



Written contribution to the
Universal Periodic Review of Nepal
2020

The Situation of the Right to Adequate Food and Nutrition in Nepal

Submitted by
FIAN Nepal

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1. **FIAN Nepal** is a member-based human rights organization to promote and advocate for the realization of the human right to food in Nepal since December 2008.¹
2. **Nepal has ratified most of the international human rights treaties², and adopted most of the UN Declarations³.** The Constitution of Nepal (2015) guarantees the right to food and food sovereignty under its fundamental rights⁴. The Right to Food and Food Sovereignty Act (2018) is promulgated and other Acts⁵, sectoral laws/frameworks such as section (8) and sub-section 3 of Act Relating to Rights of Persons with Disabilities 2074 (2017)⁶, section (7) and sub-section (2) National Park and Wildlife Conservation Act, 2029 (5th amendment)⁷ action plans,⁸ programs⁹ and strategies¹⁰ support people's right to adequate food focusing specially on marginalized communities¹¹ and groups¹² of Nepal.
3. **Poverty and lack of enjoyment of the right to adequate food and nutrition remain a critical issue in Nepal**

3.1. Poverty - Nepal is still in the list of poorest countries in the world, ranking 147¹³ (HDI) and 150¹⁴ (World Population Review - WPR) out of 189 countries. Challenging geography, lack of

¹ ULR: www.fiannepal.org

² 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), Convention on Rights of Person living with disabilities, Convention on Elimination of All Forms of the Racial Discrimination (ICERD), ILO Convention on Indigenous and Tribal Peoples, Convention on Biological Diversity

³ UN Declaration on Rights of Peasant (UNDROP, December 2018), UN Declaration on the rights of indigenous peoples (UNDRIP August 2007),

⁴ Article 36 of Constitution – 1) every citizen shall have the rights relating to food, 2) every citizen shall have the rights to be safe from the state of being in danger of life from the scarcity of food and, 3) every citizen shall have the right to food sovereignty in accordance with law; Constitution of Nepal, published in Nepal Gazette on 20 September 2015 (2072.6.3)

⁵ National Park and Wildlife Conservation Act 2029 (5th amendment), Land Use Act, 2018, Right to Housing Act, 2018, Compulsory Free Education Act 2018, Right to Public Health Services Act- 2018, Right to Employment Act, - 2018, Social Security Act, 2018

⁶(...) member of his or her family or guardian shall, on the basis of disability, make any kind of discrimination against a person with disability in the maintenance, care, provision of foods, distribution of property also section 16 of act secure the right to social security ... persons with disabilities as prescribed shall have the right to obtain economic assistance or social security ... <http://www.lawcommission.gov.np/en/>

⁷ National Park and Wildlife Conservation Act, 2029 (5th amendment) Section 7 and sub section (2): Local peoples allowed to use the facilities which they have been using traditionally such as - to collect wild resources (vegetables and fruits), fishing in the river, use drinking water resources, irrigation channel, grazing land for their cattle, traditionally using road/street/ way for their daily movement. Likewise, local peoples also allowed to collect the forest resources taking the approval from chief warden form National Park if the local peoples are disaster affected and needs more forest resources which are not enough/available in the buffer zone areas where they living <http://www.dnpwc.gov.np/>, Land Use Act, 2018, Right to Housing Act, 2018, Compulsory Free Education Act 2018, Right to Public Health Services Act- 2018, Right to Employment Act, - 2018, Social Security Act, 2018 <http://www.lawcommission.gov.np/en/>

⁸ Multi Stakeholder Nutrition Plan (MSNP- I and II) 2018-2022 Web: www.npc.gov.np, Zero Hunger Challenge National Action Plan (2016 – 2025)

⁹ School Feeding Programm for school age children, Prime Minister Agriculture Modernization Programme

¹⁰ Agriculture Development Strategy (ADS 2015 - 2035)

¹¹ Dalit, Indigenous Peoples, Madhesi, People living in rural areas (Karnali Pradesh) and,

¹² Single Women, Person Living with disabilities, Children and senior citizen

¹³ Human development report, 2019

¹⁴ World Population Review, 2020

market linkages and well-functioning markets to transport food, caste and gender-based discrimination, lack of access to land and natural resources and lack of infrastructure are complicating efforts to improve livelihoods of people. Around 18.7 percent of the population are living under extreme poverty, total 28.6 percent¹⁵ are living under multi-dimensional poverty and half of the people are living with less than one-dollar earnings per day. Even though the poverty rate in Nepal is decreasing every year, vulnerability remains high, exacerbated by both man-made and climate related shocks, such as floods, and earthquakes¹⁶. Geographical disparities are huge and rates of poverty are high in Province 2 (47.89%), Province 6 (51.22%) and Province 7 (33.56%) in comparison to Province 1 (19.62%), Province 3 (12.24%), Province 4 (14.19%) and Province 5 (29.92%).¹⁷ The Covid 19 pandemic has also been contributing and is expected to further increase poverty and food insecurity.¹⁸

