Parallel Information: The Right to Adequate Food in Nepal

Article 11, ICESCR

FIAN Nepal
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Cover photo:
A woman with a baby in her back, assisted by another girl are busy plucking up tender leaves/buds from a stinging nettle plant. People in some parts of Nepal, mainly in the rural areas of hills, depend on these types of neglected plant resources that are grown naturally in and around the agricultural lands, wasted lands, close to water sources and forest areas.

Photo by: Rajendra Kumar Basnet

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The Right to Adequate Food in Nepal
(Article 11, ICESCR)

FIAN Nepal
August 2014, Kathmandu
Abbreviations

ADS : Agriculture Development Strategy
AVR : Antiretroviral
CBS : Central Bureau of Statistics
CESCR : Committee on Economic, Social and Cultural Rights
CEDAW : Committee on Elimination of Discrimination against Women
CSO : Civil Society Organisations
DAO : District Administration Office
DFID : Department of International Development
DANIDA : Danish International Development Agency
ESCR : Economic, Social and Cultural Rights
EU : European Union
FAO : Food and Agriculture Organisation
FIAN-Nepal : Food First Information and Action Network Nepal
FNSP : Food and Nutrition Security Plan of Action
GoN : Government of Nepal
ICESCR : International Covenant on Economic, Social and Cultural Rights
IFAD : International Fund for Agriculture Development
JICA : Japan International Cooperation Agency
ILO : International Labour Organisation
NDC : National Dalit Commission
NeKSAP : Nepal Khadhye Surakchhya Anugaman Pranali
NFC : National Food Corporation
I/NGOs : International and National Non-Governmental Organisations
NHRC : National Human Rights Commission
NPC : National Planning Commission
NPR : Nepali Rupees
NWC : National Women Commission
OHCHR : Office of the High Commissioner for Human Rights
OP-ICESCR : Optional Protocol to the International Economic, Social and Cultural Rights
Rs. : Nepali Rupees
SDC : Swiss Development Cooperation
USD : United States Dollar
UPR : Universal Periodic Review
VDC : Village Development Committee
WFP : World Food Programme
YAC Nepal : Youth Acting for Change, Nepal
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I. Introduction

This report has been prepared by FIAN-Nepal for the Committee on Economic, Social and Cultural Rights (Committee) in anticipation of the Committee’s consideration of Nepal’s 3rd periodic reporting November 2014. FIAN-Nepal expects that the information contained in this report will be useful to the Committee during its consideration of the report of Nepal, and when developing concluding observations and recommendations.

Methodology

The information contained in this report is mainly based on the findings of FIAN's monitoring of the implementation of the right to adequate food by the state of Nepal. It is also based on desk research and includes a review and analysis of the relevant national laws and policies in light of international human rights instruments ratified by Nepal. Attention has been given to the collection and analysis of secondary data and statistics from various sources, including relevant government and UN agencies as well as I/NGOs. This report further benefited from the input and comments provided by experts, both national and international, working in the field of monitoring and protection of the right to adequate food in Nepal.

II. Situation of the Right to Food in Nepal

The lack of enjoyment of the right to adequate food remains a critical issue in Nepal. Poverty heavily hampers Nepalese households’ efforts to achieve food and nutrition security. Currently, around 25% of the Nepalese population lives below the poverty line.\(^1\) In terms of Development Regions, Eastern Nepal has the lowest poverty level (21.44%), while the Far-West has the highest level (46%). Among the caste groups, Hill and Terai Dalits live at the highest poverty level while the Hill Bramhins and Newars live at the least.\(^2\)

According to FAO, about 17 districts are food insecure and two districts are extremely vulnerable in terms of food security.\(^3\) The report of the International Food Policy Research Institute (IFPRI) states that the Global Hunger Index of Nepal in the year 2013 is 17.3 indicating a serious problem of food security.\(^4\) About half of the population in Nepal lives on less than US$1.25 per day.\(^5\)

1. Nutrition Security

Nepal lags behind in terms of basic nutritional indicators, and under-nutrition remains a challenge. Amongst children under the age of 5 years, 41% are stunted (low height for age), 29% are underweight, and 11% wasted (too thin for height), whereas about 16% population has been stated as undernourished.\(^6\) Micronutrient deficiencies are also seen to be higher

\(^1\) Nepal Living Standard Survey 2010/2011, CBS, GoN
\(^2\) Ibid
\(^4\) http://www.ifpri.org/publication/2013-global-hunger-index-0
\(^5\) http://meroreport.net/profiles/blogs/status-of-food-security-in-nepal
\(^6\) Nepal Demographic and Health Survey 2011,
with 46% children between age of 6 and 59 months suffering from anemia.\textsuperscript{7} The prevalence of stunt in the hills and mountains of Mid-western and Far-western regions is higher with the figure above 60%.\textsuperscript{8}

According to a report of the National Planning Commission\textsuperscript{9}, Dalits living in the Terai and Hill areas have the worst food consumption score, whereas Brahmans living in the same areas have the best. In addition, the average food security indicator scores for Dalits\textsuperscript{10} and Janajatis\textsuperscript{11} are generally worse than the average indicator scores for any one geographical region. While the prevalence of stunting is highest among the Dalits in the Hills and Terai, it was somewhat lower among the Janajatis in the Terai region. The prevalence of wasting was notably higher among the Janajatis than in any of the other groups.

Overall, there are no significant differences between the average consumption of male and female-headed households. However, the prevalence of wasting is significantly lower among women headed households (11.4\% vs. 15.8\%), as is the prevalence of underweight (30.4\% vs. 36.2\%).\textsuperscript{12} While previous studies have shown that women, particularly young women, often consume the worst diets within a household, there was no significant difference in the prevalence of under-nutrition amongst children by gender.\textsuperscript{13}

2. Economic Accessibility

Food price inflation has been steadily increasing over the past 30 years, with a significant acceleration for most commodities over the past decade and a rapid increase around 2007 and 2008 at the time of the world food crisis. However, food prices in Nepal continued to experience steep inflation even after the official end of the world food crisis, and there has been virtually no respite in recent years. Food prices across almost all commodities have increased dramatically in recent years. For instance, compared to 2003/04, the price of coarse rice has increased by almost 77\%, basmati rice by 70\%, wheat flour by more than and potato by 219\%. Most lentils and beans are now more than double the price—black gram or black lentil went up by 114\%, lentil up by 146\%.\textsuperscript{14}

This has forced low income households to spend a significant portion of their income on food. With such a high level of expenditure on food, it is difficult for these households to break the cycle of poverty since they are unable to spend their income to building assets. Moreover, when shocks occur, they are very quickly forced to sell assets for cash and have to compromise with other basic needs and rights, thus impeding the realization of the minimum essential levels of ESCR and negatively influencing the realization of the right to an adequate standard of living(article 11 of the ICESCR).

\textsuperscript{7}http://www.wfp.org/countries/nepal/overview
\textsuperscript{8} Ibid
\textsuperscript{9} Nepal Thematic Report on Food Security and Nutrition 2013, National Planning Commission, page no. 33
\textsuperscript{10} One of the lowest and suppressed groups in the Hindu-caste hierarchy system in Nepal, Dalits have long been victims of untouchability and caste-based discrimination.
\textsuperscript{11} Adivasi Janajatis refer to indigenous peoples in Nepal who, according to the National Foundation for Development of Indigenous Nationalities, have their own mother tongue, traditional culture, written and unwritten history, traditional homeland and geographical areas as well as egalitarian social structures.
\textsuperscript{12} Nepal Thematic Report on Food Security and Nutrition 2013, National Planning Commission, page no. 34
\textsuperscript{13} Ibid
\textsuperscript{14} Nepal Thematic Report on Food Security and Nutrition 2013, National Planning Commission, page no. 50
3. Right to Adequate Food and Emergencies

Nepal is highly vulnerable to natural disasters that may result in human loss and suffering as well as destruction of property and livelihood support systems. According to the Asian Disaster Reduction Centre, Nepal falls in the top 20th list of the most multi-hazard prone countries in the world ranked 4th, 11th and 30th in terms of climate change, earthquake and flood risk respectively.15 Other major disasters in Nepal include landslide, fire, drought, epidemic, storm, hailstorm and avalanches. Although there is no official disaggregated database to assess the degree of vulnerability in terms of enjoyment of the right to adequate food caused by natural and human-induced disasters, the number is generally presumed quite substantial.

In 2008, for instance, over 40,000 people of 7,563 families of Shreepur, Haripur and Paschim Kushaha VDCs in Sunsari of Eastern region were displaced as a result of the Koshi floods.16 In the same year, approximately 200,000 people in eight districts of Mid and Far Western region were affected by heavy rainfall and landslides.17 In 2013, over 2500 people were displaced after the Mahakali River burst its banks in the Darchula District headquarters, sweeping away a total of 77 houses (64 residential and 13 government offices).18 And very recently, in the span of two weeks in the month of August 2014, over 70 persons were killed by floods and landslides across the country, leaving over 22000 displaced from their original place.19

Over the past five years, the local NGO YAC Nepal (Youth Acting for Change, Nepal) monitored the displacement of 59 families from the Jogbuda Village Development Committee, Dadeldhura District who were displaced from their homes by repeated devastating flooding of the Rivers Pantura and Rangoon beginning in 1984. The floods swept away approximately 22 hectares of cultivated land on which the families depended for their livelihoods. In Fiscal Year 2069/70 (2012), the Government took a decision to allocate Rs. Nine Million (90,00,000) (approximately 70,000 Euros) for the safe resettlement of these families. However, till date the land purchasing process could not be completed by the government and the affected families have not yet been resettled.20

Apart from natural disasters, frequent Bandas21 often cause high fluctuation in food prices leaving many low-income households food insecure. Given the higher possibility of violations of the right to food in such a situation, immediate humanitarian assistance including food support and evacuation of human and property seems to be a matter of urgency for Nepal.22

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17 Ibid
19 Nagarik Daily dated 16 and 17 August and published from Kathmandu, www.nagariknews.com
20 Case documented by YAC Nepal http://yacnepal.org.np
21 Bandar means ‘closed’ in Nepali and it is the term most often to describe a strike which happens on a very frequent basis in Nepal. During banda there is no public and private transport allowed to move and shops, restaurants, hotels and schools are forced to close.
22 See UN Guiding principles on Extreme Poverty and Human Rights, V, G. C and H.
III. Legal and policy framework

1. Absence of operational laws hampers the realization of ESCR guaranteed by the Interim Constitution as fundamental rights

The Interim Constitution of Nepal 2007 includes a number of provisions that protect economic, social and cultural rights, including the right to food. Article 18 (3) of the Interim Constitution provides that “every citizen shall have the right to food sovereignty as provided for in the law”. Although the right to food sovereignty is not a human right internationally recognized, such a provision of food sovereignty in the national constitution is a positive development and may provide a condition for the realization of the right to adequate food at national level.

Similarly, the Interim Constitution contains provisions that protect the right to employment for every citizen and the right to social security for women, labourers, the aged, disabled as well as incapacitated and helpless citizens.

However, these fundamental rights require legislative measures (such as development of framework or operational law) in order to be effective. This has not happened yet despite the rulings of the Supreme Court of Nepal in 2008, including the public interest litigation case, *Amrita Thapa Magar and Others v Office of the Prime Minister and Council of Ministers and Others* in which the Court ordered the Government to enact necessary laws to effect the realization of constitutional guarantees related to economic, social and cultural rights— the right to free education, health, employment, food and social security. Such court rulings await implementation.

