

THE HUMAN RIGHT TO FOOD IN NEPAL



REPORT OF AN INTERNATIONAL FACT-FINDING MISSION



Droits et Démocratie
Rights & Democracy

Centre international des droits de la personne et du développement démocratique
International Centre for Human Rights and Democratic Development

THE HUMAN RIGHT TO FOOD IN NEPAL

Report of an
International Fact-Finding Mission



Droits et Démocratie
Rights & Democracy

Centre international des droits de la personne et du développement démocratique
International Centre for Human Rights and Democratic Development

Rights & Democracy

1001, de Maisonneuve Blvd. East, Suite 1100

Montreal (Quebec) H2L 4P9 Canada

Tel.: (514) 283-6073 / Fax: (514) 283-3792 / e-mail: publications@dd-rd.ca

Web site: www.dd-rd.ca

Rights & Democracy (International Centre for Human Rights and Democratic Development) is an independent Canadian institution created by an Act of Parliament. It has an international mandate to promote, advocate and defend the democratic and human rights set out in the International Bill of Human Rights. In cooperation with civil society and governments in Canada and abroad, Rights & Democracy initiates and supports programmes to strengthen laws and democratic institutions, principally in developing countries.

© International Centre for Human Rights and Democratic Development, 2007.

This report may be freely excerpted, with acknowledgement to Rights & Democracy.

Also available online at www.dd-rd.ca

This report is also available in French and Nepali.

Writing: Carole Samdup and Priscilla Claeys, Rights & Democracy

Photo (cover page): Mohan Dhamotharan

Copy Editing: Augie van Biljouw

Production: Anyle Coté, Officer, Special Events & Publications, Rights & Democracy

ISBN: 978-2-923539-07-2

Legal Deposit: Bibliothèque et Archives nationales du Québec, 2007;

National Library of Canada, third quarter, 2007

TABLE OF CONTENTS

List of Acronyms	5
Introduction and Acknowledgements	9
The Fact-Finding Mission	11
Site Visits, Interviews and Public Engagements	12
Using the Human Rights Framework	15
Methodology	17
The Human Right to Food in Nepal	19
The Current Political Situation	20
Hunger and Food Insecurity	21
Progressive Realization of the Human Right to Food	22
Decreasing Access to Productive Resources	23
Vulnerable Groups	24
Legal Framework	27
International Human Rights Commitments	27
National Legislation	27
Policy Framework	31
Economic Policies	32

State Compliance with Right to Food Obligations	35
Positive Steps by the State	35
Areas Requiring Improvement	36
International Cooperation	55
Donor Community Fails to Integrate a Human Rights Approach to Development	55
Neighbouring States Fail to Respect Extra-Territorial Human Rights Obligations	57
Recommendations	59
To Government	59
To Donors and UN Agencies	61
To Civil Society	62
Annex 1 – Mission Delegation	65
National Delegates	65
International Delegates	65
International Observers	66
Annex 2 – Site Visits	67
Eastern and Central Region	67
Mid West Region	68
Far West Region	69
Annex 3 – Interviews in Kathmandu	71
Government	71
United Nations	73
Donors	73
Non-governmental Organizations	74

LIST OF ACRONYMS

ADB	Asian Development Bank
APP	Agriculture Perspective Plan
CDO	Chief District Officer
CESCR	UN Committee on Economic, Social and Cultural Rights
CPN (UML)	Communist Party of Nepal (Unified Marxist-Leninist)
DDC	District Development Committee
FAO	Food and Agriculture Organization
FFM	Fact-Finding Mission
GDP	Gross Domestic Product
HoR	House of Representatives
ICARRD	International Conference on Agrarian Reform and Rural Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IMF	International Monetary Fund
LDC	Least Developed Country
LDO	Local Development Officer
MDG	Millennium Development Goal
MoA	Ministry of Agriculture
MoFSC	Ministry of Forests and Soil Conservation
MoLR	Ministry of Land Reform
MoWR	Ministry of Water Resources
NFC	Nepal Food Corporation

NGO	Non-Governmental Organization
NHRAP	National Human Rights Action Plan
NHRC	National Human Rights Commission
NPC	National Planning Commission
NPR	Nepalese Rupee (official currency of Nepal)
OHCHR	Office of the High Commissioner for Human Rights
ODC	Organization Development Centre
PAF	Poverty Alleviation Fund
PRSP	Poverty Reduction Strategy Paper
SPA	Seven Party Alliance
UDHR	Universal Declaration of Human Rights
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Program
VDC	Village Development Committee
WFP	World Food Program
WTO	World Trade Organization

The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all time to adequate food or means for its procurement.

UN Committee on Economic, Social and Cultural Rights (CESCR)
General Comment 12

Poverty is frequently a cause, as well as a consequence, of human rights violations. A focus on global average progress glosses over entrenched patterns of discrimination and inequality that can sentence communities to generations of poverty. Indeed, progress toward the MDG (development) targets can easily be achieved at the expense of, rather than in the name of, the poorest and hardest to reach.

LOUISE ARBOUR, UN High Commissioner for Human Rights, July 7, 2007

District Map of Nepal



Map not to Scale
Copyright © 2006 Compare Infobase Limited

INTRODUCTION AND ACKNOWLEDGEMENTS

The problem of persistent hunger is not limited to Nepal. The United Nations Food and Agriculture Organization (FAO) reports that more than 850 million people around the world suffer from hunger and that the millennium target of reducing that number by half by 2015 will not be met without stronger commitments and an accelerated pace. In Nepal, hunger is pervasive across the country and approaches crisis levels.