3.2. Food insecurity – 4.6 million people are food insecure with 20 percent of households mildly food-insecure, 22 percent moderately food-insecure and 10 percent severely food-insecure.¹⁹ Overall, households in rural areas (39%), where food prices tend to be higher, are more likely to be food-insecure than those living in urban areas (54%). The proportion of mildly food insecure households increased from 12% in 2011 to 20% in 2016.²⁰

3.3. Nutrition situation - Approximately 36 percent of Nepalese children under five years are stunted, while 27 percent are underweight, and 10 percent suffer from wasting due to acute malnutrition. Furthermore, food preferences have shifted from healthier and nutritious traditional foods toward processed alternatives compounding these problems.²¹ Vitamin and mineral deficiencies are also widespread, and 43% of pregnant and about 41% of all women aged 15–49 years were anemic.²²

4. Recommendations (UPR 2015) in regards to right to food and nutrition

4.1. Following the recommendations most specific for the right to food: Malaysia recommended (122.86) to **ensure effective implementation of its poverty alleviation policy as well as considers adopting a comprehensive national strategy to ensure food and nutrition security for its people.** Ireland recommended (122.88) to **adopt a comprehensive national strategy to ensure food and nutrition security for all in line with international standards.**

4.2. Implementation of recommendations – Recommendations of the UPR 2015 review concerning the right to adequate food and nutrition are only partially implemented and

¹⁵ Nepal Economic Survey, 2019

¹⁶ World Bank Overview, last updated 15 October 2019

¹⁷ Government of Nepal, National Planning Commission (NPC) Multidimensional Poverty Index 2018, (page 39)

¹⁸ <https://thehimalayantimes.com/opinion/covid-19-and-food-insecurity/>

¹⁹ Ministry of Health, Demographic and Health Survey 2016

²⁰ Ibid.

²¹ Sujan Gautam - Determining factors for the prevalence of anemia in women of reproductive age in Nepal: Evidence from recent national survey data, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0218288>

²² Ibid.

remain unimplemented to a wider extent.²³ They were neither formally translated into the local language nor disseminated across the country, thus making it difficult for grassroots activists to monitor their implementation. The Government passed several acts, programs, policies and strategies but implementation is poor.²⁴ With regard to the Right to Food and Food Sovereignty Act of 2018, the Government had not initiated its implementation at all three levels of the state structure and delayed the formulation of respective rules and regulations. Some specific UPR recommendations relevant to the right to adequate food such as employment (122.82), equal opportunity for women in labour market (122.78), access to housing for poor and vulnerable communities especially for bonded labour (122.89) and nutrition such as access to health and nutrition for women and children (122.90) remain widely unimplemented due to the lack of specific structures, resources and capacity at local and province level.

5. **Ratification of Optional Protocol of ICESCR** - Despite numerous actions and requests by civil society, the Government has not yet ratified the Optional Protocol of the ICESCR (OP), thereby limiting access to justice for marginalized groups and communities, including the right to adequate food and nutrition which is increasingly been a critical issue for a country like Nepal

6. Other Issues Related to the Right to Adequate Food and Nutrition

- 6.1. **Access to forest** and other natural resources plays a vital role in rural people's day-to-day livelihood. The majority of people residing in rural areas are subsistence farmers who sustain their livelihood and supplement their income from the resources of the forests, rivers and wetlands. With the latest amendment of the National Parks and Wildlife Conservation Act, 1972²⁵ (5th amendment) progressive provisions for specific groups²⁶ of peoples in regards to their access to resources like forests and rivers were introduced²⁷, in line with the rights set out by ILO Convention 169²⁸ and UNDRIP²⁹ article 26 (2)³⁰. However, the implementation remains in limbo due to the delayed formulation of respective rules and regulations in line with the amended Act.