Recently, FIAN Nepal, Justice and Rights Institutes (JuRI-Nepal) and other civil society organizations have started to develop draft framework legislation on the right to food to be submitted to the parliament either through the Government or as a private bill. However, it is yet to gain wider support and the involvement of key stakeholders, including the government buy-in. The development of such a framework law on the right to food must be in compliance with the relevant international human rights standards, including taking into consideration the Voluntary Guidelines on the Right to Food in the Context of National Food Security, adopted by the FAO ten years ago and the recently adopted Voluntary Guidelines on the Responsible Tenure of Land, Forest and Fisheries.

Likewise, the Interim Constitution not only fails to recognize the right to be free from hunger as a fundamental right, but also to recognize in full form the right to an adequate standard of living for a person and his/her family, including adequate food, clothing and housing, and to the continuous improvement of living conditions as provided by ICESCR.

Article 13 of the Interim Constitution guarantees the right to equality and non-discrimination as “there shall be no discrimination against any citizen in the application of general laws on

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23 Article 18 (1)  
24 Article 18 (2)  
25 Writ no. 0139, decision dated 2065/1/4 (2008)  
26 Justice and Rights Institute Nepal (JuRI-Nepal) and FIAN-Nepal are among them. For example, on 28 February 2014, JuRI-Nepal and FIAN-Nepal organized a preliminary roundtable of stakeholders in Kathmandu to identify key policy issues and areas of concern in connection to developing a framework law.  
27 Article 11 (1)
grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction or any of these.”

However, it fails to incorporate all prohibited grounds of discrimination as stated in the international human rights standards, including ICESCR. In particular, it fails to prohibit discrimination on the basis of property, birth and other status and leaving the list of such prohibited grounds of discrimination non-exhaustive or open-ended. Also, in the context of economic, social and cultural rights, there is a need to include more explicit and elaborated provisions in the constitution to address discrimination, particularly de facto discrimination as well as references to deal with ‘direct’ and ‘indirect’ discrimination.

2. Directive Principles and Policies

Article 33 of the Interim Constitution, under Responsibilities, Directive Principles and Policies of State, includes following provisions that are relevant for the right to food:

- Pursue a policy of establishing the rights of all citizens to education, health, housing, employment and food sovereignty (h);
- Adopt a policy of providing economic and social security and provide land to the economy backward classes, including the landless, bonded labourers (kamaiyas), tillers (haliyas), farm labourers and shepherds (haruwa-charuwa) (i);
- Formulate a common development strategy for socio economic transformation and justice, as well as for rapid economic progress and prosperity of the country (k); and,
- Implement effectively international treaties and agreements to which the State is party to (m).

Implementation of these provisions, however, remains to a great extent poor, for they are subject to the discretion of the Government. Article 36 of the Interim Constitution does not allow any questions to be raised in any court as to whether these provisions are implemented or not. Nevertheless, the Supreme Court of Nepal in response to a public interest litigation interpreted how even directive principles can be enforceable, particularly in the context to give effect to the fundamental rights. Taking this into consideration and also with a view to strengthen justiciability of ESCR, including the right to food, it is highly desirable that the new constitution does not contain any provision that weakens the justiciability of ESCR, including the right to adequate food.

3. Lack of Constitutional Recognition of International Human Rights Treaties

Nepal is party to the major international human rights treaties, including ICESCR. In accordance with the Treaty Act 2047 (1990), in case the provisions of a treaty which Nepal is a party to, conflict with the provisions of current laws, the latter shall be invalid to the extent

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28 Article 13 (2)
29 For example, Article 9(3)(4) of the South African Constitution provides: 3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; 4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
30 In the case Yogi Narahari Nath et al V Rt. Honorable Prime Minister Girija Prasad Koirala and Others [1996] NKP 33, Supreme Court held “Despite the non-enforceability of the Directive Principles and state policies provided under the constitution, the Court can allude to any decision of the Government made disrespecting the Directive Principles and the policies.”
of such conflict for the purpose of that treaty, and the provisions of the treaty shall be
applicable in that connection as Nepal law.\textsuperscript{31} Superiority of international law over statutory
law in the national context is a positive part of the Nepalese legal system. However, it is
required that national legal provisions are first adopted to incorporate human rights in the
national legal system. This poses a challenge in the application of international human rights
standards, including the right to adequate food.

In fact, no such law or framework legislation currently exists in Nepal making it difficult to
determine whether national legal provisions concerning the right to food in Nepal is
consistent or in conflict with the international standards. Such a vacuum can be addressed
by incorporating an explicit provision in the new constitution guaranteeing constitutional
status of international treaties. Such constitutional provision should also require the courts to
interpret constitution and other laws in line with international human rights instruments
applicable to Nepal. It is particularly relevant at this juncture as constitution making process
has resumed in Nepal with the election of Constituent Assembly for the second time
following the dissolution of the first Constituent Assembly in May 2012 without promulgating
constitution.

4. Lack of Comprehensive National Strategy on Food and Nutritional Security

The implementation of the right to adequate food requires the adoption of a national strategy
to ensure food and nutrition security for all, particularly targeting the marginalized and
disadvantaged sections of society. Such a strategy should be based on human rights
principles that define the objectives, and formulation of appropriate policies and
Corresponding human rights benchmarks.\textsuperscript{32} Currently no such comprehensive strategy exists
in Nepal that provides a guiding framework to advance the realization of the right to
adequate food and eradication of hunger and malnutrition.

In 2013, the Government, with the support of Asian Development Bank and other
donors,\textsuperscript{33} formulated the Agricultural Development Strategy (ADS) for the period 2013-23.
Initiated in 2011, it passed through rounds of consultation with stakeholders, which included
also civil society representatives in the steering committee.\textsuperscript{34} ADS aims to achieve
competitive, sustainable, and inclusive agriculture development that brings economic growth,
Improved livelihoods, and food and nutrition security.\textsuperscript{35} How far this can be considered a
positive move on the part of the Government and donors for advancing and protecting the
right to adequate food is yet to be assessed.

As a part of implementing ADS, the Government formulated Food and Nutrition Security
Plan (FNSP).\textsuperscript{36} According to FAO that provided technical support to the Government to
develop FNSP, it complements the multi-sector nutrition plan for accelerating the reduction
of maternal and child under-nutrition initiative in Nepal.\textsuperscript{37} The FNSP, according to the

\textsuperscript{31} Clause 9 (1) of the Treaty Act
\textsuperscript{32} The Right to Adequate Food: Fact Sheet No 34 by OHCHR and FAO, 2010, page no. 26
\textsuperscript{33} IFAD, World Bank, FAO, WFP, the EU, SDC, JICA, DFID, USAID and DANIDA
\textsuperscript{34} Initially, however, civil society representatives were not involved. It was only after joined intervention from the civil society that
their representatives got involved.
\textsuperscript{36} Food and nutrition security is one of the priorities identified by ADS.
Ministry of Agriculture Development, complies with the National Planning Commission’s (NPC) Three Year Interim Plan (2007-10), its Three Year Plan (2010-13), the Ministry of Health and Populations National Nutrition Policy and Strategy 2004, and the Health Sector Strategy. The FNSP is intended to serve as the Governments’ standard document for food security interventions during 2013-22 for vulnerable populations.38

In addition, various initiatives such as the promotion of nutritional education, awareness campaigns, integrated child disease management, maternal and child healthcare program, promotion of breastfeeding and child feeding practices, and fortified food and micronutrient interventions39 are also presently being implemented by the Government with some support from the donor communities.

However, tangible results of these policy and programmatic interventions have yet to be seen. One of the criticism of such policies and strategies, particularly from the human rights community in Nepal,40 is that they lack human rights-based approach; that is, they are not fully anchored in a system of rights and corresponding obligations established by national and international law, including the right to adequate food, nor do they strengthen accountability of non-implementation of these policies and programmes.

In 2010, the Government of Nepal reviewed and updated the National Human Rights Action Plan (2010-2013), but failed to incorporate any specific programmes, targets and actions to advance the realization of the right to adequate food. In February 2013, FIAN-Nepal, JuRI-Nepal41 and the Right to Food Network jointly submitted a memorandum to the Government calling on it to incorporate the right to adequate food in the action plan. As a result of this, for the first time the right to food has been included in the National Human Rights Action Plan. However, the effective implementation of the action plan remains a challenge given the poor implementation of such action plans in the past.42

IV. Implementation of the Recommendations of the UN Human Rights Mechanisms

1. Committee on Economic, Social and Cultural Rights

Being a State party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Government of Nepal has committed to taking appropriate steps, to the maximum of its available resources, to ensure the realization of the right to an adequate standard of living, including adequate food. A fundamental requirement for identifying “appropriate steps” is to have a system in place to collect and analyze data on the actual

39 For a criticism of Ready-to-use Therapeutic Foods, for which there is no significant added value for its use in the treatment of Moderate and Severe Acute Malnutrition and instead could interfere with positive aspects of food culture such as breastfeeding and infant and young child feeding practices, please see IBFAN Statement: Cochrane Review on Commercial Ready-to-use Therapeutic Foods (2013), accessible at http://ibfan.org/ips/IBFAN-calls-for-a-review-of-UN-September-2013.pdf.
40 Based on discussion with representatives of Justice and Rights Institute Nepal (JuRI-Nepal) and Justice for All, Kathmandu-based NGOs involved in legal and policy analysis and advocacy concerning human rights, including ESCR.
41 Justice and Rights Institute (JuRI-Nepal), a Kathmandu-based NGO, works in the field of human rights, social justice and rule of law.
42 Although the Action Plan was first initiated and adopted in 2004 and being reviewed and updated every three to four years, no significant results have so far been achieved. It only served as a cosmetic document of the Government.
status of realization of the right to food. Such data collection and analysis must be carried out periodically in order to continuously monitor whether the realization of the right concerned is progressive, stagnant or retrogressive, and thereof, with a view to adjusting ineffective policies and programmes.

The Committee reiterated this in its last Concluding Observations to Nepal and requested that the Government provides annual data, disaggregated by caste, ethnicity, and gender to enable monitoring and evaluate progressive realization of economic, social and cultural rights.\textsuperscript{43} No such system and practice as such is currently in place to generate disaggregated data, particularly on the prohibited grounds of discrimination. The Central Bureau of Statistics (CBS), responsible for collecting and analyzing such data and information, conducts population census every 10 years and carries out National Living Standard Survey periodically. However, the disaggregation of data of such surveys is chiefly limited to geographical location (districts and region) and on the basis of gender and certain caste and ethnicity. Such broad categories do not allow for more detailed identification of the poor and vulnerable groups in society, particularly in terms of assessing the enjoyment of human rights, including the right to adequate food by these groups.

Regarding the recommendation of the Committee that the State party takes urgent steps to ensure food security and access to water for all, particularly those who belong to the most disadvantaged and marginalized groups,\textsuperscript{44} no targeted and comprehensive measures have been taken yet to that effect. It is to be highlighted that in 2008, the Supreme Court of Nepal issued in response to a public interest litigation\textsuperscript{45} an interim order for the Government to immediately supply foodstuff in 12 remote hill districts of Mid and Far-Western regions where mass starvation was reported and particularly Dalits, lactating mothers, elderly and children among those mostly affected. However, the Court overlooked a number of other demands of the petitioners, including that the Government had to adopt preventive and protective measures in relation to differently situated individuals and groups, such as pregnant and lactating mothers, children, elderly and persons with disabilities. The Court also declined to constitute or order the Government to constitute an inquiry committee to assess the extent of the starvation and provide adequate compensation to the affected individuals and families as well as hold the responsible accountable.