Nepal is a country in the midst of a political transition. There is a great sense of hope and expectation that a more accountable system of democratic governance will bring a better life for all those living within its borders. Rights & Democracy sincerely hopes that the new government and international agencies operating in the country will welcome this report in recognition of the contribution a human rights framework would bring to resolving the underlying causes of poverty and conflict in Nepal.

This report is a collaborative effort. Deepest appreciation is extended to the members of the mission delegation and their organizations, both international and national. In particular, we would like to thank the collaborating organizations: the Right to Food Research Unit at the University of Geneva, the Right to Food Unit at the FAO, and the FoodFirst International Action Network (FIAN International).

The staff of the Organization Development Centre (ODC) in Kathmandu worked tirelessly to ensure that the mission logistics went smoothly and without problem. ODC also provided valued guidance and advice throughout the planning phase. Priscilla Claeys, at Rights & Democracy, was the backbone of the mission, coordinating all aspects of the research and planning and remaining passionate about the issues throughout the process.

The members of the fact-finding mission wish to extend special thanks to the many individuals and communities we interviewed during our time in Nepal, whose generosity and insight have inspired this report.

CAROLE SAMDUP

*Coordinator, Economic and Social Rights Program
Rights & Democracy*

THE FACT-FINDING MISSION

The International Fact-Finding Mission (FFM) to Nepal, from April 9 to 18, 2007, was the second in a series of country studies undertaken by Rights & Democracy to promote the advantages of a human rights framework for the eradication of hunger.¹ The FFM was undertaken in cooperation with the Right to Food Unit at the FAO, the Right to Food Research Unit at the University of Geneva, and FIAN International.

The FFM objectives were as follows:

- Assess hunger and food insecurity in Nepal from a human rights perspective.
- Apply the FAO Voluntary Guidelines on the human right to food in a practical context.
- Make recommendations in relation to using a human rights framework for policy and program development.

The FFM paid particular attention to restricted or denied access to productive resources, internal displacement linked to infrastructure development, the situation of bonded labourers, agrarian reform and the rights of peasants, as well as the impact of food aid. Special emphasis was also placed on the rights of indigenous peoples, women and low caste communities (Dalits).

The FFM delegation included representatives from both national and international organizations. The 13 delegates were divided into three teams for the site visits and into two teams for interviews in Kathmandu. The complete list of mission delegates and interviews is provided as an annex to this report.

¹ See *Human Right to Food in Malawi: Report of a Fact-Finding Mission*, Rights & Democracy and FIAN International, 2006, www.dd-rd.ca.

Site Visits, Interviews and Public Engagements

The three site visit teams visited affected communities in the districts of Siraha, Makawanpur, Nawalparasi, Chitwan, Banke, Jumla, Dadeldhura and Achham. In Kathmandu, FFM members met with parliamentarians and representatives of government ministries, donor countries, UN agencies and civil society. At the conclusion of the site visits and interviews, the FFM delegation hosted a public seminar in Kathmandu to present preliminary findings and to seek additional input from a wider range of national non-governmental organizations (NGOs) and other stakeholders.

Site Visit to Central/East, Terai Region

The Terai, or plains, region of Nepal is an agricultural, food surplus area bordering the Indian states of Uttar Pradesh and Bihar to the south.

The site visit team visited four districts in the central-eastern region: Siraha, Makwanpur, Nawalparasi, and Chitwan, targeting Dalit and indigenous communities, both of which reported chronic food insecurity despite living in a food surplus area of the country. Discrimination, manifested in several ways, was found to be at the root of food insecurity for these groups. In addition, the team hosted a roundtable discussion with fifteen NGOs in Lahan, Siraha District and met with local representatives of political parties.

Site Visit to Mid-west Region, Banke and Jumla

The site visit team visited Banke, a food surplus area and Jumla, a food deficit area in the mid-west region of Nepal.

The primary issues addressed in Banke were flooding, access to land, migration and the situation of bonded labourers. Team members met with Dalit communities affected by dam flooding and river cutting. Meetings were also held with landlords, local development officers and a regional representative of the National Human Rights Commission (NHRC). In Jumla, the team looked at women's access to food and the role of the National Food Corporation (NFC) in the delivery of food aid. Meetings were held with both communities and local NGOs.

Site Visit to Far-west Region, Achham and Dadeldhura

Dadeldhura and Achham districts are food deficit areas located in the far-western hills of Nepal. In Achham, the site visit team focused on the situ-

ation of flood victims, landless Dalits, women living with or affected by HIV/AIDS and the impacts of migration on sustainable access to adequate food. Community consultations were accompanied by meetings with local officials in Mangalsen and a roundtable discussion with a series of organizations that work specifically on the issue of HIV/AIDS. In Dadeldhura, the site visit team addressed chronic food insecurity as experienced by freed bonded labourers (Haliyas).

Interviews with Officials in Kathmandu

FFM members met with a range of stakeholders in Kathmandu including government representatives, UN agencies, donor country representatives and political parties.²

Meetings with government included the Ministers of Land Reform and Agriculture, officials at the Department of Health, the National Planning Commission (NPC), the Ministry of Water Resources (MoWR), the Ministry of Forests and Soil Conservation (MoFSC), the NFC and the NHRC. The FFM members also met with representatives of political parties including the Communist Party of Nepal (Maoist) and the United Marxist Leninist (UML), and representatives of the Inter-party Women's Alliance, which gathers women politicians across political parties.

