

AIDE-MEMOIRE

NEPAL - STRENGTHENING THE LABOUR MARKET REFORM THROUGH SOCIAL SECURITY AND A PROPOSED UNEMPLOYMENT BENEFIT PROGRAMME

For consideration by National Task Force [on Employment], as convened under the auspices of the Ministry of Labour & Transport Management

Background

While the social security system of Nepal has a relatively long history – dating from the first establishment of a Provident Fund in the 1930s – the existing provisions meet the present-day needs only rather poorly. This is the case in respect of all three major “dimensions” of social security –coverage by proportion of persons/workers, coverage by contingencies, and quantum of benefits. In particular, the first of these deficiencies reflects the overall limitations of the labour market in Nepal, and the overwhelming predominance of the informal economy (or “unorganized sector”) as compared with the formal economy.

There is now a renewed sense of urgency directed towards a major reform of the labour market in Nepal. The overall objective is to put in place an environment designed to facilitate both enhanced investment and productivity, with simultaneous benefits for entrepreneurs and the work force of the country. It is envisaged that, in order to achieve these aims, virtually all aspects of the labour market and labour law should be reviewed and, where necessary, overhauled; these will certainly include the system of regulation of industrial relations – to which end a new National Labour Commission Act is envisaged, and has been drafted – and of social security.

As regards social security, a number of measures are likely to be proposed, to address the needs of those working in both the “organized” and “unorganized” sectors. However, the most immediate need is likely to be to put in place a scheme of unemployment benefits, designed as far as possible to facilitate the transition of workers who are presently employed rather unproductively (but whose continued employment is effectively protected under the existing labour law) from such employment to, it is hoped, yet-to-be-created but more productive jobs. There are many advantages to the implementation of such a scheme on the basis of social insurance principles; this would be the first example of social security provision (at the national level) on such a basis.

The next stage in the development of an unemployment benefit (UB) scheme will be for the social partners to give consideration to the relevant issues and the necessary decisions which will need to be taken at the national level. An appropriate forum in which to develop, as far as possible, a suitable consensus is likely to be the national Task Force on Labour Law Reform, constituted under the auspices of the Ministry of Labour and Transport Management, or a successor body. In order to facilitate such deliberations, the ILO has fielded a technical mission to Nepal, from 3rd to 8th March 2008.

Principles

Social security, by its nature, seeks to meet the needs of individuals who suffer the impact of specified “contingencies”, but on a collective, or society-mandated, basis. It is usual *either* that the right to receive benefits for individual workers is established through the payment of contributions either by the individuals themselves, *or* by their employers, *or* (most commonly) on a predetermined, joint basis. More rarely, government may add a share to the overall pool of contributions, but it is usual for government to restrict their commitment to the financing of social income benefits to so-called “social assistance” arrangements, which provide in general for those who are unable for some reason (usually lack of employment or lack of means) to contribute to a rules-based social security scheme. For any such social security arrangement to work effectively, it is essential that those who are responsible for payment perceive a general basis of fairness underlying their participation.

In a rules-based scheme of social security, the members’ rights are accordingly established, albeit in a rather mechanical way, in relation to the wages or salaries from which contributions are calculated. It is very difficult to find a way in which such a scheme can offer comparable rights to workers in the informal economy, or “unorganized sector”. If, however, some sense of equity across the whole society is to be established, then such an outreach to the unorganized sector is, in the long run, essential. The Interim Constitution of Nepal seeks, in a relatively strong manner (by comparison with other countries), to establish *rights* of this nature.

As a mechanism for rights-based provisions by way of social security, we may point to the advantages of social insurance, which provides a naturally strong notion of “fairness”, resting (technically) on the basis of *solidarity*. The proposals set out here for the establishment of a scheme of UB do in fact represent a scheme of social insurance, and since it is thought that, until now, no aspect of social security provision has in fact been arranged through this mechanism, the proposals may be described, in this sense, as ground-breaking.

Legal/Legislative Considerations

It is essential that any scheme of social security, and specifically a rules-based scheme, should be founded upon a properly formulated legal basis. In fact, the social security provisions presently existing in Nepal almost all rely on legislative provisions contained in the Labour Law, which as presently constituted dates from 1992 (2048 Nepal calendar); the structure and operation of the Employees’ Provident Fund are governed by specific, additional legislation (the Employees’ Provident Fund Act of xxxx).