The Committee also asked the Government to provide in its third periodic report detailed information about the extent of food insecurity, the groups most vulnerable to it, and the concrete measures envisaged to address it.\textsuperscript{46} The Government of Nepal, however, fails to do so. No adequate and updated information is available in the state report\textsuperscript{47} submitted to the Committee with regard to the extent of food insecurity and the population that suffered. A positive development, though, is the Nepal Food Security Monitoring System (NeKSAP)\textsuperscript{48} that collects, analyzes and presents information on household food security, emerging markets and nutrition from across Nepal. Established by the World Food Programme (WFP), it is currently being institutionalized by the Government of Nepal in collaboration with the Ministry of Agricultural Development and the National Planning Commission, which is a

\textsuperscript{43} NPL/CO/2, 16 January 2008, Para 30
\textsuperscript{44} E/C.12/NPL/CO/2, 16 January 2008, Para 42
\textsuperscript{45} Prakashmani Sharma and Others v GON, Prime Minister and Council of Ministers and Others, wrt no 065-w0-149 and filed on 15 Sept, 2008.
\textsuperscript{46} E/C.12/NPL/CO/2, 16 January 2008, Para 42
\textsuperscript{47} E/C.12/NPL/3, October 2012
\textsuperscript{48} http://www.neksap.org.np/
positive development. However, the indicators used are not human rights indicators that help measure compliance with the right to food as provided by the Covenant.

In 2012, the National Human Rights Commission, with the support of UN Office of the High Commissioner for Human Rights (OHCHR), developed a set of indicators\textsuperscript{49} to monitor the government compliance of the right to adequate food which is further being expanded in consultation with relevant stakeholders, including NHRC, by FAO.\textsuperscript{50}

Regarding the Committee’s recommendation of the immediate application of the Interim Constitution and laws prohibiting caste-based discrimination and segregation in cases of denial of access to public water sources, and that access to public wells be closely monitored by the District Development Committees or by another appropriate local body,\textsuperscript{51} the Government in 2011 enacted Caste-based Discrimination and Untouchability (Offence and Punishment) Act\textsuperscript{52} criminalizing caste-based discrimination and untouchability. Although the Act is yet to be fully implemented, this allows Dalits to exercise their rights and freedoms, including accessing public places and services. There is also a need to develop a regulation to effect the full implementation of the Act which is yet to done.

In 2008, FIAN Nepal, in its Parallel Information to the Committee regarding the consideration of Second Periodic Report of Nepal, stated how the Dom community, one of the Dalit community in Terai (lowland areas of Nepal in southern belt), was denied access to safe drinking water. This was particularly the case in Hariharpur Village Development Committee of Dhanusha district of Central Region where so-called higher caste people did not allow the members of Dom community to fetch water from any of the 17 public wells in the village. This situation continues as the Government fails to protect and ensure access to water of Dom communities, among the most vulnerable, as well as enforce the law.

2. Committee on Elimination of Discrimination Against Women

The Committee on Elimination of Discrimination against Women examined Nepal’s combined fourth and fifth report in its 49\textsuperscript{th} Session held from 11 to 29 July 2011. Among the recommendations of the Committee, following were particularly relevant to the right to food:

- Strengthen initiatives aimed at encouraging sustainable economic empowerment of women, including the promotion of women’s access to land and credit and the promotion of training in microenterprise development and management, and monitor the impact of these initiatives.\textsuperscript{53}
- Ensure equal access by women to resources and nutritious food by eliminating discriminatory practices, guaranteeing land ownership rights for women and facilitating women’s access to safe drinking water and fuel.\textsuperscript{54}
- Provide for the right to adequate food in the new Constitution.\textsuperscript{55}

\textsuperscript{49} Indicators for Monitoring Economic, Social and Cultural Rights: A User’s Guide, Chapter 4 Page no. 28-32
\textsuperscript{50} http://www.nhrcnepal.org/books.php?&nstart=1&start=2&num_torec=43&n=&page=B
\textsuperscript{51} A task force established by FAO is currently refining these right to food monitoring indicators, by taking also additional reference to “IBSA handbook on Monitoring the Realization of ESCR: The Example of the Right to Food”, University of Mannheim & FIAN International, 2009
\textsuperscript{52} E/C.12/NPL/CO/2, Para 43
\textsuperscript{53} CEDAW/C/NPL/CO/4-5, 11 August 2011, Para 38 (b)
\textsuperscript{54} Ibid, Para 38 (c)
Most of these recommendations have only partially been implemented. The Government’s policy, adopted in 2006, regarding the tax rebate of 10% that was upped 25% in 2009, in order to encourage women’s access to land continues to resulting increased land ownership in the names of women.\(^{56}\) However, in practice women do not fully enjoy the actual entitlements, such as the decision of selling, using, and transferring the property, which depends on the will and decision of either husbands, fathers or brothers. Moreover, this measure still remains as a policy and has not been legislated for, leaving implementation largely at the discretion of the Executive branch of the Government; meaning this is yet to be a legal guarantee. While such measures can be viewed positive towards promoting the access to and ownership of women over land, there has not been any comprehensive study done to assess the actual impact of these measures. To what extent and which categories of women have actually benefited from such schemes remain unanswered. According to some CSOs,\(^{57}\) working in the area of land rights, such policy measures have not been able to positively influence the lives of women from Dalit community and indigenous groups and those from low-income households. Moreover, Dalit and indigenous women’s access to credit and loans is very low.

The Committee on Fundamental Rights and Directive Principles of previous Constituent Assembly (2008-2012) proposed to include ‘the right to adequate food of every Nepali citizen’\(^{58}\) as a fundamental right in the new constitution. Although the first Constituent Assembly got dissolved without promulgating the constitution, the new Constituent Assembly formed by November elections last year has decided to own up the issues settled by the first Constituent Assembly indicating the positive development in line in respect of the right to food.

### 3. Universal Periodic Review

The recommendations of the Universal Periodic Review (UPR) concerning the right to food remain largely unimplemented. In 2012, the Government developed an Action Plan on Implementation of the UPR Recommendations, but it lacks concrete commitments and corresponding indicators to measure the outcomes. No adequate consultation with stakeholders was done at the time of the development of the action plan, whereas the Government, according to some civil society organizations\(^{59}\), merely "informed" them of its content.

As of June 2014, the UPR Outcome Document was neither formally translated into the local language nor disseminated across the country making it more difficult for the grassroots activists to monitor the implementation of the recommendations.

Some specific UPR recommendations relevant to the right to food remain unimplemented. Those of particular concern include:

- Stepping up efforts to achieve the effective realization of economic, social and cultural rights for the marginalized and vulnerable groups by ensuring that they

\(^{55}\) ibid, Para 38 (c)  
\(^{56}\) Land and Land Tenure Security in Nepal, Community for Self Reliance Centre, 2008  
\(^{57}\) Community Self-Reliance Centre, based in Kathmandu, www.csrcnepal.org  
\(^{58}\) Article 21 of the Draft developed by the Committee  
are provided with adequate access to food, health, education and fair employment (Malaysia);  
- Improving food safety of vulnerable groups, particularly indigenous people, former bonded labourers, Dalits, Muslims, persons with disabilities and those who are infected with HIV/AIDS (Hungary);  
- Continuing its efforts to overcome discrimination and social exclusion on the basis of gender, caste, class, ethnic group, disability or geographic situation, in order to ensure the respect of civil, political, economic, social and cultural rights (Argentina).

There are a number of cases derived from FIAN-Nepal monitoring that illustrate the poor implementation of these recommendations. For example, in Singasain, Singaudi, Tilepata and Rakam Karnali villages of Dailekh district of Mid-Western region, the prevalence of HIV/AIDS is high. In Rakam Karnali Village alone, 22 persons are affected by HIV/AIDS, out of which 18 are single women. They have usually caught it from their husbands who travel to India as seasonal and migrant workers. However, in society women often get blamed for HIV/Aids even though their male partners have caused it.

These women take ARV medicines provided by the government free of cost. However, due to high prevalence of food insecurity in these remote districts and villages, they are unable to eat the required amount of nutritious food before they consume medicine and some of them take medicine with water only. In the absence of alternative economic opportunities and the lack of access to land and other productive resources available, these single women continue to face marginalization in terms of accessing food, shelter, health and other basic necessities required to live a life with dignity. Although the government recently started providing one packet of flour (three kilogram) per person per month, such provision is just inadequate.

This case reveals the extent to which the Government of Nepal has failed to meet its human rights obligations, including addressing the prevalence of malnutrition among HIV/AIDS infected women. The food insecurity continues to grip these villages and particularly these categories of women suffer in the absence of adequate government provision of either enabling them to increase their access to food or providing adequate and nutritious food essential for their health condition.

V. Key Concerns and Challenges

1. Identification of Groups Affected by Right to Food Violations

Although there is no formal listing of who constitutes the marginalized and disadvantaged groups in Nepal, it is usually former bonded labourers (Kamaiyas and Haliyas), indigenous peoples (Adivasi Janajati), Dalits, ethnic, religious and sexual minorities, landless, persons with disabilities and persons with HIV/AIDS who suffer from the violation and denial of the right to food. Within these groups, women, children and elderly suffer disproportionately and bear the brunt of inadequate food.

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60 A/HRC/17/5, 8 March 2011, Para, 106.46
61 Ibid, Para 106.49
62 AHRC/17/5, 8 March 2011, Para, 106.21
63 In most of the cases documented by FIAN Nepal (appx.90%), it is members of these marginalized and disadvantaged groups who suffer the right to food violations.
a. Freed Bonded Labourers

The freed bonded labourers, particularly Kamaiyas\(^{64}\) and Haliyas\(^{65}\) continue to live in the margins of society in terms of enjoying their basic human rights, including the right to adequate food. The emancipation of these former bonded agriculture labourers has not been supported by adequate and effective rehabilitation programmes as promised by the Government.\(^{66}\) In particular, the abject living condition of 10093 former Haliyas\(^{67}\) remains largely unchanged in 12 Mid and Far western hill districts. According to the Federation of National Freed Haliya Society, 518 Haliyas\(^{68}\) living in those districts are yet to be verified and most of them continue, in matter of fact, to work as debt labourers with their former landlords receiving very minimal wage.

The slow implementation of the rehabilitation of freed Haliyas prompted them to seek court intervention and on 28 June this year, the former Haliyas filed a writ petition in the Supreme Court seeking speedy rehabilitation. The court is yet to give its verdict.

The condition of freed Kamaiyas is no better than that of freed Haliyas. Although there is no official data available, news reports stated that some 13000 former Kamaiyas are still deprived of obtaining land and other rehabilitation package as announced by the Government during the abolishment of the system some 15 years ago.\(^{69}\) Among them, 5000 former Kamaiyas have already been verified and have certificates from the Government, whereas 8000 ex-Kamaiyas still await the verification process to begin. So far, 24000 ex-Kamaiyas from above districts have obtained land. However, the size of the plot provided to these former agriculture bonded labourers is sufficient only for shelter, not for cultivation.\(^{70}\)

Moreover, the land provided by the Government in most instances is infertile to grow crops or subject to flood and inundation, and erosion. This has compelled many former Kamaiyas to return to their former landlords simply to exist. For example, according to the Freed Kamiya Development Forum, the government rehabilitated 90 freed Kamaiya families at Ramnagar in Sorahawa of Bardiya district six years ago, providing each family five kattha (approx. 18225 sq. ft.) of land. However, out of them, 40 families have returned to their formal landlords saying that the land provided is uncultivable and insufficient to grow crops, and therefore to sustain their life.