FFM members met with representatives of the UN in Nepal, including the UN Development Program (UNDP), the World Food Program (WFP), the FAO and the Office of the High Commissioner for Human Rights (OHCHR) in Nepal. Among donor countries, the delegation met with the Canadian Cooperation Office, the German GTZ, UK Department for International Development (DFID) and the Asian Development Bank (ADB). Additional meetings were organized with local and international NGOs including Action Aid Nepal, United Mission to Nepal (UMN), National Democratic Institute, Lutheran World Federation, Feminist Dalit Organization (FEDO) and the Informal Sector Service Centre (INSEC).

Civil Society Seminar

At the conclusion of the FFM, the mission members hosted a public seminar for civil society organizations and other stakeholders. The purpose of the seminar was to disseminate the FFM's preliminary findings and to debate the use of the human rights framework for addressing hunger in Nepal.

² See annex 3.

The seminar was inaugurated by the Minister of Agriculture and chaired by the Officiating Secretary of the NHRC. The seminar featured presentations from the Office of the UN Special Rapporteur on the Human Right to Food and the FAO. Representatives of each site visit team presented their experiences, followed by plenary discussion and the formulation of recommendations for next steps.

USING THE HUMAN RIGHTS FRAMEWORK

When the UN Charter was adopted, it called upon nations to “pledge universal respect for and observance of human rights” (Article 55). Further it required states to take “joint and separate action” to implement those rights. Subsequently, the UN adopted in 1948, a Universal Declaration on Human Rights (UDHR) as a statement of principles, which were soon protected in international law by two governing covenants—the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.

The ICESCR recognizes the right to an adequate standard of living, including the right to food, which is described as the right to be “free from hunger.” One hundred and fifty-six states are currently party to the ICESCR, representing an international consensus upon which cooperation between states can be built. In 2004, the FAO adopted the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*.³ The FAO Voluntary Guidelines offer a practical tool to assist states as they develop programs and policies designed to implement their right to food commitments pursuant to the ICESCR.

All human rights are governed by an over-arching set of common principles derived from the ICCPR as follows:

- Human rights are universal and should be enjoyed without discrimination.
- Human rights are indivisible, interdependent and inter-related.
- States are accountable and must ensure access to effective remedies when human rights violations occur.

³ www.fao.org/righttofood/en/highlight_51596en.html

Following the World Food Summit in 1996, the treaty monitoring mechanism, UN Committee on Economic, Social and Cultural Rights (CESCR), was mandated to further articulate the human right to food by means of a “general comment.” Although general comments are not legally binding, they are considered to be authoritative interpretations of specific rights or principles governing rights. General Comment 12, devoted specifically to the human right to adequate food, adopted by the UN Commission on Human Rights (UNCHR) in 1999. The General Comment provided a typology for monitoring the different levels of state obligations under the ICESCR.⁴ The typology—to *respect, protect and fulfil*—is now generally applied to all economic, social and cultural rights.

The obligation to respect refers to the state’s commitment not to undermine enjoyment of human rights either through action or failure to act; the obligation to *protect* requires states to ensure that persons living within its jurisdiction do not suffer human rights violations at the hands of non-state actors; the obligation to *fulfil* requires states to provide an institutional framework to ensure that rights can be effectively enjoyed in practice (facilitate and provide).

General Comment 12 also explains that states should implement the right to food *progressively*. Progressive realization can be understood as a measurement tool for monitoring purposes and also as a planning tool for sequencing of policies and programs.

It is helpful to read General Comment 12 in relation to other general comments issued by the CESCR. General Comment 2 on international technical assistance, General Comment 3 on the nature of state obligations and General Comment 9 on domestic application of the ICESCR are available on the OHCHR Web site.⁵

⁴ See *The Right to Adequate Food and to be Free from Hunger*, Updated study on the right to food, Asbjorn Eide, Sub-Commission on Prevention of Discrimination and Protection of Minorities, UNCHR 51st Session, 1999 (E/CN.4/Sub.2/1999/12).

⁵ See the CESCR Web site, including all its General Comments, at www.ohchr.org/english/bodies/cescr/

METHODOLOGY

“Fact-finding” indicates a process in which information is gathered related to an alleged human rights violation. While there are many useful and clear guides to conducting human rights monitoring missions, including numerous academic papers on the use of indicators, our mission based its procedural approach on the experiences and lessons learned of previous similar missions. Its substantive approach is derived from General Comment 12 on the human right to food and the FAO Voluntary Guidelines. In addition, for both process and substance, we were informed by the OHCHR’s excellent *Training Manual on Human Rights Monitoring*.⁶

We relied heavily on General Comment 12, with specific attention to the normative principles of the right to food (adequacy, accessibility, availability) in their relation to the different levels of state obligation (respect, protect, fulfil). We attempted throughout to apply the over-arching human rights principles of universality, indivisibility, and accountability. Despite the methodological challenge this approach naturally entails, common observations did evolve from the process; these were primarily qualitative in nature and based largely on anecdotal information obtained during site visits.

Interviews were conducted primarily with affected communities that had already filed reports with local organizations about particular violations or threats to the enjoyment of their human right to adequate food. Situation-specific questionnaires were developed during a pre-mission workshop in Kathmandu and interviews were scheduled in advance by local partner organizations. All site visit discussions were conducted in the local language and translated into English for the FFM delegation.

