progress of freed-*kamaiyas* rehabilitation programme, among other reasons, has also contributed to their household vulnerability. More detailed analyses presented here have shown that the situation of volatile income, food insecurity, landlessness, and limited access to basic services most likely will create a situation in which the most vulnerable freed-*kamaiya* households resort to bonded child labour arrangement to get foodstuff, loans, and a piece of land to cultivate.

Many freed-*kamaiyas* and their children appear to value education highly. This likely because they see education as a tool to come out of poverty and to achieve better social status. However, many freed-*kamaiya* households involve in the annual contract with the employers because of the promise of education for their children. In reality, children hardly manage to work and to study at the same time, or even they are not

allowed to attend schooling. Moreover, the quality and quantity of education facilities, and the realization of free primary education still need a lot of improvement in order to provide equal access to education for all children and to increase demand for education.

Furthermore, there is a widespread acceptance of child labour practice. It derives from the perception of childhood and the role of a child in the family in Nepali society. Supporting family, particularly during difficult times, is regarded as a shared responsibility of all household members. By accepting the role of children as contributor to household welfare, Nepali society, in general, perceives child labour as unavoidable or even beneficial or charitable. This may likely create demand for child labour as employing child labour is always attractive—easier to deal with, uncomplaining, and undemanding, not to mention lower or no wage. In addition, the lack of awareness and understanding of the law is also part of the problem.

All in all, the government efforts in liberating and rehabilitating former *kamaiyas* are plausible. Some interventions on bonded child labour issue are also promising. However, there are a lot left to do. The continuation of above mentioned factors are likely to preserve the *kamaiya* bonded child labour practice.

Several studies, including this one, have tried to shed a light on the root causes of *kamaiya* bonded child labour issue. In this study, I have tried to apply a holistic approach to the issue by discussing legal, political, and socio-economic factors of the issue. I focused on governmental interventions. I included interviews and discussions with rescued children, peers, teachers, and community leaders to give insight on their experiences related to the issue. However, I also realized that the research sample represents a small number and limited geographic areas, therefore, it can only be generalized to address the research question in a certain extent. More studies are needed to have better understanding on wider societal factors in larger geographic areas. A thorough assessment of freed-*kamaiyas*' livelihood situation is also necessary to determine further steps in addressing *kamaiya* bonded child labour issue.

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## APPENDIXES

### Appendix 1 Map of Nepal

(Source: <http://www.mapsofworld.com/nepal/nepal-district-map.html#> as of 13 May 2012)



### Appendix 2 Questionnaire to Rescued Bonded Child Labourers & Peers

#### 1. General background data

- Age
- Sex
- Education

#### 2. Family Condition

- Household composition
- Forms, source of family income
- Division of labour within family
- Informal support network in community

#### 3. Labour activity of children

- Work history
- Characteristics of employer

Type of contract  
 Form/amount of payment  
 Task/responsibilities  
 Who benefits from wage?  
 Hours and conditions of work  
 Attitude to work

**4. Education of the children**

School attendance before, after, and during employment  
 Frequency of attendance in School  
 Feeling about school

**5. Feelings about situation and self**

Perception of past, present and future  
 Meaning of education  
 Expectation and dream on the future

**Appendix 3 List of Interviewed Children**

**Dang Diristrict**

Sabi (10)	Ara (18)	Gane (16)	Nirma (16)	Sati (15)
Sami (11)	Basa (15)	Subin (16)	Yama (16)	

**Bardiya District**

Atina (14)	Manji (11)	Gati	Nirma (15)
Atina (15)	Sushi	Ranji	Astuti (12)

**Banke District**

Rati (16)	Gena	Suni (16)	Asmi (9)
Bire	Lali	Shara (19)	Sushi (13)

**Appendix 4 Interviewed Community Leaders and Teacher**

1. Dilli Bahadur Chaudhary, Tharu Community Leader and Director of Backward Society Education (BASE)
2. Birbal Chaudhary, Tharu Community Leader and Bardiya District Coordinator of BASE
3. Rama Paudel, Teacher at a School in Kachnapur VDC, Banke District.