At Dhan Chauri Village of Beladevipur VDC in Kailali District along the Bank of Khutiya River Nepal Government had resettled 61 households of Freed Kamaiya (Ex-Bonded Labour) in 2001 with providing 5 Kattha\(^{71}\) of land. These 61 households had strictly rejected being

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\(^{64}\) Kamaiya, a traditional system of bonded labour in southern Nepal, was abolished in 2000. The people affected were also called Kamaiya or Kamaiyas who are particularly indigenous Tharus from Banke, Bardiya, Dang, Kailali and Kanchanpur districts of Mid and Far western regions.

\(^{65}\) Haliya is a form of ancestral debt-bonded labour, mostly affecting the Dalit community in some hill districts of Mid and Far Western Nepal. Despite its abolishment by the 2008 Government Decree, many Haliya families still remain trapped in debt-bonded labour relationships and extreme poverty.

\(^{66}\) On 5 September 2008, while announcing the abolishment of Haliya system, the Government and the Federation of National Free Haliya Society signed a 5-point agreement which, among others, includes rehabilitation of former Haliyas. Following the agreement, on 26 September 2008, the Government formed a Committee to study and recommend it on rehabilitation. The recommendations of the Committee, among others, include providing 10 katthas (approx. 36450 sq. ft.) of land to each Haliya in the Terai and 10 ropanis (about 54760 sq. ft.) of land to a Haliya family in the hills.


\(^{69}\) Based on the news report aired by BBC Nepali service at FM 103 on 19 July 2014 at 7:15 a.m., [http://www.bbc.co.uk/nepali/](http://www.bbc.co.uk/nepali/)

\(^{70}\) Ibid

\(^{71}\) 1 Kattha is 338.57 m²
settled on the bank of the river because of recurring flood and river erosion. However, the Land Reform Office Kailali assured that this was temporary, and they would be replaced at a safe place as soon as possible. However, till date the government has not resettled them at safe place leaving them at risk of flood. In the meantime, the floods of Khutiya River have started to destroy their houses and land. As a consequence, one person died, 10 household lost lands due to river erosion, and 21 households have been displaced due to the fear of recurring floods.72

b. Dalits

Dalits, who represent approximately 13% of Nepal’s population (2011 census)73 and have higher incidence of poverty than the national average, are one of the most marginalized communities in Nepal. They face significant hurdles in social, political, economic and cultural spheres of life. According to human rights organizations referring to the government statistics, 44 percent of Dalits in the plain area are landless, while 44.6 percent of them in hill areas are marginalised farmers owning less than 0.4 hectares of land.74 Despite criminalization of caste-based discrimination and untouchability through enactment of Caste-based Discrimination and Untouchability (Offence and Punishment) Act,75 de facto discrimination against Dalits continues hampering their enjoyment to human rights, including the right to adequate food. In particular, incidents in which Dalits are prevented from touching drinking water, milk, or cooked food, or from entering private houses, shops, or cowsheds happen in rural areas where literacy rate is lower.76

Within Dalit communities, women particularly suffer multiple forms of discrimination in relation to equitable access to available food. A particular case in example is 14 Gandharva77 landless women of Jarbutta VDC in Surkhet district of Mid-Western region. They make their daily living by collecting sand and crushing stones from nearby Jhupra River and hardly earn Rs. 100 (approximately USD 1) per day, which is far below the minimum wage. (For detail, please see subsequent box story page no. 25)

c. Landless Peasants and Small Farmers

The vast majority of people suffering from hunger and malnutrition in Nepal are the poor, landless and the small farmers who can neither afford to buy food nor have the means to grow it themselves. They lack access to sufficient productive resources, such as land, water, fertilizer and seeds, as well as to markets and information. In Nepal, for instance, the top seven percent of households own about 31 per cent of agricultural land, whereas the bottom 20 percent possess about three percent.78

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72 More information can be obtained from YAC Nepal http://yacnepal.org.np
73 Central Bureau of Statistics, Government of Nepal
75 The Legislature-Parliament of Nepal enacted the law on 25 May 2011.
76 In 2011, the literacy rate in rural area was reported 62.5% against 82.2% in urban area.
77 Gandharvas are musicians by their traditional profession and belong to Dalit community.
For instance, the Gandharvas in Saurahawa VDC of Surkhet District in Mid-Western region were allocated land in the year 1996 by the Landless Problem Solving Commission. The land was allocated on the basis of persons in the family and 28 families were supposed to receive land. Although the land was allocated to the Gandharvas, these people had not received land registration documents till 2012. As a result, some of their land has been encroached by community forestry user groups. In the meantime, according to information collected by FIAN-Nepal, the land of 16 households was surveyed by the Land Survey Office in September 2013, and they received their certificate by the end of 2013. Of these 16 households, 15 households have received low cost housing support from the government and built their permanent home. The remaining 12 households have yet to receive land certificates.

d. Indigenous Peoples

The indigenous nationalities of Nepal, also known as Adivasi Janajatis, comprise approximately 37.2% of the total population (2011 census).\(^79\) The Government officially listed 59 groups as Adivasi Janajatis. Despite some significant positive steps\(^80\) taken by the Government to advance the rights of these people in recent years, indigenous nationalities in Nepal continue to experience political, economic, social and cultural marginalization preventing them from enjoying basic human rights and fundamental freedoms, including the right to adequate food and freedom from hunger. Most live in conditions of poverty that, on the whole, are double or more the national poverty level, and not only in remote and rural regions but also in cities.\(^81\)

Historically, Nepal’s indigenous peoples accessed food from rivers, forests or from limited cultivation. However, they have suffered gradual loss of traditional lands and access to life-sustaining natural resources, across the country, and rank low in all human development indicators.\(^82\) According to NEFIN, 65% of ancestral land of indigenous people has now been occupied by national parks and reserves forcing majority of them to take refuge elsewhere.\(^83\) Among them, Kusunda, Bankariya, Raute, Surel, Hayu, Raji, Kisan, Lepcha, Meche and Kuswadiya, the most endangered groups,\(^84\) have particularly been negatively affected.

According to the OHCHR, the number of indigenous peoples participating in the Government’s decision-making processes remains low, particularly regarding the management of national parks and neighbouring buffer zones where many indigenous peoples live.\(^85\) Sonaha in the Bardiya National Park and Balapur Community living in the buffer zone of Banke National Park (see box story below, page no. 20 and 22) are of examples.

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\(^79\) http://www.nefin.org.np/list/Indigenous-People-of-Nepal/5/0/5

\(^80\) The ratification of International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (”Convention 169”) on 14 September 2007; initiation of the development of the National Action Plan to implement the ILO Convention by the Ministry of Federal Affairs and Local Development (yet to endorse by the Government); and invitation of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya from 24 November to 2 December 2008.

\(^81\) A/HRC/12/34/Add.3 , 20 July 2009

\(^82\) A/HRC/12/34/Add.3 , 20 July 2009, Para 26

\(^83\) http://www.nefin.org.np/list/Indigenous-People-of-Nepal/5/0/5

\(^84\) Ibid

\(^85\) A/HRC/12/34/Add.3 , 20 July 2009, Para 29
2. Measures Adopted to Held Authorities Accountable

According to researches and experiences of FIAN Nepal and several other national level human rights NGOs, impunity is widespread with regard to violations of ESC Rights. Mostly, concerned responsible authorities are unidentified and actions to hold them accountable are nominal, at the most limited to oral statements of commitment by different policy makers while follow-up by the government is really weak.

For example, along the South Nepali border to India more than 3000 families of the Banke District are facing inundation and river erosion every year caused by the Lakshmanpur Barrage and Kalkalwa Afflux on Indian Territory that has resulted into loss of lives, agricultural land, properties, crops and displacement facing hunger problem. According to the affected communities, the temporary relief packages (containing tea, sugar, beaten rice, instant noodles, biscuits, salt, oil) and other items (blankets, tents, life jackets) distributed to them by the Government of Nepal are not sufficient to survive the flood period (the packages are even frequently damaged or lost by water). People go hungry for days. They also have difficulties in getting clean drinking water.

As per the various treaties and agreements between India and Nepal, India has a responsibility to ensure its actions do not have such devastating results for its bordering country. India needs to take measures to ensure that its actions do not harm those in the nearby region in Nepal86. Likewise, the Government of Nepal needs to protect its citizens from the harmful actions of the Indian Government.

Negotiations are ongoing between the governments of India and Nepal regarding protection measures at Kalkalwa Afflux bund and the barrage. On December 2011, the Government of India agreed to start the construction of 5 km permanent embankment in Holiya VDC, where the effect of the flood is its worst. However, the construction has not started yet (July 2014).

Instead, a 700 meters permanent embankment had been initiated by the Government of Nepal. Situated in Holiya VDC, the embankment will protect two villages -Tepari and Godianpurwa - that are at most risk of Rapti River breaking its banks. Unfortunately, the embankment has not yet been completed (July 2014), when the rainy season has already started, and floods can occur at any time. Even once the current embankment is constructed as planned; it will not address the demands of the affected people for a permanent embankment covering 28kilometers on both sides of the river. The present construction on one side might encourage cutting on the other side of the river. Moreover, all other affected villages are not considered.

Some of the concerns were raised in bilateral political discussions including during the India visit of the Prime Minister of Nepal, and in bilateral ministerial and technical committee meetings. However, results are yet to yield of these interventions.

Despite various complaints before the respective administrational and national mechanism, including National Human Rights Commission, no comprehensive rehabilitation plan, nor participatory consultation with the affected population and compensation for the loss have so far been provided. A data survey for loss of land, crop & other properties & compensation since the date of loss is still pending. Already in 1982, the Nepali government had passed

86 Case information collected by FIAN India since 2012.
the Natural Calamity (Relief) Act guaranteeing emergency assistance and disaster relief. However, the responsible authorities in Nepali have not been identified nor have they been held accountable.87

3. Food Aid Schemes

Nepal has been receiving food aid since the 1950s. The findings of a study commissioned by FIAN Nepal reveal that the real benefit to the poor people has been only temporary. Generally food aid has been used as a program to support immediate provision of food (rice mainly) as relief in emergency situations, while the attention to pertinent issues of structural transformation remains to be addressed. FIAN concludes that food aid has widely failed to significantly strengthen the people’s livelihood base towards the realization of the right to adequate food.

The government, through the Nepal Food Corporation (NFC) has been spending between 250 to 300 million Nepali rupees (approximately 2.6 to 3.1 million USD) annually to provide subsidized food (mainly rice) to the populations in remote districts for a long time.89 Local communities participating in the study have voiced their discontent that the food channelled through the NFC rarely reaches those who really need it, indicating a pattern of discrimination or at least a lack of prioritization of the most marginalized and disadvantaged communities.

Local elite, political leaders, government employees and private sector actors have their vested interests linked to food aid programming in Nepal. According to information gathered during the FIAN study, political leaders most frequently use it as a means to garner their votes during elections. Moreover, receiving food aid from the NFC has been unpredictable and inconsistent, while the amount of rice received is far from adequate in terms of the quantitative requirement for adequate food.

The WFP, mainly extending food aid through its Food for Work (FfW) initiative, has been widely criticized for having limited relevance in building sustainable agricultural systems at the local level with direct bearing on improving food security in the region. FfW programs have been reported to have primarily concentrated on construction of local level infrastructure such as foot/mule trails, dirt roads and community buildings in an inefficient manner. The local communities interviewed during the study had listed the building and rehabilitation of small-scale irrigation schemes as their primary concern; however in the study districts (Dailekh, Mugu & Bajura) their needs were not responded to. By not tailoring the programs to fit the needs of local communities the overall effectiveness of food aid in Nepal has been found greatly diminished.