Research methods differed among site visit teams according to the local context. In some but not all meetings, the community was separated into

⁶*Training Manual on Human Rights Monitoring*, OHCHR, 2001.
www.ohchr.org/english/about/publications/docs/train7_a.pdf.

women and men for interviews. All of the interviews with communities called upon individuals to describe their situation in their own words and to introduce topics they felt were most relevant to human rights and food insecurity.

Some of the facts and figures provided in this report were obtained through on-line research and post-mission inquiries. With the time and resources available, it was not possible to verify all points of view with the people who made them and therefore comments are not attributed to any specific individual or interview group.

THE HUMAN RIGHT TO FOOD IN NEPAL

Nepal is a small landlocked country situated between Tibet to the north and India on the other three sides. It lies on the southern slopes of the Himalayas and has a population of approximately 27 million.⁷ For administrative and developmental purposes, the country is divided into five regions: eastern, central, western, mid-western and far-western. There are 75 districts comprising approximately 4,000 Village Development Committees (VDC).

Nepal is classified as a least-developed country (LDC) and ranks 138 out of 177 in UNDP's *Human Development Report 2006*. *An estimated 31% of the population lives below the national poverty line and 24% live with less than \$1 a day. Poverty is worse in mountainous areas and 13 out of 16 mountain districts and 21 out of 39 hill districts are food-deficient.*⁸ Adult literacy at 44% is among the lowest in the world. Infant and under-five mortality rates are high, at 59 and 82 per 1000 births respectively. Life expectancy is 62 years.

Agriculture represents the largest sector of the Nepalese economy and contributes 82% of exports.⁹ However, agricultural production has been in relative decline since the 1980s and the share of agriculture in the Gross Domestic Product (GDP) has fallen from 66% to 38% during the last 20 years.¹⁰ During the 1990s, Nepal became a net importer of food. Wage labour and remittances from family members working in urban areas or abroad represent an increasingly important source of support for poor rural households.¹¹

⁷ World Bank estimate, 2005.

⁸ By government standards: districts are classified as food surplus or food deficit depending on total district production in five selected commodities (rice, wheat, maize, millet and barley).

⁹ National census, 2001.

¹⁰ Services represent 37% of the GDP, followed by industry (22%). Foreign aid represents about 6% of the GDP (World Bank, 2004 data).

¹¹ Remittances are expected to reach 12 to 15 % of the GDP in the coming years (World Bank, 2006).

Only 15% of homes have electricity and for rural households the figure is as low as 3%. Telephone infrastructure is poor and concentrated in and around major cities. Twelve of the 75 districts have no direct service, and less than half of VDCs have telephone access. Only 30% of the rural population has access to all-weather roads and the poor condition of the road network hampers the service delivery, particularly in the remote hill and mountainous districts of the country. Fifteen of the government's district headquarters remain unconnected by road.

About two-thirds of the development budget of Nepal is derived from foreign assistance.¹² Japan is the largest bilateral aid donor and the bulk of European Union (EU) aid comes from the UK, Germany and Denmark. The World Bank and the ADB are the principal multilateral donors. The majority of foreign assistance is in the form of loans and Nepal's debt burden now constitutes approximately 50% of its GDP.¹³

The Current Political Situation

The Maoist insurgency began in 1996. It was primarily a reaction to corruption, bad governance and failure of the state to reduce economic and socio-cultural inequalities. By 2006, widespread protests were met with violent repression, including curfews, mass arrests and threats to human rights defenders. All of this took place against a backdrop of continuing armed clashes between state security forces and Maoist insurgents.

The April uprising led to an agreement between the Seven Party Alliance (SPA) and the Communist Party of Nepal (Maoists) to work together toward the election of a Constituent Assembly.¹⁴ This agreement was decisive in forcing King Gyanendra to step down on April 24, 2006. He reinstated the House of Representatives (HoR) that had been dissolved in October 2002. The Maoists declared a cease-fire and, over the next few months, initiated peace talks with the government. On May 18, the HoR adopted a proposal depriving the King of his privileges and declared Nepal a secular state.¹⁵

On November 8, 2006, a six-point agreement resolved lingering issues around the signing of a peace accord, including arms management, adoption of an

¹² Ministry of Finance data, 1999.

¹³ *Human Development Report*, UNDP, 2006. www.undp.org

¹⁴ The SPA includes all the main political parties of Nepal: Nepali Congress, Nepali Congress (Democratic), Communist Party of Nepal (Unified Marxist-Leninist), Nepal Workers and Peasants Party, Nepal Goodwill Party (Anandi Devi), United Left Front and People's Front. The only significant exception is the Monarchist Rashtriya Prajatantra Party (RPP).

¹⁵ The makers of the 1990 Constitution of Nepal had rejected the idea of a secular state, which had been demanded by leftist parties and many non-hindu groups. Instead, the state was defined as a "Hindu Kingdom."

interim constitution and interim government, and a plan for elections to the Constituent Assembly. The role of the Constituent Assembly was to re-write the Constitution through a democratic process and enable the abolition of the monarchy through popular consent.

Both the interim parliament and interim government include the Maoists, which is seen as an essential step in ensuring that differences are addressed within the political system rather than through armed conflict. All of the people's governments and people's courts put in place by the Maoists were to be dissolved. A high-level commission was formed to recommend restructuring of the state to include development of inclusive and democratic institutions and governance systems.