Case - I: Bote Indigenous People's Deprivation from their Customary Traditional Occupation

²³ <https://reliefweb.int/report/nepal/delays-implementation-upr-recommendations-highlight-absence-functioning-democratic>

²⁴ *ibid.*

²⁵ Act 5th Amendment in 2017 and published in Nepal gazette on 2073/12/17 (30 March 2017)

²⁶ Indigenous community people" whose traditional occupation and livelihood are mostly belong to forest and river related resources

²⁷ As per Article 7 (2) National Park and Wildlife Conservation Act 1972 (5th amendment on 30 March 2017) *local people are allowed to use the facilities which they have been using traditionally such as - to collect wild resources (vegetables and fruits), fishing in the river, use drinking water resources, irrigation cannel, grazing land for their cattle, traditionally using road/street/ way for their daily movement. Likewise, local people are also allowed to collect forest resources after the approval from chief warden form National Park if the local peoples are disaster affected and need more forest resources than the ones available in the buffer zone areas where they live..*

²⁸ International Labour Organization, Indigenous and Tribal Peoples Convention No. 169

²⁹ UN Declaration on the Rights of Indigenous Peoples

³⁰ Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired

900 members (60 Households) of Bote indigenous peoples (IPs) have been living in Patihani Village, ward no. 13 and 22 of Bharatpur Metropolitan City, Chitwan district. The area is a buffer zone³¹ of Chitwan National Park and fishing and boating in Rapti River is the traditional occupation of Bote IPs. A family member from each Household is eligible for a fishing license as per the amended National Park and Wildlife Conservation Act, 1972, for which a yearly fee of NR 100 has to be paid to the National Park authority. However, in disregard of sub-section 2 of section 7 of National Park and Wildlife Conservation Act 1972 (5th Amendment 2017), National Park authorities have introduced four new rules. These rules implicate certain bans for fishing and thus deprive Bote from their traditional occupation. For example, National Park Authorities inserted a clause with regard to the fishing license renewal that for fishing yarn-nets shall be used instead of readymade nylon-nets. However, such yarn-nets are not available in the market and Bote people are not in a position to make them themselves. Another rule for the fishing license renewal is related to a strict schedule with regard to the fishing time and place. As these are practically not feasible, Bote peoples are facing violations of their right to food. In the case of Bote, Nepal Government has violated its obligation to respect the right to food and nutrition³² and breached its own legislation.

Identification and reorganization of indigenous peoples – According to The National Foundation for Development of Indigenous Nationality (NFDIN) Act, 2002, 59 indigenous communities are legally recognized³³ as indigenous peoples (IPs) of Nepal. Through legal recognition, they are eligible to access certain government resources and benefits (social security)³⁴ allocated for endangered and highly-marginalized IPs.³⁵ The Nepalese Government, OPMCM³⁶ took a decision on 11 February 2009 towards the re-identification and correction of the IPs list as per the NFDIN Act and identified 24 new IPs communities. However, till date, these 24 IPs are still not legally recognized, in spite of constitutional³⁷ and international³⁸ legal frameworks. They are thus deprived from the respective resources and benefits and end up being victims of discrimination. Further, as per the Constitution of Nepal an Indigenous Nationality Commission was formed in 2019³⁹. However, this Commission is still not operational even after five years of formulation of the constitution, as the Government has not yet allocated the respective financial and human

³¹ Buffer Zone means a peripheral area of a national park or reserve prescribed under the Section 3a of NP and Wildlife Conservation Act in order to provide facilities to use forest resources on a regular and beneficial basis for the local people.

³² FIAN Nepal Case Documentation of Bote Indigenous Right to Food Violation and regular Case Work following the case documentation (2018 till date)

³³ Annex – I of NFDIN Act (2058) listed all the 59 identified and legally recognized indigenous communities of Nepal

³⁴ Endangered IPs of Nepal eligible to get NRS 1000 per month per person

³⁵ Highly marginalized IPs of Nepal eligible to get the government supports such as free education and citizen housing scheme

³⁶ Office of Prime Minister and Council of Ministers (OPMCOM)

³⁷ Fundamental rights of Constitution of Nepal – Article 18 – Right to Equality: “ (...) nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or development of the citizens including the socially or culturally backward women, *Dalit*, indigenous people, indigenous nationalities (...)”, and Article 42: Right to Social Justice: “Socially backward women, *Dalit*, indigenous people, indigenous nationalities (...) shall have the right to participate in the State bodies on the basis of inclusive principle.”

³⁸ International Labour Organization, Indigenous and Tribal Peoples Convention No. 169 (Article 2 – Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply), and United Nation Declaration on the Rights of Indigenous Peoples

³⁹ Constitution of Nepal – Article 261 - Indigenous Nationalities Commission: (1) There shall be an Indigenous Nationalities Commission of Nepal

resources to the commission. As a consequence, IPs of Nepal are still not fully integrated into the state mechanisms, and are increasingly endangered with regard to their access to natural and productive resources, as well as traditional customary institutions.