Moreover, such food aid programs have not exhibited a human rights based approach. Food aid recipients are often viewed as beneficiaries of charity and not as rights holders. Also, the government food aid programmes through NFC are lacking targeting; that is, instead of

87 Case work of FIAN Nepal: After a series of interventions by FIAN Nepal, FIAN International and other bodies, finally the data collection process started on loss and damage caused by the Rapti River/ Lakshmanpur dam, it has been completed in four VDCs and for the remaining two it is ongoing from the mid of July 2013.
88 FIAN Nepal: Assessing the Impact of Food Aid on the Right to Adequate Food in the Western Hills of Nepal, 2013
targeting the vulnerable segments of population who are food insecure, which might be in any part of the country including the Terai (the plain area), the NFC has traditionally been limited to 30 districts identified as vulnerable to food insecurity and starvation a long time ago.

4. National Human Rights Institutions

The National Human Rights Commission (NHRC), National Women Commission (NWC) and National Dalit Commission (NDC) constitute the National Human Rights Institutions in Nepal. A constitutional body, the NHRC has a broad mandate to protect and promote human rights, including ESCR. But in the past 13 years since its establishment, out of 735 recommendations it made to the Government following the investigation of the complaints it received, only 13 recommendations were related to ESCR (food, housing, health, education and work). This demonstrates either low level of awareness among the rights-holders on ESCR, (possible since most violations and denial of ESCR are often concentrated among the poor and marginalized communities), or the lack of capacity and focus of NHRC in monitoring and investigation of ESCR. In particular, the NHRC does not properly follow up violations of the right to adequate food.

The implementation of the NHRC recommendations, including ESCR related by the Government continues to remain a challenge. According to the NHRC, only 14% recommendations were fully implemented by the Government, whereas 38% were implemented partially and remaining 48% recommendations were under consideration.

The NWC is a statutory body with a mandate to monitor and investigate cases of violation and abuses of human rights and violence against women. It provides legal aid to women monitors the reporting obligations of the Government under the CEDAW and coordinates with the Government and other agencies for mainstreaming gender in national development policies and programmes. The NDC, established as per the Government of Nepal’s executive order of 2002, is mandated to protect and promote the rights of Dalits, especially through combating untouchability and caste based discrimination. However, both institutions lack resources and capacity to discharge their mandate effectively.

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91 Altogether 11,407 complaints
93 FIAN Nepal has submitted four right to food violation cases to NHRC at Mid-West regional office, while one case was submitted at central level as well. NHRC has made commitment to investigate these cases (it is included in their work plan of 2069/2070 – Nepali time) however no significant progress has been made in response to these cases till date (August 2014). One of the reasons, often cited by the NHRC is the lack of human resources and backlog of cases that it has to deal with. A Summary Report on the Status of Implementation of NHRC Recommendations to the Government in the past 13 years reveals that very few cases that NHRC investigated and made recommendations were related to ESCR.
95 Section 11 of National Women Commission Act of 2007
96 A/HRC/19/21/Add.4, para 34
5. ILO 169 and Optional Protocol to the CESCR

In August 2007, Nepal became the first country in Asia to ratify ILO Convention No. 169 of 1989 on Indigenous and Tribal Peoples. A task force of concerned line ministries and indigenous organizations was subsequently formed to develop a comprehensive action plan and to propose the revision of laws and implementation of policies and programmes to recognize the rights of indigenous peoples, including in the areas of land and natural resources, culture, governance and education. However, the action plan, even after six years, has not been adopted by the Government and is pending in the Ministry of Federal Affairs and Local Development. Its provisions are yet to be incorporated into the domestic law.

Despite numerous actions and requests by civil society organizations the Government has not ratified the Optional Protocol to the ICESCR (OP). During talks between the OP Coalition and the Office of the Prime Ministry in February 2014 the possible ratification of the OP after the adoption of the new constitution has been mentioned, however, a speed up in the process would be needed. It is particularly so as the access to justice to the victims of the violations of ESCR, including the right to food has increasingly been a critical issue for a country like Nepal which experienced the armed conflict (1996-2006). The ratification of the Optional Protocol to CESCR may help Nepal further strengthen its efforts to enforcing ESCR.

6. The right to food and access to land for marginalized and disadvantaged groups

Land is a critical source of livelihood for a majority of the Nepali population living in rural areas as smallholders, cultivating small land plots often of less than one hectare. Especially for Dalits and ethnic groups who are usually marginalized, land ownership and access to and control over land and related resources is a major issue. A large population of indigenous people solely depends on natural productive resources for subsistence. About 80% of the indigenous population is marginal landowners, owning only less than 1 acre, or small cultivators (owning 1-2 acres). Most Dalits are landless. The gender dimension of land distribution is even more critical: men own 92% of the land holdings.). Being landless, the vast majority of these groups of people have no access to resources related to land ownership or tenure and tend to experience enormous food insecurity.

According to FIAN Nepal case research, the Kushbandiya community living in Indrapur VDC-3 of Banke district is an endangered indigenous community classified as one of the most vulnerable communities. Due to their extremely poor economic conditions and the lack of access to land they are vulnerable to violations of the right to adequate food. The major occupation of the community is making traditional stone grinders and weaving ropes (Sanpat), which they sell travelling through different parts of Nepal. A total of 60 Kushbandiya communities reside within the whole Banke District.

Although the state government has committed to providing social safety net allowance of Rs. 500 (approximately USD 5.2) per month per person for their livelihood support, this allowance is not adequate, and in fact not available on a monthly basis. Government has not

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managed to install an adequate cash allowance distribution system for the Kushbandiya people. Lack of income generation activities and programs, vocational skills and employment opportunities contribute further to the problem. The community demands for land, both for shelter and agriculture being provided to them, because the small area of land provided is not enough for the growing community. Also, the monthly allowance should be increased and adequate food and education for their children should be provided.

Land is also becoming an increasingly scarce resource as a consequence of population growth and rapid urbanization. The Interim Constitution requires the government to pursue a policy of implementing scientific land reform through the abolition of feudal system of land holding with a view to curbing the wide spread inequalities in access to land.98

There exists a vast bodies of legislations regulating access to land— the Land Act 1964 (hereinafter called the Land Act) being one of the major ones which put a ceiling on land holding,99 fixed the rent to be paid as contract (Kut) by tenants at 50% of the principal crop,100 and emphasized security of tenant farmers against eviction.101 However, the Act failed to bring any significant results. In particular, the provision related to ceiling which is the key aspect of this Act has never been effectively implemented. This situation has continued throughout the 5th Amendment of the Act in 2002 and even after the Supreme Court verdict in response to the litigation *Madhav Basnet v. Government of Nepal.*102

Around 37 percent of the land is in the hands of 5 percent of wealthy people who themselves are not engaged in cultivation.103 This means that over 5.5 million Nepalese104 people are landless. Having no land of their own, the landless and land poor are left at the mercy of big farmers and landlords, and are often forced to sell their labour for a negligible wage which eventually leads to a state of bondage. Most of them are illiterate and have no alternative means of earning a living.105

The Government as per 1964 Land Act nationalized land and terminated traditional collective land tenure systems such as *kipat,*106 which resulted into deprivation of indigenous groups and communities, particularly Rai and Limbu in the Eastern hills, of their traditional land and territories. Such deprivation, which is not compatible with international human rights standards, particularly ILO Convention 169107 and United Nations Declaration on the Rights of Indigenous Peoples 2008108, further increased their vulnerability to food insecurity and in the enjoyment of their right to adequate food and other basic needs and freedoms.

To address food insecurity, the Land Act provides for a compulsory deposit of food grains by every landlord and tenant,109 which is quite a positive provision. Unfortunately this remains unimplemented and the Act is not clear with regard to the use of the deposited food.

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98 Article 33 (f)
99 Sections 7 and 8
100 Sections 33, 35 and 36
101 Sections 29 and 29A
102 Supreme Court decision dated 17 July 2009.
104 Ibid.
105 Ibid.
106 Section 3A of Land Act
107 Article 14
108 Articles 25-30
109 Section 40 of the Land Act
The Land Act also sets out the concept of cooperative farming\textsuperscript{110}, land zoning and plotting\textsuperscript{111}, agriculture saving credit\textsuperscript{112} and farmers’ cooperative institutions.\textsuperscript{113} These provisions mostly remain non-implemented. Lack of genuine and coordinated efforts of responsible agencies coupled with lack of political will are the major factors of non-implementation. However, such provisions may provide a solid basis for the drafting of a new Land Act towards addressing the pressing issue of poverty reduction and food insecurity, particularly through enhancing access of small farmers and landless people to land.

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment. However, the Government has not taken any initiation towards promoting secure tenure rights in line with the Guidelines. The National Land Use Policy of the Government, introduced in 2012, aims to achieve social and economic development as well as environmentally sustainable growth through scientific land reform and reclassification of land and formulation of plans and programmes on land use.\textsuperscript{114} However, the land use policy remains silent on granting tenure security to those individuals and groups who sustain their livelihood on land, fisheries and forest despite the provision to distribute land to landless and deprived communities. It also awaits effective implementation.

7. The right to food and access to forest and other natural resources of marginalized groups

Forest, forest resources, and other natural resources like water play a vital role in rural people’s day-to-day livelihood and survival. The majority of these people are subsistence farmers who sustain their livelihood and supplement their income from the resources of the forest, river and wetlands. Restrictions imposed by the creation of National Parks, may severely limit their access to forest and resources and cause a detrimental effect on their livelihood. The cases included in the boxes below vindicate this.

\begin{quote}
Sonahas’ access to food significantly decreased
\textit{In Saijana village of Manau Village Development Committee of Bardiya district, live about 300 Sonahas of 42 households. They represent one of the most endangered indigenous groups in Nepal. They lead semi-nomadic lifestyle and their livelihood mainly depends on fishing and gold panning. Since the establishment of Bardiya National Park in 1975, the livelihood of these Sonahas has significantly been weakened as they do not have free and unhindered access, as they used to enjoy in the past, to fishing, gold panning, and forest resources.}
\end{quote}

\begin{quote}
The stricter regulations and limited access to the park and river have drastically reduced the earning of these Sonahas. Most Sonaha women who were skilled at gold panning
\end{quote}

\textsuperscript{110} Section 51 (I)
\textsuperscript{111} Section 51 (E)
\textsuperscript{112} Section 40
\textsuperscript{113} Section 60
\textsuperscript{114} Section 5 (1) of the Policy
were forced to abandon their original occupation, without any alternative arrangement in place. While establishing the national park, no consultation was done with Sonahas. The strict regulations imposed to this and other communities living in and around the national park have but negatively affected in their capacity to accessing food.

Sonahas are also deprived of accessing the benefits generated by the Bardiya National Park. In addition, the increase of non-Sonaha fishing population mainly through leases to local contractors following the Local Governance Act of 1999, or the act of poisoning the river by others resulting into death of fish, further exacerbates the situation of Sonahas. The delay on the part of the Government to recognize Sonahas as an indigenous community has further deprived them of many state-driven facilities and services dedicated to endangered indigenous groups.

Based on FIAN Nepal monitoring

The 1993 Forest Act and 1973 National Parks and Wildlife Conservation Act are two major pieces of legislation governing access to forest. The former divided Nepal's forests into six ownership systems: government managed, community, leasehold, religious, protected and private forests, whereas the latter provides the basis for the management of protected areas, such as national parks, wildlife reserves, hunting reserves, conservation areas and buffer zones. According to the indigenous activists, the national parks and reserves have mainly been established in the territories of the indigenous peoples, often displacing them from the forestland upon which their livelihoods largely depend.