On January 15, 2007, the Interim Constitution was approved, the HoR and National Assembly were dissolved, and the Maoist rebels entered the interim parliament and interim government. They now hold 83 of 330 seats of the legislature and count among them several representatives of the lowest caste groups. Although the peace agreement represents a significant achievement after a decade of conflict, human rights violations continue and key issues such as impunity and redress for victims have not significantly improved.¹⁶ Tensions in the central and east Terai continue as Madhesi activists complain that their demands have been ignored by both the Maoists and the government.¹⁷

The interim constitution had originally designated June 2007 as the date for elections to the Constituent Assembly. However, after recent amendments to the constitution, November 22, 2007 has been fixed as the new date.

Hunger and Food Insecurity

About six million people or 23% of Nepal's population is undernourished. Half of all children under the age of five suffer from malnutrition and stunting.¹⁸ While agriculture provides the principal livelihood for more than 80% of all working adults in Nepal, studies have shown that up to 50% of people involved in farming, agricultural labour, share-cropping, and rural service

¹⁶ *Nepal: the Human Rights Situation in 2006*, Asian Human Rights Commission, 2007.

¹⁷ Many residents of Nepal's Terai, also known as Madhesh, have deep cultural and linguistic links with the people of Northern India. Madhesi groups have suffered historical and systematic discrimination by the Hindu Hill rulers because of their geography and culture. Millions remain without citizenship certificates. Their demands include political representation, access to government jobs and an end to linguistic and cultural discrimination.

¹⁸ FAO, 2006.

provision are hungry.¹⁹ Insufficient access to food results from a number of interacting conditions:

- The amount of food produced for consumption is often insufficient to meet needs because of the small size and poor quality (steep, unirrigated) of holdings.²⁰
- There is particular vulnerability to natural disasters such as hailstorms, droughts, landslides, floods, epidemics and earthquakes, which disrupt food production and distribution.
- Access to food from the market is limited by endemic poverty, low wages and scarce opportunities.
- Internal conflict has constrained the supply and movement of food and contributed to the internal displacement of between 100,000 and 200,000 people.²¹
- Variations in poverty levels are often based on gender, ethnicity, and occupation.

Progressive Realization of the Human Right to Food

While the measurement of progressive realization remains a complex issue, certain indicators are clearly relevant. For example, despite net increases in government revenue between 1990 and 2005,²² aggregate figures measuring levels of hunger in Nepal show little improvement over the same period of time: the percentage of the population experiencing hunger decreased a mere 2%, from 49% to 47%.²³ UNICEF reports that the decrease in percentage of stunted children was clearly insufficient, from 57% to 53% between 1990 and 2005. In terms of actual numbers, there are more hungry people now (4.1 million) than there were in 1990 (3.9 million) despite a series of improved economic indicators.²⁴ Furthermore, the number of landless households doubled between 1991 and 2001 to 24.4% or one million households.²⁵

¹⁹ *Food Security and Hunger Survey in Nepal*, United Mission to Nepal (UMN), 2004.

²⁰ A substantial proportion of farmers are sharecroppers, who must give half or more of their harvest to the landlord.

²¹ Internal Displacement Monitoring Center, Nepal, 2006.

²² Government revenues as a percentage of GDP increased from 9% to 13.2% according to ADB 2007 figures. See www.adb.org.nepal

²³ *Nepal Millennium Development Goals: Progress Report*, UNDP, 2005.

²⁴ *FAOSTAT - Nepal*, 2006. Note that while the MDGs measure the proportion of people who suffer from hunger, the FAO measures improvement in terms of actual number of people. See www.fao.org/monitoringprogress/summit_en.html

²⁵ National Census, 2001 as quoted in *Land Rights in Nepal*, Community Self-Reliance Center, 2003.

Evidence suggests that hunger and poverty have actually increased for specific groups of people. However, disaggregated data is unavailable, except by region.²⁶ The UN Committee on Economic, Social and Cultural Rights (CESCR) has requested that the Government of Nepal provide annual data, disaggregated by caste, ethnicity, and gender to enable monitoring and evaluate progressive realization of economic, social and cultural rights.²⁷

In its General Comment 12, the CESCR describes the legal obligation of the state to move as “expeditiously as possible” toward full realization of the right to food. In order to monitor and evaluate the state’s compliance with this obligation, reliable data disaggregated by both region and group is required.

Decreasing Access to Productive Resources

Food security in Nepal is affected by the unequal access to productive resources such as land, water, and forests. The pattern of land holdings is highly unequal. The bottom 47% of agricultural households operate only 15% of the total agricultural land area, while the top 5% occupy more than 37% of all agricultural land.²⁸ The vast majority of land holdings are small and fragmented. More than 70% of peasants own less than one hectare of land, which can produce only a small proportion of their food needs.²⁹ For many, debt bondage is common and the constant insecurity of land tenure and fear of eviction are critical issues.³⁰

Nepal is blessed with abundant water resources but the expansion of industrial activities is polluting rivers and reducing fish stocks. Access to year round irrigation remains problematic. The government is ill-equipped to monitor industrial pollution or water diversion resulting from activities such as damming outside of its borders, in India for example. Furthermore, while 90% of the population now has access to an improved drinking water source, only 35% has access to improved sanitation.³¹

Another key factor affecting food security, especially for indigenous groups, is the shrinking access to forests.³² The laudable establishment of national

²⁶ For targeting purposes, the WFP provides a regularly updated mapping of vulnerability by district. For example, see www.un.org.np/bulletins/WFP/2007/

²⁷ CESCR, 38th Session, April 30 - May 18, 2007, Concluding Observations, Nepal, p. 5, para 30.