Case – II: Sonaha IP community struggles for the identification and legal recognition to secure their traditional occupation and their right to adequate food

The Sonaha are one of the endangered landless indigenous communities⁴⁰, living in the belt of Karnali and Mahakali River, in the buffer zone areas of Bardiya National Park, Bardiya district. The total population of Sonaha is 1180. Their traditional occupations are gold panning and fishing in the Karnali River. Bardiya National Park had been established by the Nepal government in 1988 as per the National Parks and Wildlife Conservation Act, 1972⁴¹. As the Sonaha are not yet officially recognized, they are not allowed to follow their traditional occupation. In addition, they cannot access government livelihood support programs targeted to marginalized communities e.g. livelihood support, road construction and maintenance, support to schools, support to flood affected people of buffer zone areas etc. As per the provisions of the National Parks and Wildlife Conservation Act, 1972 5th amendment, 30-50% of the national park annual income has to be spent for community development, and is thus supposed to benefit the Sonaha as well.

In October 2014, representatives of the Sonaha filed a writ petition in the Supreme Court against several concerned government agencies.⁴² On 2 December 2015, the Supreme Court decided to: a. *list Sonaha people as indigenous nationality*, b. *Provide the facilities as per the law provisioned for indigenous peoples*, c. *Provide necessary environment to promote their traditional occupation and livelihood dependent on fishing with their traditional knowledge and skill*, d. *Preserve community identity, culture and traditional occupation with alternatives and other programs for their livelihood*⁴³. However, the Supreme Court Verdict in regards to Sonaha is still not implemented.⁴⁴

6.2. Delayed reconstruction after earthquake – daunting the life of marginalized people

The earthquakes of April 25 and May 12, 2015 took the lives of 8970 people, with 198 people missing, and 22,303 people seriously injured. The earthquakes destroyed 604,930 houses completely and 288,856 houses partially. Around 800,000 people were displaced.⁴⁵ However, only 86% private houses were reconstructed after the formation of the National Reconstruction Authority (NRA) 2015. Similarly, 71% (5,380 among 7,553) of educational institutions school and 665 health institutions (out of 1197) affected by the earthquakes have been reconstructed until the end of the 2019.⁴⁶ Land related issues, size of roads, NRA's house reconstruction standards, low income of affected peoples, high price of reconstruction

⁴⁰ Endangered indigenous communities – less in population, high maternal and child mortality rate, lack of access to education and other facilities, low life expectancy in compare to other community

⁴¹ Act 5th Amendment in 2017 and published in Nepal gazette on 2073/12/17 (30 March 2017)

⁴² OPMCOM, NFDIN, Ministry of Federal Affair and Local Development, Ministry of Women Children and Senior Citizen, District Development Office Bardiya, Bardiya National Park and District Forest Office Bardiya

⁴³ Supreme Courte Verdict (071 WO 0257) date, 2072/08/16 (2 December 2015)

⁴⁴ FIAN Nepal Case Documentation of Sonaha Community Right to Food Violation and regular Case Work following the case documentation (2011 to till date)

⁴⁵ Amnesty International Nepal. Earthquake Recovery Must Safeguard Human Rights. London; 2015. pp. 1-21. Available from: https://www.amnestyusa.org/wp-content/uploads/2017/04/p4583_report_-_nepal_report_on_earthquake_web.pdf__adobe_acrobat_pro.pdf

⁴⁶ Mr. Sushil Gayali – CEO – NRA – Government of Nepal

materials and shortages of labor are major issues for the delay. Major reconstruction problems remain in Kathmandu valley where out of 48135 total beneficiaries 42896 made an agreement with the NRA, but only 2670 (5.5%) had completed reconstruction by the end of 2019.⁴⁷

Case – III: Reconstruction Makes the Tamang Indigenous Community indebted compromising their right to food and nutrition

Around 350 households of Tamang IPs communities are sustaining their livelihoods in Chaimale– Dakshinkali, Municipality Ward. No 8, Kathmandu district with subsistence farming. Their agro-products bear their 3-6 month food requirement and for the remaining months, they have to work as daily wage laborers. Even though being beneficiaries of the NRA for house reconstruction, due to the inadequacy of the resources provided by the government⁴⁸ about 200 households have not started their house reconstruction. Those, who already initiated / completed reconstruction work had taken loans from local saving credit cooperatives at high interest rate (100/14% per month). In order to return this money to the saving credit cooperative, they have been forced to compromise on expenses for food: Some of them have even sold their land and / or cattle, thus making them more vulnerable to hunger and malnutrition.