These legislations do not comply with Nepal’s obligations under international human rights standards concerning the rights of indigenous peoples, particularly the rights set out by ILO Convention 169 and UNDRIP. The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, in his report of his visit to Nepal in 2008, stated the lack of recognition of indigenous peoples’ right to consultation or to access their traditional lands and resources governed by the National Parks and Wildlife Conservation Act. In particular, he referred to a case of the Chitwan National Park, which was established in 1971 in the areas traditionally used and inhabited by the Tharu, Majhi, Bote, Darai and other communities who were displaced to the park’s buffer zone.

As reiterated by the Special Rapporteur, these communities enjoy limited access to fishing and other traditional occupations per some preferential arrangements made by the local authorities. However, many individuals displaced from the park area still remain landless and have not been provided alternative livelihoods or compensation. The situation remains largely unchanged as the Special Rapporteur heard from members of various communities who were prevented from gathering food, medicinal herbs and firewood from the park area, which severely limits their livelihoods based on subsistence economies.

\[\text{Based on FIAN Nepal monitoring}\]

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115 Representatives of the National Federation of Indigenous Nationalities
116 A/HRC/12/34/Add.3, 2009
118 A/HRC/12/34/Add.3 20 July 2009,Para. 35
119 A/HRC/12/34/Add.3 20 July 2009,Para. 35
**Life and livelihood of Balapur residents under threat**

The right to food of 1377 Balapur villagers in Banke District is at risk after the establishment of Sikta Irrigation Project and Banke National Park in May 2010. The village located at the buffer zone of Banke National Park is surrounded by forests, covering an area of about 200 bigha (6.6 hectares). Forest resources are the main source of livelihood for the villagers. Farming lands, houses, livestock and grain storage are at risk of being encroached by wild animals. Even their life is under threat from wild animals as the national park, according to the Government, is particularly set up to conserve the tigers.

In addition, the villagers’ lands also face the risk of inundation due to Sikta irrigation project, especially during monsoon. The Balapur residents demand for alternative arrangements with appropriate resettlement in a suitable location and assurance of access to their sources of income and proper food. At present, no provision of alternative settlement was offered or compensation of other means of livelihood has been provided by the Government.

No adequate and proper consultation with the villagers and the community forest users group has taken place prior to this decision. The villagers organized themselves, met local and central level authorities and submitted petitions with their demands which, among others, included either resettlement to another areas or protection of their life and crops from wild animals as well as unhindered access to forest and resources to sustain their livelihood. On 12 February 2012, a peaceful demonstration of the villagers was even met with the excessive use of force by the district administration, leaving 42 people injured.121

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According to the Special Rapporteur, members of these and various other communities are prevented from gathering food, medicinal herbs and firewood from the park area severely impacting upon their livelihoods. The existing benefit-sharing mechanisms are ineffective, indigenous peoples are insufficiently represented in the management, and mechanisms in place to compensate or consult indigenous communities are inadequate or non-existent.122

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8. Lack of Protection from Forced Evictions and Displacement

The Forest Act gives power to the forest officials to carry out removal of, *inter alia*, the houses or huts constructed in the national forest land. In particular, Section 56(2) of the Act is problematic as the District Forest Officer or a Forest Officer or Forest Assistant designated by him may remove the harvest or dismantle the house or hut and confiscate the harvest irrespective of the fact that the land within the National Forest was cultivated or a house or hut was built in such land. The Act fails to oblige the Government to ensure procedural guarantees prior to, during and after evictions as required by international norms and standards, the General Comment No. 7 of CESCR and the UN Basic Principles for Development-based Evictions and Displacement in particular. This may leave the population

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120 According to National Parks and Wild Life Conservation Act, 1973, buffer zone means a peripheral area of a national park or reserve created to lessen biotic pressure and for the sustainable management of natural resources. The creation of buffer zones is aimed at motivating local communities in the participatory management of forest resources to fulfill their needs of forest products through the User Groups.

121 Based on FIAN-Nepal monitoring of the situation

122 A/HRC/12/34/Add.3 20 July 2009, Para 32, 33, 34, 35, 36, 37 and 38
residing in and around national parks and reserves vulnerable to forced evictions which may render the affected population homeless and perpetuate violation of their human rights including the right to adequate food.

According to Community-Self Reliance Centre, on 14 May 2011, a team of the District Forest Office (DFO) destroyed and burnt 11 household of landless people at Kalinjor VDC-7 and 8 of Sarlahi district, both VDCs comprising of 76 households. During the eviction, all of their clothes, food, and housing items were destroyed leaving the residents nothing of their own. In order to establish community forestry in the name of forest conversation in the area, the DAO had repeatedly asked the people to leave the area. However, no formal notice (by writing) was issued before the demolition took place that left no room for the residents to evacuate the place themselves. The indigenous peoples and Dalits have been tilling the land for over 28 years. It was a public land in the past, but brought under forest land by the District Forest Office later. According to CSRC, these people have still been occupying the land with the support of local human rights organizations, including the Land Rights Forum, a national alliance of landless and small farmers. People have not been offered alternative livelihood opportunities and they have to live under constant threat to be evicted at any time by the District Forest Office.

9. The Right to Food of Rural Women

Despite the high contribution of women in agricultural production women, in particular rural women, they do not possess their own land for production. A report commissioned by the NWC revealed startling discrimination against women in terms of ownership of assets and properties. The report, which assessed the situation in 68 of 75 districts in Nepal, exposed the skewed nature of property distribution. It revealed that only 0.78% of houses were actually (legally) owned by women (about three women in 500 had houses in their names). Only 5.25% of women had land-ownership certificates in their names.

Likewise, only 5.45% of women owned livestock. About 17% of women had some kind of assets in their names. Despite the provision to distribute land to landless and deprived communities, the Land Use Policy 2012 fails to have specific provisions to ensure access, management and control over land by women farmers. The policy also remains silent over the issue of joint ownership on land by husband and wife.

Also on the issue of access to productive resources, it is relevant to mention that the majority of the victims of the decade long armed conflict in Nepal are women and children as their male family members were abducted, killed, or disappeared. UN OHCHR, for instance, stated that the disappearances caused significantly less food and income for relatives in Bardiya district. Female-headed kamaiya and sukumbasi households were the most adversely affected by disappearances, because they were only marginally subsisting prior to the disappearance. Faced with these difficulties, families resorted to taking loans where

125Ibid
available, sending women and children to work, at lower wages and in often difficult
conditions, and begging in the community to survive.126

With regard to access to forest resources, the role of women is still not adequately
recognized in the Forest Act 2006 as it does not adequately address participation of women
in the Forest User Groups.

10. Labour, Income Opportunities and Minimum Wage

The labour law in Nepal guarantees “equal pay for equal work” for all persons in Nepal
irrespective of caste and gender. As spelled out under article 13(4) of the Interim
Constitution, there should be equal remuneration between men and women for the same
work. Labour Act 1992 which is applicable in the formal sector, has made provisions on
health, safety and security of labour, minimum wages, over time payment and other social
security measures, such as welfare fund, leave, compensation. The mandate to determine
the minimum wage in informal sector rests with the District Development Committees
(DDCs) based on the economic status of the concerned district. However, such provisions
have not fully been utilized for the benefits of the affected communities.

Also, under article 18 of the Interim Constitution, the right to employment is ensured. Despite
this legal provision, marginalized and disadvantaged groups in Nepal are often being
deprieved of their labour rights as their participation in the work force is largely in the informal
sector.127 This situation is more pertinent in rural and remote areas of Nepal.128 Without
adequate remuneration allowing for an adequate standard of living for wage earners and
their families, the right to food of the workers is at risk, and the workers are also physically
worn out and further vulnerable to food and nutrition insecurity. Till date, monitoring by the
government is lagging behind, likewise ensuring appropriate policies and legal frameworks
along with the implementation of these legal provisions.

The minimum wage in Nepal remains low compared to the soaring inflation and does not
provide a decent standard of living for workers and their families, particularly in the
agricultural and informal sector. As of June 2014, the minimum daily wage for agriculture
workers was Rs 281 (approximately USD 3) and Rs 158 (approximately USD 1.6) for
workers at tea estates.129 In accordance with the 1992 Labour Act, which provides for labour
rights and standards, workers’ minimum salary is reviewed every two years. The Act,
however, denies legal protection for the workers engaged in the enterprises where less than
ten workers are engaged and the workers engaged in informal sector, in particular,
agriculture and domestic work.

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126 Conflict-related Disappearances in Bardiya District, report by OHCHR in 2008,
2.ohchr.org%2FSPdocs%2FCountries%2FOHCHRReportBardiyaDistrict.doc&ei=wZYEVL-
ZFcPo8AWd4IKIBw&usg=AFQjCNEdt4T9kCKGK9q0cPnYrTwILyo9Mw&bvm=bv.74115972,d.dGc
127 Caste-based discrimination in South Asia: A study on Nepal,
128 International Labour Organisation: Informal Economy; available at:
http://webcache.googleusercontent.com/search?q=cache:MtctpD0raIgJ:www.ilo.org/kathmandu/areasofwork/informal-
economy/lang--en/+&cd=4&hl=de&ct=clnk&gl=de
Landless Gandharva women suffer from inadequate food
Lack of proper wages, social security and health care has been leading to severe food insecurity and malnutrition of women in Surkhet district. In a hamlet composed out of small huts without doors or windows live fourteen landless women aged 22 to 45, belonging to the Gandharva community. They suffer from severe lack of food and basic health care facilities. These women have lived in Jhupra hamlet, Baluwatar 1, of Jarbutta VDC since 1993, located in the Shiva community forest between two other community forests. Their daily work entails collecting sand from the Jhupra stream banks, crushing stone and loading the heavy stones into trucks that transport these to the cities, where the material is used for construction work. For this they hardly get paid 100 NRs (slightly over USD 1) a day by the middleman for work done from dawn to dusk.

During monsoon, it is very challenging to collect sand and stones from the river, often half covered by water. They must then carry them on their head and walk for 30 minutes on a steep and slippery path in order to bring the load to the truck at the roadside. At most, they can make two trips with the loaded “doko” (a basket made of bamboo) and hardly earn 60 NRs (less than USD 1) a day. The baskets weigh approx. 30kg. From working in the cold river and due to carrying heavy loads 12 of 18 women are found physically worn out with backache and joint problems. Six of them have serious uterine ailments. Their access to healthcare is limited as the nearest health post is located two hours walk from the hamlet and they cannot afford the health services.

Nutritionally these women hardly get to eat two meals a day and most of the time they have to satisfy themselves with simple rice taken with “fado”, a mixture of water and wheat flour. This gets even more severe during the pre-natal and postnatal conditions with lack of diet and detrimental effects on the health and nutrition of both mother and child. There is a lack of protein intake (i.e. milk, egg, fish) during pregnancy. Women have to work during their entire pregnancies and also immediately after giving birth. Immediately, these women do not have any alternative or other income source to change their situation. Hunger and malnutrition exacerbate their health problems day by day. Their earning, which is below par the minimum wage per day determined by the local government, is just insufficient to manage even daily food stuff of 4-8 family members. This has made them compromise with the enjoyment of their other basic rights, including education to their children.