²⁸ *Human Development Report*, UNDP, 2004, www.undp.org.

²⁹ NPC, 1998.

³⁰ *Food Insecurity and Vulnerability in Nepal: Profiles of Seven Vulnerable Groups*, FAO, 2004.

³¹ *The Millennium Development Goals: Progress and Challenges in South Asia*, UNICEF, 2006.

³² *Food Insecurity and Vulnerability in Nepal: Profiles of Seven Vulnerable Groups*, FAO, 2004.

parks, banning of slash and burn cultivation, and conversion of open access resources into “community forests” has often excluded indigenous peoples from access to traditional resources. The over-exploitation of forest and land has caused a marked degradation in their quality due to soil loss and deforestation. Deforestation in turn has also reduced access to food, fuel wood, fodder and income for many vulnerable households in the Terai and hill regions.³³

Vulnerable Groups

The identification of vulnerable groups allows states to design policies and programs specifically for those whose human rights are most affected.³⁴ In this sense, it is a prerequisite for efficient targeting of corrective measures. The list of vulnerable groups in Nepal includes landless peasants, small farmers, freed bonded labourers, urban poor, Dalits, indigenous peoples, refugees and people living with HIV/AIDS.³⁵ Within these groups, children and women are particularly vulnerable.

Dalits, who represent approximately 20% of Nepal’s population, have a 15% higher incidence of poverty than the national average.³⁶ Although caste-based untouchability was abolished in 1963, discriminatory practices continue. For example, social custom prevents Dalits from touching the drinking water, milk, or cooked food, or from entering private houses, shops, or cowsheds. Within many Dalit communities, women face additional discrimination in terms of equitable access to available food. They are commonly the last to eat and the first to go without food in times of shortage.

Women constitute about 51% of the population in Nepal. As such, they are not a minority but rather the majority of the population. The Interim Constitution of Nepal includes provisions for non-discrimination against women, but in practice discrimination against women is pervasive. Prevalent patriarchal cultural values and other social, economic and political factors prevent women from enjoying their most basic of human rights, including the right to food. More than 90% of women working outside the household work as agricultural labour—the highest rate in South Asia—while political

³³ Forests provide 80% of fuel needs and 50% of fodder requirements (UNEP, 2001).

³⁴ The term vulnerable groups refers to both the potentially food insecure and the food insecure.

³⁵ *Food Insecurity and Vulnerability in Nepal: Profiles of Seven Vulnerable Groups*, FAO, 2004.

³⁶ *Human Development Report*, UNDP, 2006.



Most agricultural labourers in Nepal are women

participation remains weak due to low levels of education and lack of access to economic resources.³⁷

The indigenous nationalities of Nepal, known as Adivasi-Janajatis, comprise approximately 37% of the total population (2001 census).³⁸ Most experience political, economic, social and cultural marginalization, although there are disparities among different indigenous groups. Historically, Nepal's indigenous peoples accessed food from rivers, forests or from limited cultivation, but the state does not recognize their rights to traditional resources. As land ownership systems evolved over time and with the introduction of protected area policies and large infrastructure development, indigenous

³⁷ *Women and Children: The Double Dividend of Gender Equality*, UNICEF, 2006.

³⁸ Fifty-nine indigenous nationalities have been listed in the Indigenous Nationalities Act 2002.

peoples have found themselves increasingly marginalized, exploited and displaced from traditional land and sources of food. There are no policies or programs in place to return the use or control of traditional resources to indigenous communities.³⁹

³⁹ See *A Case Study on Marginalized Indigenous Communities' Access to Natural Resources in Nepal: National Laws, Policies and Practices*, International Conference on Agrarian Reform and Rural Development (ICARRD), 2006.

LEGAL FRAMEWORK

International Human Rights Commitments

Nepal has ratified major international human rights treaties including the ICCPR, ICESCR, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Elimination of all forms of Racial Discrimination. Nepal has not acceded to the 1951 Convention on the Status of Refugees despite the presence of 107,000 Bhutanese and 20,000 Tibetan refugees in the country.

Nepal has ratified most but not all core labour rights conventions. Important exceptions include International Labour Organization (ILO) Convention 87 on freedom of association and collective bargaining, Conventions 29 and 105 on the elimination of forced and compulsory labour, and Convention 169 concerning indigenous and tribal peoples in independent countries.

Nepal submitted its first periodic report to the CESCR in 1990. The second report, submitted in August 2006, was reviewed by the CESCR in May 2007.⁴⁹

National Legislation

The Interim Constitution of Nepal includes provisions that protect economic, social and cultural rights. Article 33 of the Constitution, under duties and directive principles, lists the following obligations, which are relevant for the right to food:⁴¹

- Pursue the policy of establishing the rights of all citizens to education, health, housing, employment, and adequate food (h).
- Adopt universally accepted fundamental human rights (c).

⁴⁰ To read the government's report and the CESCR concluding observations, visit www.ohchr.org/english/bodies/cescr/cescrs38.htm

⁴¹ An unofficial translation of the Interim Constitution can be found on the Canada Forum for Nepal Web site: <http://cffn.ca>

- Effectively implement international treaties and agreements of which the Nepali State is a party (m).
- Adopt a policy of providing economic and social security to the class that are socio-economically backward such as the landless, bonded labourers, tillers and shepherds (i).
- Pursue the policy of adopting scientific land reform programs by gradually ending capitalistic land ownership practices (f).

