

1. Introduction

1. This information is submitted by FIAN Nepal. FIAN Nepal¹ is a member-based human rights organization to promote and advocate for the realization of the human right to food and nutrition in Nepal.

2. Nepal and the Right to Adequate Food

2. Nepal has ratified most of the international human rights treaties². Nepal adopted the FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (Right to Food Guidelines) and the FAO Voluntary Guidelines on Responsible Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGLT). Nepal has also ratified ILO Convention 169 and has adopted the UN Declaration on the Rights of Indigenous Peoples.

3. The lack of enjoyment of the right to adequate food and nutrition remains a critical issue in Nepal. Poverty heavily hampers households' efforts to achieve food and 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.³ Micronutrient deficiencies are also seen to be higher with 46% children between age of 6 and 59 months suffering from anemia.⁴ The prevalence of stunt in the hills and mountains of Mid-western and Far-western regions is higher with the figure above 60%.⁵

3. Recommendations of the Previous UPR, 2011

4. The recommendations of the UPR 2011 concerning the right to food and nutrition 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 organizations⁶ merely "informed" them of its content. As of February 2015, 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 and nutrition remain unimplemented.

5. Those of particular concern include:

*"Stepping up efforts to achieve the effective realization of economic, social cultural rights for the marginalized and vulnerable groups by ensuring that they are provided with adequate access to food, health, education and fair employment (Malaysia);"*⁷

¹ FIAN Nepal acquired legal status as non-governmental organization in December 2008 and was recognized as National Section of FIAN International in October 2009. For more information please visit: www.fiannepal.org.

² Such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC).

³ Nepal Demographic and Health Survey 2011, http://cbs.gov.np/wp-content/uploads/2012/02/Statistical_Report_Vol2.pdf.

⁴ <http://www.wfp.org/countries/nepal/overview>.

⁵ Ibid.

⁶ Human Rights and Democratic Forum (FOHRID), a Kathmandu-based Human Rights NGO, <http://www.fohrid.org.np/>

⁷ A/HRC/17/5, 8 March 2011, Para, 106.46.

"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)"⁸; and, "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)"⁹.

4. Issues Related to the Human Right to Food and Nutrition

a. Optional Protocol to the CESCR

6. Despite numerous actions and requests by civil society, 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 and nutrition has increasingly been a critical issue for a country like Nepal which experienced the armed conflict (1996-2006). The ratification OP may help Nepal further strengthen its efforts to enforcing ESCR.

b. The Human Right to Adequate Food and Nutrition and Access to Land for Marginalized and Disadvantaged Groups

7. 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 issue¹⁰. 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.

8. 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 land¹¹. There exists a vast bodies of legislations regulating access to land - the Land Act 1964 (Land Act) being one of the major ones which put a ceiling on land holding¹², fixed the rent to be paid as contract (*Kut*) by tenants at 50% of the principal crop¹³, and emphasized security of tenant farmers against eviction¹⁴. 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. 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.¹⁵

⁸ Ibid, Para 106.49.

⁹ AHRC/17/5, 8 March 2011, Para, 106.21.

¹⁰ Adhikari, Jagganath: Land Reform in Nepal: Problems and Prospects, P.44, ActionAid, 2008, available at: http://www.actionaid.org/sites/files/actionaid/land_reform_complete.pdf.

¹¹ Article 33 (f).

¹² Sections 7 and 8.

¹³ Sections 33, 35 and 36.

¹⁴ Sections 29 and 29A.

¹⁵ Ibid.

9. The Government as per the Land Act nationalized land and terminated traditional collective land tenure systems such as *kipat*¹⁶, 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 169¹⁷ and United Nations Declaration on the Rights of Indigenous Peoples 2008¹⁸, further increased their vulnerability to food insecurity and undernutrition and in the enjoyment of their right to adequate food and nutrition 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 tenant¹⁹, 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.

10. The Land Act also sets out the concept of cooperative farming²⁰ land zoning and plotting²¹ agriculture saving credit²² and farmers' cooperative institutions²³. 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 and nutrition insecurity, particularly through enhancing access of small farmers and landless people to land. The VGLT 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 VGLT. 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 use²⁴. 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.

c. The Human Right to Adequate Food and Nutrition and Access to Forest and other Natural Resources of Marginalized Groups

11. 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 livelihoods.

12. The 1993 Forest Act and 1973 National Parks and Wildlife Conservation Act are two major pieces of legislation governing access to forest. 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

¹⁶ Section 3A of Land Act.

¹⁷ Article 14.

¹⁸ Articles 25-30.

¹⁹ Section 40 of the Land Act.

²⁰ Section 51 (I).

²¹ Section 51 (E).

²² Section 40.

²³ Section 60.

²⁴ Section 5 (1) of the Policy.

recognition of indigenous peoples' right to consultation or to access their traditional lands and resources governed by the National Parks and Wildlife Conservation Act.²⁵ According to the Special Rapporteur, 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.²⁶

Life and Livelihood of Balapur Residents under Threat

13. *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 zone²⁷ 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.*²⁸

3d. Lack of Protection from Forced Evictions and Displacement

14. The Forest Act gives power to the forest officials to carry out removal of, *inter alia*, the houses or hut 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 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 and nutrition.

15. 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 conservation in the area, the DAO had repeatedly asked the people to leave the area. No formal notice (by writing) was issued before the demolition took place that left no room for the residents to evacuate the place themselves. People have not been offered alternative livelihood opportunities.

5. Recommendations

16. FIAN requests the Human Rights Council to consider recommending the Nepal Government:

²⁶ A/HRC/12/34/Add.3 20 July 2009, Para 32, 33, 34, 35, 36, 37 and 38.

²⁷ 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.

²⁸ Based on FIAN-Nepal monitoring of the situation.

17. **To 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 and nutrition insecurity. Such strategy should be based on the existing international standards on the human right to adequate food, including the General Comment No. 12 of this Committee, the Right to Food Guidelines, the VGLT and the Directive Principles on Extreme Poverty and Human Rights, among all other relevant standards on the field.
18. To improve the mechanisms and **methodologies to identify groups suffering from violations** of the human right to adequate food and nutrition and its causes. It should create **achievable and disaggregated benchmarks to monitor progress** and consistency with human right to food and nutrition commitments and obligations, and regular monitoring systems should be created that are participative and culture sensitive. Accessible and effective complain mechanisms should be created and access to them should be ensured without discrimination, especially for marginalized and disadvantaged groups.
19. **Expedite the implementation of the previous recommendations** relevant to the human right to adequate food and nutrition provided by the Treaty-based and Charter-based bodies of the United Nations, in particular of CESCR, CEDAW and the UPR under the Human Rights Council.
20. **Invite, as a matter of priority, the UN Special Rapporteur** on the right to food to visit Nepal.
21. **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 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.
22. **Ensure priority for the most disadvantaged and marginalized groups**²⁹ in the policies and strategies on access to resources.
23. **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 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**.
24. Recognize both individual and collective **land rights** when it comes to strengthening access of the indigenous peoples to food and nutrition.

²⁹ Such as women, indigenous peoples, Dalits, communities affected by HIV/Aids, among others.