- based on FIAN-Nepal monitoring

11. Access to Water– Drinking and Irrigation
In Nepal, a large number of people, living in urban as well as rural areas, are yet to gain regular access to safe drinking water. According to the census report 2011, tap/piped water is the main source of drinking water for 47.48 percent of the total households. Tube-well and pumping is the main sources of drinking water for about 35 percent of the total households, whereas other sources such as spout, uncovered and covered kuwa (well) are the main sources for the rest of the population.130

Most of the programs related to water supply and sanitation, are still concentrated on the urban areas. The differentiation in water regulations for rural and urban areas is hindering further the traditional impediments on access to water in rural areas. This affects especially

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women and girls, who traditionally are responsible to reach to water sources and fetch/carry water.

The Water Resources Act, 1992 is the major piece of legislation concerning the management of water resources in Nepal. It sets a priority order for water use which includes (a) drinking water and for domestic use; (b) irrigation; (c) agricultural use, such as animal husbandry and fisheries; (d) hydro-electricity; (e) cottage industry, industrial enterprises and mining use; (f) navigation; (g) recreational use; and (h) for other use. The Act also sets a general rule that "No person shall be entitled to utilize the water resources without obtaining a license under this Act". Under Section 24 of the Act, the Government is empowered to formulate necessary rules to fulfil the objectives of the Act. By virtue of this provision, there are a number of rules and regulations currently in place, mainly the Water Resources Regulation, 1993 and Irrigation Rules, 2000. The former creates a number of committees including the District Water Resources Committee to exercise licensing powers, the Water Resources Utilization Inquiry Committee to deal with disputes in relation to use of water and the Service Charge Fixation Committee to fix service charges for use of water resources and the Compensation Committee to deal with the compensation related issues; whereas the latter establishes irrigation users' committees and has a provision that prohibits access to irrigation services to those who do not pay the service charge. It has but a discriminatory impact on the poor farmers.

Similarly, the Drinking Water Corporation Act, 1989 was adopted with a view to expedite the distribution of pure drinking water on a regular basis and to make proper arrangement for drainage systems for public welfare and public health. However, the availability of drinking water service by the Drinking Water Corporation is subject to discretion of the Government as the Corporation provides its service only in the areas designated by the Government. The Corporation is under an obligation to provide drinking water in consideration of charges. The Act, however, does not enable the Corporation to launch a program of its own targeting the needy population who are unable to pay for safe drinking water. Thus the Act needs to be amended to ensure access to safe drinking water for its population consistent with its obligations under ICESCR. In fact, the affordable access to drinking water by disadvantaged and marginalized groups of society, such as Dalits and indigenous peoples is yet to be ensured.

**Women in Mugu district struggle daily for fetching water from river walking long hours**

In Mugu district, 332 women in Hangloyu VDC and 1747 in Rugha VDC have long been facing severe shortage of drinking water as there is no proper water supply system in these villages. The women have to spend nearly two hours walking 10 to 15 kilometres every day to fetch drinking water from the river Karnali. Since water in the Karnali river, according to district drinking water supply office, is not safe for drinking, it has led to water-borne diseases among the villagers. As collecting and fulfilling the demand of their family to water for cooking, cleaning, washing rests with women in the village for which they have to walk

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131 Section 7(1)  
132 Section 4(1)  
133 Clause 29(1) and Clause 5(1)  
134 Nepal Water Supply Corporation Act, 2046 (1989), Section 3(1)  
135 Ibid, Section 5.1.7  
136 Article 11 and 12 of ICESCR; also, the General Comment 15 (Para 27) of the CESC clarifies that the State party is obligated to adopt necessary measures in order to ensure affordable drinking water.  
137 Case documented by FIAN Nepal, last update June 2013.
long hours, this has made women physically and mentally stressed worn out and therefore vulnerable to various diseases. On top of that women have to fetch water on an empty stomach. It has negatively impacted in women and girls' health and education. Over the past five years, these women have been putting pressure on the Village Development Committee to install a safe and accessible drinking water supply system in the villages, but their efforts are yet to yield the result.

Livelihood of local communities in Dang district at stake

Haphazard excavation of stone and sand by a crusher company has affected the livelihood of communities in six VDCs. As a result of the haphazard excavation activities at the bank of Gwarkhola rivulet in Dang district the water level of the river has lowered, which has negatively affected 16 irrigation canals fed by the river. This has directly affected the livelihood of 19000 households from Halwarpur, Bijaure, Manpur, Duruwa, and Tarigaun VDCs who depend on the irrigation canals for agriculture. With the support of FIAN Nepal and Dang District Right to Food Network, the struggle committee in early January 2012 has successfully raised their concern to the responsible authorities. The excavation was halted after the cut of electricity supply by District Administration Office. In April 2012, the District Development Committee has suspended the tender for stone and sand excavation from Gwarkhola rivulet. However, constant community surveillance and monitoring is required for this. Apart from Gwarkhola, 17 other rivers in the district have also been affected by the same kind of excavation. A district network on river and irrigation dam affected people is currently monitoring the situation and lobbying with the Government (both local and central authorities) to stop such excavation permanently.

12. Social Protection and Social Security

Although the Interim Constitution includes the right to work/employment and social security as fundamental rights, there is a lack of framework legislation to give effect to these constitutional guarantees. In particular, such legislation is required to address inadequate allowances, low level of public awareness regarding allowance schemes, limited capacity of the institutions to ensure smooth and effective distribution of the allowances coupled with corruption and irregularities, current age threshold which is inconsistent with the Senior Citizens Act, among others.

Moreover, existing legal provisions surrounding social security have been mainly developed with a welfare-based approach and lack a human rights-based focus; meaning, they fail to enable the citizens to claim their right in case of denial and violation of the right in question and to hold the authorities concerned accountable. The Interim Constitution requires the Government to provide social security to women, labourers, the aged, disabled as well as incapacitated and helpless citizens as provided for in the law. However, the provision of social security, which is essential to satisfy the minimum core content of ESCR, including the essential food stuff required for survival in the context of the right to food, remains ineffective in the absence of adequate legislation.

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138 Case documented by FIAN Nepal, last update June 2013.
139 Articles 18 (1, 2)
140 70 year
141 Article 18 (2)
There is still improvement needed, in particular with regard to the right to food of the HIV/AIDS infected women. The National HIV/AIDS Strategy (2006-2011) does not have any specific references to the sexual and reproductive health and HIV prevention service needs of girls and young women. There are limited plans on addressing the infected and affected women's issue of livelihood opportunities and social security schemes and ensuring their nutrition requirement for effective treatment. Voluntary counselling and testing (VCT) services, ARV drugs and substitution drugs which are only available in district HQs are not easily accessible for the affected communities in particular those who live in rural remote areas. Lack of funds for transportation and stay during the treatment has become major hindrances as there is no provision for monetary support and assistance to cover for the expense of long distance travel and stay during the treatment.

Currently, only 2,433 HIV patients have been receiving medication from the government. It is estimated that 48,600 persons have HIV/AIDS and out of the listed HIV patients, 8,546 persons have been receiving antiretroviral therapy (ART) at present. Lowering both HIV mortality rate and infection rate has become a challenge.

13. The courts: Justiciability of the Right to Adequate Food

In Nepal, courts have increasingly become important recourse mechanisms to provide justice to victims of violations of ESCR, including the right to adequate food. This is particularly so after the promulgation of the Interim Constitution 2007 which provides for the right to constitutional remedy in case of violation of the fundamental rights. The Supreme Court, an apex body of the judiciary, has extraordinary power to issue order and writs, such as habeas corpus, mandamus, certiorari and any other appropriate order if any constitutional and legal question involving any dispute of public interest and concern arises. And recently, through the amendment of the 1991 Judicial Administration Act and 1990 Administration of Justice Act, the power of writ jurisdiction has been extended to the Appellate Courts and District Courts, although limited, paving a way to strengthening judicial remedies, and the justiciability of ESCR, including the right to adequate food.

Over the past 20 years, the Supreme Court issued a significant number of decisions responding to public interest litigations that are explicitly or implicitly related to the right to adequate food. The court decisions ranged from protecting the rights and freedom of population against starvation; compensating farmers for the destruction of their crops by wild animals of national parks/reserves; promoting access to safe drinking water and

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143 Article 32
144 Article 107
145 Article 107 (2)
146 Section 8(2) of the Administration of Justice Act 1991, which reads, "The Court of Appeal shall have powers to issue orders of habeas corpus, mandamus, certiorari, prohibition, quo warranto or injunction, as required, for the enforcement of legal rights of any person infringed by anybody or authority under its territorial jurisdiction."
147 As per Section 7(2) of the Administration of Justice Act, 1991, district Courts are given power of writ jurisdiction to issue writs of habeas corpus and injunction as required for the enforcement of the legal rights of any person violated by any agency or official under its territorial jurisdiction.
148 Madhav Kumar Basnet v Prime Minister, Girija Prasad Koirala and Others, writ no 3341 of the year 2055, decision dated 20/6/27 and Prakashmani Sharma and Others v GON, Prime Minister and Council of Ministers and Others (Writ no 065-w0-149) writ filed on 15 Sept, 2008 and final decision issued on …
149 Bajuddin Minhya and Others v GoN, Prime Minister and the Council of Ministers, Writ no WO-0338 of the year 2064 (2008), decision dated 18 March 2009
protecting water resources from being polluted;\textsuperscript{150} enforcing nutritional rights of infant and lactating mothers at employment;\textsuperscript{151} enforcing access of women to properties (land) through eliminating gender- discriminatory laws;\textsuperscript{152} and enhancing coverage and effectiveness of social security assistance to persons with disabilities and single women.\textsuperscript{153}

This shows the judicial activism of the Supreme Court of Nepal towards giving effect to the right to adequate food. However, effective implementation of these court judgments by the Government remains a challenge.

\section*{VI. Recommendations}

FIAN requests the Committee on Economic, Social and Cultural Rights, after its review of the third periodic report, to consider recommending the Nepal Government:

\textit{On Legal Frameworks, Policies and Strategies}

The state of Nepal should:

- \textbf{Adopt all necessary measures} to incorporate the right to adequate food, including food sovereignty and nutrition with a gender perspective, and the right to water, in the new Constitution and to ensure their direct applicability.

- \textbf{Provide constitutional status} to the international human rights treaties, including its primacy and direct application through inclusion of a specific provision in the new constitution.

- \textbf{Ratify the Optional Protocol} to the International Covenant on Economic, Social and Cultural Rights.

- Develop a new \textit{comprehensive right to food policy and legal framework} and strengthen the capacity of related institutions to ensure implementation. Special emphasis should be put on gender and inclusion aspects. Moreover, the Government should provide technical support to the local governments and administrative staff members to ensure implementation of the right to food at the local level.

- \textbf{Adopt a framework law on the right to adequate food, drafted} through a consultative process with relevant stakeholders, particularly ensuring participation of a broad range of civil society and community-based organizations as well as the marginalized and vulnerable groups and communities. Such framework legislation should be fully in conformity with international human rights standards relevant to the right to adequate food. In particular, it should incorporate provisions that strengthen freedoms and entitlements of individuals and communities in relation to the enjoyment of the right to adequate food; that strengthen coordination and collaboration between and among the government line ministries and departments and civil society and private sector (i.e. through creation of a Right to Food Council); that allow affected populations and victims

\textsuperscript{150}Prakash Mai Sharma v Nepal Khane Pani Sansthan (Nepal Water Supply Corporation) and Others, Writ no 2237 of the year 2047, Decision dated 2057/3/26 and Bhojraj Aire v Ministry of Water Resources and Others, Writ no 3305 of the year 2056, decision dated 2058/6/11

\textsuperscript{151}Raju Prasad Chapagai and Others representing Pro-Public v HMG, Ministry of Health et al, WPN 2621 of the year 2059 BS, SC decision dated, 5 Nov. 2004.