The Labour Law is designed, essentially, to regulate the relationship between an employee and his employer, assuming that relationship to be one of some degree of formality. Those provisions under social security which are specified in the Labour Act fit reasonably well into this pattern, being (the maternity, accident and sickness benefits) in each case items which have “traditionally” been provided under so-called “employer’s liability” and which can be seen, in fact, as risks which are *insurable*, i.e. risks which are in principle capable of being underwritten

through contracts of insurance which could (even if this is not often done in practice) be effected by employers with commercial insurers.

If, now, a scheme of UB is put in place and operated on the basis of social insurance, such a scheme will be rather different in its nature. The basic relationship to be guaranteed by the law will now be one between insured members (workers) and the institution operating the scheme (mirroring some aspects of the EPF). It is suggested, therefore, that close consideration should be given to drafting a separate, new law to regulate the scheme of Unemployment Insurance (UI). Such a law might well be drafted in such a way as to accommodate, in the future, any extensions of the social security system in which new branches of social protection could be brought into effect under social insurance principles.

Unemployment Benefit – general remarks

In the following outline, the contingency to be addressed (at least in the conditions presently prevailing in Nepal) is that of “unemployment” *in the sense* of the event of an individual worker being made redundant by reason in some legitimate way of the disappearance of the employer’s need for the services of that worker (or any other worker who might fill substantially the same post). This would be the case, clearly, if the enterprise closes permanently, or the enterprise withdraws from the sector of business in which the particular worker is engaged.

Unemployment Benefit Scheme – detailed considerations

Attached below is a matrix, setting out as many as reasonably possible of the elements and features of a new Unemployment Insurance scheme which must be considered in making the detailed design, together with some technical comments on each item. As far as possible, it hoped that a consensus may be quickly established between the stakeholders regarding individual design elements, which may then be reflected directly in the draft legal framework to be prepared.

Many of the main issues which we perceive to have been raised in the discussions to date, and therefore to be of principal concern to the stakeholders relate to the following:

- *Affordability:* any new UI programme should not be too costly, as otherwise it will not be sustainable;
- *Administration:* there are a variety of ways in which such a new scheme can be administered. One possibility would be to delegate the administrative responsibility to the sole existing institution dealing with social security, namely the provident fund organization (EPF/KSK); however, there are a number of possible countervailing considerations, and in the initial “round” of stakeholder consultations the proposal was put forward, even if tentatively, that a new institution – perhaps a National Social Security Authority – may be needed;
- *Coverage:* It is proposed that, as a general principle, government employees should be covered under any new UB or UI scheme, partly to ensure that the relevant “risk pool” is maintained at the largest reasonable size, and partly because it is observed that there is

increasing mobility (which is generally desirable in itself, within the (admittedly rather small) formal economy, as between public and private sector employees; however, there are certain categories of government employees, mainly in the security services, whose conditions of service are sufficiently distinctive to justify maintaining their independent provision,

- *Governance:* In general, the ILO recommends that all social security schemes should be subject to oversight by a board of “governors” or “trustees” (according to the most suitable local legislative provisions constituted from among the stakeholders on a fully tripartite basis. In general, this principle has been recognized in Nepal, and indeed the Task Force itself represents an expression of that recognition – but has, perhaps, been put into practice in the past only rather weakly.
- *Links to other aspects of Labour Law reform and development:* It is likely, inter alia, that the new National Labour Commission to be established under the newly drafted legislation will have a significant role to play in relation to the proposed UI scheme, this is likely in particular to feature in the appeals system, which is a necessary component of any social security scheme.

One aspect of the scheme design which has already been raised repeatedly is the need to protect the new scheme from abuse by claimants who may qualify for benefits on a convoluted interpretation of the rules but not within the spirit of the design. It has been suggested that one such means of defence would be to require that an individual worker should complete an uninterrupted period of work of 12 months before becoming affiliated to the scheme. We would comments that there are “pros and cons” to the inclusion of such a provision, which would slow the progress to full coverage, so that, if it is indeed incorporated in the new UI law, it should be subject to review at a very early stage.

All issues need to be carefully analysed and discussed. The ILO is well prepared to assist the Government in the future development of the proposed Unemployment Insurance scheme.

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UB Scheme Outline - Matrix to be attached