6.3. Women Living with HIV - Women living with HIV/AIDS (WLHA) are at particular high risk of living a painful, shameful life of exclusion. Discrimination for women can discourage them from seeking vital medical and psychological care they need during the illness. HIV stigma in women is associated with rejection from friends and family, society, feelings of uncertainty and loss, low self-esteem, fear, anxiety, depression and even suicide in some cases. Though the known number of women with HIV is less than the number of known cases among men, it is escalating and the epidemic is hitting women hard in Nepal. Gender inequities and poverty have increased the vulnerability of women to HIV risk behaviors and exposure. Acknowledging the constitutional provisions to guarantee universal access to basic health services, the Government of Nepal has developed the Nepal Health Sector Strategy Implementation Plan 2016 (Nepal Health Sector Strategy (NHSS) 2016/17-2020/21) and committed to “Improved access to health services, especially for unreached population”, in particular to “Increase access to CD4 count machine”.⁴⁹ HIV positive women are provided free Antiretroviral Therapy (ART).⁵⁰ However, while undergoing the therapy, there is the need for a more nutritious food intake, which, women living with HIV are not always able to access and are thus vulnerable for additional health problems.

⁴⁷ NRA database

⁴⁸ Beneficiaries received NPR 50 000 – (10 000 NRS is equivalent to about 74 Euros) - (1st installment for every household) in 2018, however, as the overall costs for a moderate two rooms house as per the NRA standard are 1 500 000 NRs — at least NRS 500 000 are needed to initiate the house construction as per the NRA house reconstruction standards in Kathmandu valley.

⁴⁹ <https://climate.mohp.gov.np/contact-us-page/31-acts/163-nepal-health-sector-strategy-implementation-plan-2016-2021>

⁵⁰ Nepal has a *National Policy on HIV and STI, 2011*. Its guiding principle is to ensure the citizens' right to primary health by keeping the national and international standard. There is provision for focal points (desks) on HIV/AIDS in Prime Ministers' Office, National Planning Commission and line ministries. It further talks about Multi-sectoral HIV/AIDS strategy development and implementation for extend HIV/AIDS issue beyond health sector at the present stage.

Case – IV: Right to Health of Dalit Women Living with HIV – Barabis villages which has almost 9000 inhabitants, is situated in Bajura, is one of the remote and least developed districts. 26 people are infected with HIV/AIDs, 11 are female and 15 are male, and most of them belong to the Dalit community. The disease is usually contracted by men, who go as migrant workers to India to earn a living, and transfer the infection to their wives. Working as seasonal worker in India is a common practise, as many people, particular Dalits, are either landless, or own only small and marginal plots of land, and employment opportunities in the area are scarce. Women have triple-fold responsibilities (care work, household tasks and wage labour work) even while living with HIV. Regular ART is difficult, as the ART site in the district is far (in Dhangadi). Many infected women do not have time to travel as they need to engage in labor work and household care. In addition, they are not physically fit to undertake long travels due to lack of adequate food and nutrition.⁵¹ Affected women are demanding free CD4 count in their own district, nutritious food, skilled development training and facilities for their livelihood, education for their children and to be free from stigma.

7. Recommendations

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

1. The government should fully implement previous UPR recommendations (2015) formulating a comprehensive national action plan and especially implement at local level the recommendations relevant to the human right to adequate food and nutrition.
2. The government should ratify the optional protocol of ICESCR and formulate an appropriate mechanism to implement it from local to federal levels.
3. The government should implement the Right to Food and Food Sovereignty Act and related policy/plan/programs to ensure food and nutrition security for all, particularly targeting the vulnerable, marginalized and disadvantaged communities and groups of society.
4. The government should improve the mechanisms and methodologies to identify and legally recognize indigenous peoples to facilitate their access to natural resources and government schemes.
5. The government should ensure that indigenous and other communities feeding themselves from forests and fisheries are not dispossessed from their territories and prevented from accessing natural resources
6. The government should implement people's fundamental right to shelter especially focusing on earthquake-affected people.
7. The government should ensure the access to government health and nutrition services and facilities especially for Dalit women living with HIV/AIDS.

⁵¹ FIAN Nepal case documentation and regular case work on the issues related to Dalit women's right to food violation by not accessing health services