\textsuperscript{153}Sudarhan Subedi and others v. Government of Nepal, Office of the Prime Minister and Council of Ministers (NKP, 2069, No 5, Page 830)
of the violations of the right to food adequate remedies; that enhance accountability and
good governance; and that obliges the Government to allocate adequate resources for
the implementation of the law, among others.

- **Reform all sectoral laws and by-laws impacting on the enjoyment of the right to
  adequate food, to ensure its coherence** with international human rights standards
  relevant to the right to adequate food as well as to give effect to the existing
  constitutional guarantees related to the right to food.

- **Adopt a comprehensive national strategy to ensure food and nutrition security for
  all**, particularly targeting to the marginalized and disadvantaged groups of society, which
  are vulnerable to food insecurity. Such strategy should be based on the existing
  international standards on the right to adequate food, including the General Comment
  No. 12 of this Committee, the Voluntary Guidelines on the Right to Food in the Context of
  National Food Security, the Voluntary Guidelines on Responsible Tenure of Land, Forest
  and Fisheries and the Directive Principles on Extreme Poverty and Human Rights,
  among all other relevant standards on the field.

- **Implement the FAO Voluntary Guidelines** on Responsible Tenure of Land, Forest and
  Fisheries as well as the FAO Voluntary Guidelines on the Right to Food in the Context of
  National Food Security.

- **Mainstream gender** in all food and nutrition security and food sovereignty related
  legislation, policies, strategies and action plans.

**On Institutional Framework**

The state of Nepal should:

- **Ensure effective coordination and cooperation amongst all key actors involved in
  food and nutritional security and food sovereignty**, by establishing a new body or
  strengthening the mandate of the existing ones. It should also increase the role of food
  and nutritional security in the national agenda. This can be done through adopting the
  framework law aforementioned.

- **Take steps to increase the capacity of local authorities** in the implementation of
  related laws and policies and ensure that public servants working at national and local
  level are educated about the human right to adequate food, its holistic concept and the
  related implications for their work.

- **Improve the mechanisms and methodologies to identify groups suffering from
  violations** of the right to adequate food and its causes. It should create **achievable and
  disaggregated benchmarks to monitor progress** and consistency with human right to
  food commitments and obligations, and regular monitoring systems should be created
  that are participative and culture sensitive. Accessible and effective complaint
  mechanisms should be created and access to them should be ensured without
  discrimination, especially for marginalized and disadvantaged groups.

- **Provide training for public officials**, particularly those working at district level,
  including judges, in the application of economic, social and cultural rights, including the
  human right to food.

**On Monitoring and Accountability**

The state of Nepal should:

- ** Expedite the implementation of the previous recommendations** relevant to the right
  to adequate food provided by the Treaty-based and Charter-based bodies of the United
  Nations, in particular of CESCER, CEDAW and the UPR under the Human Rights Council.
• Invite, as a matter of priority, the UN Special Rapporteur on the right to food to visit Nepal.

• Ensure application of the relevant international human rights standards when processing and adjudicating cases relevant to ESCR, including the right to adequate food. Furthermore, scale up monitoring the implementation of the court judgments.

• Provide effective participation in decision making for prior informed consent, provide legal or other appropriate remedies, including prevention measures and compensation, restitution, rehabilitation and non-repetition to communities and groups threatened by displacement or displaced by national parks, wildlife reserves, and infrastructure development such as dams and hydropower.

• Ensure adequate access to justice and remedies for victims of the right to adequate food violations, including gender sensitive legal aid.

• Effectively implement all necessary measures to ensure that no discrimination takes place, and to abolish discrimination, both de jure or the de facto, against marginalized and disadvantaged groups. Adequate complaint and remedy mechanisms should be made available for victims of discrimination regarding the right to adequate food.

• Adopt all necessary measures to strengthen the capacity of the National Human Rights Commission (NHRC)- personnel, as well as program and funds - for monitoring and promoting economic, social and cultural rights, and intensify cooperation with human rights and other civil society organizations.

• Conduct a gender vulnerability analysis related to women’s access to food and nutrition and its connection to the enjoyment of other human rights, including the rights to health, education, and the right to participate in public affairs.

• Implement targeted programs to guarantee that women, in particular women with low income and resources have equal right to and ownership over productive land, and security of land tenure.

• Ensure participation and representation of women in decision making mechanism - starting from user groups on natural resources management, e.g. forest, water, agriculture, VDC level planning, cooperative management etc. to policy level structures concerning women’s access to productive and natural resources.

• Strengthen monitoring and accountability mechanisms to ensure compliance with right to adequate food related women rights and to allow women being affected by discrimination in access to land and other natural resources to claim their rights and thus support to secure their right to adequate food and nutrition.

On Gender and Women Rights to Food and Nutrition

The state of Nepal should:

• Conduct a gender vulnerability analysis related to women’s access to food and nutrition and its connection to the enjoyment of other human rights, including the rights to health, education, and the right to participate in public affairs.

• Implement targeted programs to guarantee that women, in particular women with low income and resources have equal right to and ownership over productive land, and security of land tenure.

• Ensure participation and representation of women in decision making mechanism - starting from user groups on natural resources management, e.g. forest, water, agriculture, VDC level planning, cooperative management etc. to policy level structures concerning women’s access to productive and natural resources.

• Strengthen monitoring and accountability mechanisms to ensure compliance with right to adequate food related women rights and to allow women being affected by discrimination in access to land and other natural resources to claim their rights and thus support to secure their right to adequate food and nutrition.
• Adopt all necessary measures to guarantee the access to natural and productive resources including production related inputs to sustain an agriculture based livelihood in Nepal (specially focused on rural population) and give due recognition to women's contribution for it including adequate remuneration. The role and contribution of women’s work in natural resources activities should be recognized by the state in its legal regime.

• Improve the support to rural and low resource/income base women belonging to marginalized and traditionally disadvantaged groups in accessing to and utilizing the natural resources they require for their livelihood.

On Access to Resources

The state of Nepal should:

• Review and update the national minimum wage on annual basis to ensure access to an adequate standard of living, including the adequate food for all, including agriculture workers and casual/seasonal workers in line with international human rights law.

• The minimum wage related legal provisions need to be further strengthened with the creation of a specialized agency to fix and update the minimum wage as per consumer index and monitor its compliance in both formal and informal sectors.

• Expedite the land reform and land redistribution, especially targeting to the landless and marginalized communities, including the provision of remedial mechanisms.

• Address the existing disparity in landholdings including though effectively implementing land ceiling and land distribution provisions consistent with the Supreme Court Order.154

• Make sure that the new Agriculture Development Strategy promotes sustainable small-scale agricultural practices and ensures access to productive resources (land, seed and water), and is addressing issues of food and nutrition security from the perspective of the most marginalized and disadvantaged.

• Ensure priority for the most disadvantaged and marginalized groups (such as women, indigenous peoples, Dalits, communities affected by HIV/AIDS, among others) in the policies and strategies on access to resources.

• Ensure that indigenous and other communities feeding themselves from forests and fisheries are not evicted from their territories and prevented from accessing natural resources due to the creation by the State of a national park or any other protected area, or industrial or development project. Prior to the launch of such projects, a human rights impact assessment should be carried out, affected communities should be consulted by the state, and their free prior and informed consent should be given, their views should inform authorities decisions. The State should also ensure that in case the project continues, livelihood alternatives in the same territory or adequate and integral compensation and resettlement are proposed to them and complied with, so that they will maintain access to the natural resources. Complaint mechanisms should be available during the entire process.

• Provide statistics on the displacement of persons as a result of dam and development projects (e.g. factories), infrastructure development (e.g. roads, irrigation projects) and national parks and other protected areas and on information on measures taken to ensure that these projects will not negatively impact the ability

154 The court ordered in favour of a public interest litigation, Madhav Basnet v. Government of Nepal (filed on 18 August 2009) in which the petitioner pleaded for issuance of an order of mandamus to hold the authorities accountable for not implementing the Land Act,1964 provision concerning acquisition of land requiring the government to prepare an inventory of the ownership of land throughout the country, acquire the land exceeding the legal limit and distributing the lands to the landless within 180 days of the receipt of the order.
of indigenous, agricultural and peasant and other affected communities to realize their right to adequate food. The state should also inform which complaint mechanisms are available to communities affected.

**On Food Aid, Access to Water and Other Relevant Areas**

- Adopt measures regarding food aid schemes to address the structural causes of poverty, hunger and under nutrition rather than just delivering grain to the area. Food aid schemes should integrate transparency, accountability, participation, non-discrimination and empowerment as essential components in its operation, while ensure equity in the distribution (use of local market to procure the food items, adequate storage and mechanisms to ensure that the most affected are reached) along with stronger monitoring mechanism.
- Adopt all necessary legal, policy, implementation and monitoring measures necessary to ensure the access of all rural people to water in conditions of dignity.
- Adopt short-term, middle and long-term strategies to ensure that those affected communities from natural and human induced disasters have access to food at all times and after a period of time recover their capacity to feed themselves.
- Recognize both individual and collective land rights when it comes to strengthening access of the indigenous peoples to food.

**On India's Extraterritorial Human Rights Obligations with regard to Nepal**

States are obliged to respect, protect, and fulfil the right to food of people living under their jurisdiction, even if these are located beyond the borders of their territory. The obligations that a state has beyond the borders of its territory are called Extraterritorial Obligations of States (ETOs). A main regulatory framework facilitating the analysis of cases of violations of the ETOs of a specific state are the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, 2012\footnote{The Maastricht Principles constitute an international expert opinion, restating human rights law on ETOs. The Maastricht Principles were issued on 28 September 2011 by 40 international law experts from all regions of the world, including current and former members of international human rights treaty bodies, regional human rights bodies, as well as former and current Special Rapporteurs of the United Nations Human Rights Council. The Maastricht Principles do not purport to establish new elements of human rights law. Rather, the Maastricht Principles clarify extraterritorial obligations of States on the basis of standing international law. Please see the principles under: \url{http://www.etousp.org/ac/en/library/maastricht-principles}}.

The state of India should comply with its extraterritorial obligations regarding the people affected by the Lakshmanpur dam and Kalkalwa afflux in Nepal, in light of the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (ETOs). Measures towards ETO compliance should include inter alia:

- To conduct a human rights impact assessment in order to establish the impact that the Lakshmanpur Dam and Kalkalwa afflux have had on the human rights of the affected communities and adopt all necessary measures to ensure comprehensive remedies to the victims, including compensation, restitution, rehabilitation and guarantees for non-repetition.
Bibliography

Reports
1. Annual Household Survey, CBS, GoN, Kathmandu, May 2014
5. Concluding observations of the Committee on the Elimination of Discrimination against Women to Nepal by CEDAW, July 2011
15. Nepal Thematic Report on Food Security and Nutrition 2013 by National Planning Commission, GoN,

National law, policy and regulations
19. The Forest Act, 1993
22. The Food Regulation, 1970
23. The Irrigation Regulation, 2056 (2000)
24. The Kamaiya Labour Prohibition Act, 2002
25. The Labour Act 1992
26. The Land Act (Fifth Amendment) 1964 (2001)
29. The National Land Use Policy, 2012

**Websites**

34. www.ohchr.org
35. www.lawcommission.gov.np
36. www.nhrcnepal.org
37. www.un.org.np
38. www.supremecourt.gov.np