In addition, Article 18 of the Interim Constitution protects the right to employment and social security and provides that “every citizen shall have the right to food sovereignty according to the provision made by the law.” Food sovereignty, a concept that promotes local ownership of productive resources for food security, incorporates a human rights perspective.⁴²

The Interim Constitution recommends that the NHRC be upgraded from a statutory body to a constitutional body.⁴³ The NHRC was established in the year 2000 under the Human Rights Commission Act 1997. In its strategic plan for 2004-2008, the NHRC identifies the right to food, health, shelter, education, and work as the focus of one of its seven strategic objectives. Other commissions have been created specifically to address the issue of discrimination in Nepal, including the National Women’s Commission, the National Dalit Commission, and the National Committee for the Development of Nationalities, but they currently lack appointment of chairperson and other members.

In 2000, the Government of Nepal announced that it formally abolished the Kamaiya⁴⁴ bonded labour system. The Bonded Labour (Prohibition) Act was passed in 2002.

Land Reform

A vast body of legislation regulates access to land in Nepal. Traditionally, land was considered the property of the state (Raikar). Only the state had the right to allocate land through sale, mortgage or bequest. During the 104 years of Rana rule (1846-1950), many indigenous peoples saw their land confiscated and distributed to supporters of the royal family. By 1950, almost one third of all agricultural and forest land had been granted to private individuals

⁴² Windfuhr, Michael and Jennie Jonsén, *Food Sovereignty: Towards Democracy in Localized Food Systems*, FIAN International, 2005.

⁴³ www.nhrcnepal.org

⁴⁴ The most widespread debt bondage labour systems in Nepal are Kamaiya (in the western lowlands, almost solely the burden of the Tharu ethnic group), Haliya (in the hills), and Haruwa (in the Terai).

and the rest belonged to the ruling Rana family. Local functionaries obtained a great deal of land from the state and rented it to peasants under tenancy arrangements. In this way, local functionaries became landlords.⁴⁵

Efforts at land reform began in the mid-fifties and were amplified in 1964 with the Land Act 2021 (1964), which put a ceiling on land holding, fixed the rent to be paid as contract (Kut) by tenants at 50% of the principal crop, and emphasized security of tenant farmers against eviction. The Act failed to achieve any significant results. In 1997, the fourth amendment to the Land Act abolished the tenancy system and provided for the equal division of land between the owner and the tenant, thereby eliminating dual ownership. Under the fourth amendment, peasants were given a period of six months to register their proof of tenancy after which unregistered tenants were unable to claim their right. In 2001, the government reduced the land ceiling to 3.75 ha in all hill and mountain areas, 1.5 ha in the Kathmandu Valley and 7.43 ha in the Terai.⁴⁶

Access to Forests

About 29% of Nepal's total area is covered by forests. Forests represent an important source of food, fodder, fuel wood and timber. Historically, the ownership of forest area corresponded to the patterns of indigenous land ownership particularly in hill areas. The 1993 Forest Act divided Nepal's forests into six ownership regimes: government managed, community, leasehold, religious, protected and private forests. It is estimated that 40% of the country's population (divided in 20 000 users' groups) is involved in community-based resource management systems such as community forestry.

The 1973 National Parks and Wildlife Conservation Act provides the basis for the management of protected areas in Nepal. The area covered by national forests and protected area systems, which includes national parks, wildlife reserves, hunting reserves, conservation areas, and buffer zones, represents about 40% of the total land area of the country. These parks and reserves have mainly been established in the territories of the indigenous peoples, displacing them from the forestland upon which they depend.⁴⁷

⁴⁵ See *A Case Study on Marginalized Indigenous Communities' Access to Natural Resources in Nepal: National Laws, Policies and Practices*, International Conference on Agrarian Reform and Rural Development (ICARRD), 2006.

⁴⁶ *Ibid.*

⁴⁷ Battachan argues that the Tharus, Magars, Gurungs, Thakalis, Pachhgaunles, Baragaunles, Tamangs, Sherpas, Rais, Limbus, Rautes (the last nomads) and Chepangs have all been affected by the creation of parks and reserves. "Dominant Groups Have Right to Live?" K. Battachan, 2000.

Legal Provisions on Access to Water

The 1992 Water Resources Act gives ownership of water resources to the state but grants the right to use water to individuals and other private parties. It provides the legal framework for the registration of water users' associations to make use of water resources for collective benefits. The Act also lists the different priorities for water usage, such as drinking, sanitation, cultural and religious use, irrigation, agriculture, hydropower, and industry. The 2003 Irrigation Policy establishes irrigation users' committees. It has a provision that prohibits access to irrigation services to those who will not pay the service charge, which has a discriminatory impact on poor farmers.⁴⁸ The 2003 National Water Resource Development Policy has some provisions for people affected by hydro-projects, such as minimizing displacement, providing compensation and rehabilitation, and encouraging affected people to participate in projects. However, in practice, the state is not strong enough to negotiate such provisions in foreign investment or international lending agreements.⁴⁹

Legal Provisions on Minimum Wage

The legal minimum wage in Nepal is low and does not provide a decent standard of living for workers and their families, particularly in the agricultural sector.⁵⁰ These rates were revised in 2003 and recently in 2006. The daily wage for labourers is NPR 125 and NPR 95 for tea plantation workers. This is the minimum wage fixed at the national level, but the local government District Development Committee (DDC) has the authority to raise the minimum wage in consideration of the economic status of the concerned district. Discrimination in wage rates between women and men is rampant, although the Labour Act guarantees "equal pay for equal work."

