

Universal Periodic Review

Violations of the Right to Food in Nepal

Submission by FIAN International (July 2010)

- **Explanation of Organization**

The following information is submitted by FIAN International in Cooperation with FIAN Nepal in July 2010. FIAN, the Food-first Information and Action Network is an international human rights organization for the right to adequate food with consultative status at the United Nations. FIAN has 18th sections and coordinations in different countries and works in further countries together with partner organizations. FIAN International also has thousands individual members across the globe. FIAN Nepal is one of the national sections of FIAN International.

- **Summary**

The aim of the following report is to draw attention to the wide range of stakeholders on Right to Food violations, related to food access in Nepal. Many of these problems have existed for quite some time; some surfaced as early as 1970s. Yet, they have not been met with any solutions thus far.

However, the International Human Rights treaties and other international law sources recognizing the Right to Food the state of Nepal has committed to, as well as its Interim Constitution, which was adopted in 2007, obligate the government to adopt measures to realize the right to adequate food in these cases.

On May 14th 1991 the South-Asian state of Nepal ratified the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). In addition, Nepal has also ratified all other treaties, relevant to the Right to Food, such as *the International Covenant in Civil and Political Rights*, *the Convention for the Elimination of all Forms of Discrimination against Women* or the *Convention on the Rights of the Child* and adopted the *FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*.

Nepal's official respect for its citizen's Right to Food is also enshrined in the country's Interim Constitution. Beginning in the preamble one can find an explicit reference to the state's duty to fulfill the fundamental human rights of its citizens. These fundamental rights are further specified in article 33 of the constitution, which deals explicitly with the state's responsibilities to its citizens. According to section h) of article 33 the state is obligated to "pursue a policy of establishing the rights of all citizens to education, health [...] and food sovereignty".

The constitution also carries a number of dispositions that are indirectly relevant to deal with the food crises: for example section r) in article 33 declares the Nepalese state's obligation to "conduct special programs to rehabilitate the displaced", section 1) of article 14 mentions the issue of *untouchability* and declares it unconstitutional to discriminate against any individuals on the grounds of "caste, descent, community or occupation.", which is a legal basis to combat discrimination in the access to resources needed for the realization of the right to adequate food.

The above discussion of certain articles in the Nepalese constitution as well as the country's ratification of all major international instruments recognizing the Right to Food demonstrate that officially the state of Nepal is doing a lot to ensure its citizens' Right to Food. However, the actual situation in Nepal frequently differs from the country's theoretical and official foundation. It means the structures have not been implemented in order to get impact in the effective realization of the right to adequate food of Nepal citizens

3. Cases

The lack of compliance of legal obligations at the macro level, can be confirmed through the identification, documentation and analysis of specific cases. Since 2007, FIAN Nepal has been investigating and documenting a number of cases of Right to Food violations in Nepal. In the

following section these cases will be grouped into thematic sub-categories. Category a) comprises cases where hunger is related to a lack of access to land and productive resources, while category b) contains cases of faulty policies and inefficient governance. Some cases of forceful land eviction have been grouped in category c) and cases of stress-induced migration and resulting hunger problem in category d).

a. Denied Access to Productive Resources and Resulting Hunger

Case of Kumal Community in Bhajani VDC, Kailali District

The Kumal people of Nepal are a group of landless indigenous people, who are scattered throughout the entire country. Traditionally they earned their living by making clay pots. Moreover, they depend on nearby forest resources such as wild vegetables, medicinal herbs, firewood etc. for their subsistence.

However, since the local market is becoming increasingly flooded with cheap plastic products, the Kumals have lost their existential basis, no effective safeguard policies to protect them from these concurrence have been taken. In addition since the release of the Community Forest Act of 1991 their access to forest produce is also restricted. Thus many Kumal suffer from severe food shortages due to their reduced access to resources.

Now, the Kumal community urgently requires adequate compensation for their continued loss of livelihood base and the adoption of measures which allow them to achieve access to resources to continue feeding themselves. It means, they need immediate rehabilitation with new means of livelihoods. They are demanding with the state to have appropriate package of land, employment and social safety net guaranteed for them so as to get realized their rights of being free from hunger.

Case of Raji Community in Khailad and Bhajani VDCs of Kailali District

The Raji, another landless indigenous community scattered out in different districts of western Nepal, used to feed themselves by gathering, collecting and hunting edible plants and animals in the surrounding forests and by fishing in the riverbanks. They would process some of these natural products and subsequently sell them at the local market. Unfortunately, after enactment of The Forest Act of 1993 and Forest Regulation 1995 that has provisions for management of community forests, restricted them from their customary rights of forest resources use. Hence they were denied to access their primary means of subsistence. The *Rajis* ask the state of Nepal to protect their usufruct access and user rights of forest resources.

Case of Sonaha, Kanchanpur District

Sonaha, another marginalized landless indigenous communities have been living along the banks of Mahakali river of the far western Nepal for generations. Primary means of living for them is fishing in the river.

Following the Local Governance Act of 1999 seven kilometers of the Mahakali riverbank were leased out for fishing to a local contractor, a move which allowed the government to collect a yearly tax of 15 hundred thousand. However, this decision drastically affected the livelihoods of the *Sonaha* people. As a result of the lease the 64 resident *Sonaha* families were deprived of their means to feed themselves. They demand uninterrupted fishing rights in Mahakali river as well as provisions of adequate alternative means of livelihood from the government, which has not been provided thus far.

b. Faulty policies and inefficient governance: the cases of crop failure

Wheat crop failure in Baliya VDC, Kailali

In 2008, 142 families in the village of Balyia in Kailali district bought wheat seeds form Ratani Trades, an authorized seed retailers of Salt Trading Corporation (a semi autonomous government agency) and sowed them on about 130 hectare of land. However, only 30% of the seeds germinated. The villagers soon found out that farmers from other villages, such as Chuha,

Janakinagar, Pratapur, Patharaiya, Tikapur and Rajapur had also experienced the same problem. Wheat is the second important food crop after paddy in the flat area of Nepal including Kailali. Due to the germination failures of wheat seeds poor farmers were affected by severe crop shortages and exposed to threats of hunger. Poor farmers approached the seed retailer and distributor claiming adequate compensation to their crop loss. But the private retailer shop refused to accept their fault. Due to continuous pressure and demand by farmers, the Salt Trading Corporation finally accepted their mistakes and committed to pay some portion of loss as compensation. Farmers are now demanding to correct such type of inefficiencies in future and institutionalize the practice of punishment for the guilt. This demand is in line with the state obligation to protect, including the adoption of regulation, monitoring of activities of private actors, investigation and in case of crime, an adequate remedy for victims in case of damage caused due to this kind of irregularities.

Seed Set Failures of Maize Crops in Bara District, Nepal

In 2010, farmers from southern plain of Nepal suffered seriously due to complete failures in seed setting in their hybrid maize crops. Farmers were traditionally growing local maize grains for generations. Hybrid maize was introduced in the region through a donor-sponsored and government-run "Maize Mission Programme" nearly ten years back. Since then the farmers had almost exclusively focused their agricultural production on maize. Farmers were almost utterly dependent on this crop for their cash incomes, using the hybrid seeds and discontinuing the traditional seeds. Currently, peasants lack reliable sources of ancestral seeds supply. That created a lucrative market for multinational seed companies in the area. Moreover, these farmers depended on seeds provided by unauthorized agencies including non-registered multinational companies. The state with its regulatory mechanism was totally insensitive to the issue, neglecting its obligation to protect the right to adequate food. As a result, an agricultural catastrophe was invited: Due to the absence of proper regulatory mechanism in the seed market, low quality seeds were sold to thousands of farmers, resulting in severe failures in seed setting on more than 15000 of hectares of maize crop land.

The farmers are now accusing the ineffective state governance with regard to seed quality check and regulation, and demand adequate compensation for their crop loss from the government. They have raised their voices to get quality seeds from reliable sources as well as to make public regulatory mechanisms more efficient and effective in the seed sector.

c. Forceful Eviction from Land and Territory

Case of eviction due to creation of protected area

As a result of the planned expansion of the Sukhla Phanta Wildlife Reserve in the Western region of Nepal the state forcibly evicted 207 families who lived in the proximity of the wildlife reserve, from their territory without any alternative provisions.

In the beginning, to subside their struggles, the evicted families were provided with food and clothes. These supplies gradually decreased and almost all households were forced to live under distress and hunger. The households adopted seasonal migration as basic livelihoods strategy to avoid hunger problems. Mainly male member of the family are forced to leave for India in order to find labor works. The women, children and elders who remain in the home are constantly plagued by a lack of warm clothes and food. Under this circumstances, Nepal did not meet its obligation to respect the right to food of these communities, causing a clear violation of its international human rights obligations.

Collectively the victims of the wildlife reserve project demand the immediate cancellation of the park extension as well as compensation for their lost territory and land.

Forceful displacement by the Army: Case of Bajhang District

In 2002 while the country was in emergency due to violent conflict between Maoist insurgents and the government, the then Royal Nepalese Army forcefully evicted 162 families from their houses near the army headquarters in Chainpur, Bajhang district of Far West Nepal.

According to the affected families no formal warning had been issued, which could have prepared them for the event. The victims were neither provided relief nor any compensation from the state or the army. They not only demand compensation for the land they lost but also for the loss of production that has occurred due to the aforementioned forceful eviction from their land. As the Nepalese State was not able to comply with its obligation to protect and respect during the conflict, now it has to meet its obligation to fulfill the right to food by the affected communities, through the adoption of compensation measures and through policies and strategies which allow these communities to feed themselves immediately

Dam and Displacement: Case of Laxmanpur Dam in Banke District

From 1985 to 2000 the Government of India built a dam across the Rapti River very near to Indo-Nepal Border at Laxmanpur of Banke district in mid-west Nepal. The dam authority frequently close all doors while there is flood in Rapti river during the monsoon season resulting into inundation of upstream areas affecting more than 3000 families of Banke district. Most of the families are peasants and their land is their major source of livelihood. Therefore, the affected families ask the state of Nepal to take precautions against future flooding by opening all 14 flood gates during the monsoon season and by building additional safeguard constructions against flooding. They also ask for the provision of emergency shelters and to be compensated for present and future land loss. In order to meet the obligation to respect (avoiding omissions) and to fulfill the right to food of the affected communities, the State of Nepal should respond adequately to community claims.

d. Distress migration and associated risks: Case of HIV AIDS infection in Achham District

Due to the high poverty rate and lack of regular employment opportunities at local level, it has become increasingly common for men in western hills of Nepal to leave their families in order to find employment in India.

Most of the migrants from Achham district go to Mumbai. Alone in Mumbai for long periods of time these men tend to consort with prostitutes and as a result often get infected with HIV/AIDS. When they return to their homes in Nepal they usually transmit the disease to their wives and hence future children. Thus many widows who are themselves affected with HIV are left the sole caretakers of large families and are frequently unable to properly feed themselves and their children. Thus the affected families demand the provision of basic financial support as well as the formation of a local level HIV/AIDS support group. Moreover, they demand strong social safety net provisions for households affected by such catastrophes. According to international human rights standards, states have the obligation to provide the right to food to people who are unable to feed themselves. AIDS/HIV infected woman and children are one of the most vulnerable population groups.

The brief case descriptions above show that although formally the state of Nepal has taken some measures to ensure its citizen's right to food, there are many situations, in which the Right to Food is violated.

To improve this situation, FIAN Nepal recommends following to the Government of Nepal:

Adopt a comprehensive national policy and legislative framework for the eradication of hunger and realization of the human right to food in Nepal

- Integrate food and nutrition security as a primary objective of the government including the possible creation of a high level body with responsibility for food and nutrition security in Nepal. This body should take care of institutional coordination of all different instances taking decisions which affect the right to food and nutrition.

- Give attention to the concluding observations of the CESCR and create an inter-departmental working group to implement its recommendations.
- Respect indigenous people's special relationships with the nature and protect their customary rights of access to natural resources.
- Establish a legislative and institutional framework for oversight of the food and nutrition security objectives, including provisions for monitoring and implementing effective remedies.

Create procedures for reporting and facilitating access to effective remedies, either judicial or administrative

- Establish a land court to settle the land-related cases without prejudice
- Support the creation of local level complaint centers across Nepal to facilitate community reporting and access to legal aid for the poor
- Provide effective legal or other appropriate remedies, including compensation to communities and groups displaced by national parks, wildlife preserves and infrastructure development, such as dams
- Provide training for (district) officials, judges, and lawyers in the application of economic, social and cultural rights, including the human right to food.
- Adopt the Basic Principles and Guidelines on Development-based Evictions and Displacements as proposed by the UN Special Rapporteur on the Right to Adequate *Housing*.

Implement genuine land reform

- Quicken the pace of land reform and land distribution including the provision of remedies
- While enforcing existing land ceiling levels, take steps to reduce those ceilings
- Provide appropriate resettlement programs for displaced through dam or other ways
- Identify and restore traditional land to indigenous peoples

Improve targeting policies and practices

- Develop a government-owned targeting procedure to facilitate the delivery of special programs to the most vulnerable.
- Make concerted efforts to ensure that protected area benefits are not captured by local elites and that steps are taken for the effective participation of displaced communities in user committees
- Ensure that identification of vulnerable groups includes food insecure groups in food deficit regions, as well as vulnerable villages and groups in food surplus regions (based in need, not district)
- Conduct a gender vulnerability analysis related to women's access to adequate food and its connection with the enjoyment of other human rights.

Support the National Human Rights Commission of Nepal

- Strengthen the NHRC through the immediate appointment of independent commissioners and provide adequate resources for its work and institutional development.
- Give the NHRC a mandate to investigate violations of the human right to food, access related government documentation and assist victims as they seek access to remedies.