⁴⁸ See *A Case Study on Marginalized Indigenous Communities' Access to Natural Resources in Nepal: National Laws, Policies and Practices*, International Conference on Agrarian Reform and Rural Development (ICARRD), 2006.

⁴⁹ For example, a recently-announced hydro project contract guarantees India's Power Trading Corp (PTC) 100% of the power produced but only vaguely refers to compensation for 1500 displaced families. See <http://newspostindia.com/report-6379>

⁵⁰ *Ibid.*

POLICY FRAMEWORK

The development of national development policies and programs in Nepal is the mandate of Nepal's National Planning Commission (NPC).⁵¹ The NPC must approve any related policy framework before development programming can be implemented. Nevertheless, despite the high level of hunger in Nepal, the UNDP has noted that "food security never constituted a major plank of policy-making" in the country.⁵²

The NPC works in collaboration with international donors to develop the UN Development Assistance Framework (UNDAF) for Nepal. A new framework is currently being drafted to replace the 2002-06 UNDAF, which was designed to facilitate collaboration between UN agencies and national level implementation of various international commitments, such as the MDGs. The new UNDAF has adopted a human rights framework for development, which targets the most vulnerable, state accountability and citizen participation. The programming cycles of most UN agencies in Nepal are harmonized with the UNDAF timeframe, which also coincides with economic policies such as Nepal's Poverty Reduction Strategy Paper (PRSP).

In 2004, Nepal adopted a National Human Rights Action Plan (NHRAP), following a two-year, US \$200,000 process led by the UNDP and the OHCHR.⁵³ The NHRAP objectives include targeting of vulnerable groups and inclusion of human rights in all of Nepal's development programming. It also calls for the mobilization of national and international resources for the promotion of all human rights in Nepal. Unfortunately, however, the NHRAP does not contain any explicit references to the human right to food, despite pervasive hunger in the country. It assigns responsibility for its implementation to the NPC and the NHRC.

⁵¹ The NPC (www.npc.gov.np) works under the guidance of the National Development Council.

⁵² *Nepal Development Goals: Progress Report*, UNDP, 2005.

⁵³ www.undp.org.np

Economic Policies

Over the past decade, Nepal has undertaken three parallel processes to increase economic and agricultural growth rates, namely, an economic reform program, the Agricultural Perspective Plan (APP) and the Ninth and Tenth Five-Year Plans.

Implementation of the economic reform program began in the late 1980s, under direction of the International Monetary Fund (IMF) and the World Bank. A structural adjustment program was introduced in 1987 and an enhanced structural adjustment facility was implemented from 1992 to 1995. Its scope was expanded to include reforms in the civil service, human resource development, poverty alleviation, and environmental protection. As a result, public enterprises have been privatized, subsidies reduced, and efforts made to create an enabling environment for the private sector in areas that include health, education, and agriculture. Nepal now has one of the most liberal economies in South Asia.⁵⁴

The APP (1995-2015) promotes growth in the agricultural sector through commercialization. It advocates development of export markets for rice, apple, citrus, vegetables, livestock and forestry products, and it recommends development of agribusiness as an important part of its commercialization strategy.

The Tenth Five-Year Plan (2002-2007), which is also Nepal's PRSP, recommends preparing land use policies and guidelines to implement a new land ceiling (the amount of land one individual may own). It establishes a land bank to help the poor acquire land, arbitrate resettlement problems associated with bonded labourers, and prepare the legal ground for promotion of contractual and cooperative farming systems. Some attention is devoted to poverty and food insecurity, but the recommended approach is agricultural productivity. Human rights are barely mentioned.

The PRSP proposes some targeted measures for emergency relief, for example, enhancing food supply and distribution in food deficit areas, food-for-work programs in famine-hit areas, food stock maintenance, food aid distribution through NGOs and the rehabilitation of people suffering from disorder in affected areas. These programs are to be implemented through Nepal's Poverty Alleviation Fund (PAF), an autonomous institution created to channel government and donor resources.

⁵⁴ UN Development Assistance Framework Nepal (UNDAF), 2002-2006.

The Nepal Food Corporation (NFC), established in 1974, distributes cereals at subsidized prices in food deficit areas and delivers emergency food relief to communities that have been affected by natural disasters. The NFC assures support prices for farmers and affordable prices for customers. However, the NFC does not monitor the impact of its food distribution on nutrition or sustainable access to food for vulnerable groups.

STATE COMPLIANCE WITH RIGHT TO FOOD OBLIGATIONS

Hunger and malnutrition are pervasive across Nepal both in food surplus and food deficit districts. In food deficit districts, chronic shortages in sustainable access to food suggest structural constraints, whereas in food surplus districts, external influences such as natural disaster or discrimination are the primary causes of hunger.

While food insecurity is found throughout Nepal, it affects certain groups more than others. Particularly vulnerable groups include Dalits (low caste), women, children, Adivasi Janajatis (indigenous nationalities), Kamaiyas, Haliyas and Haruwas (bonded labourers) and people living with or affected by HIV/AIDS.

Positive Steps by the State

Although the Government of Nepal is in political transition and lacks the capacity to fully implement programs and policies, the FFM welcomed the many positive steps taken by the state to improve implementation of its right to food obligations.

In relation to the legal framework, the FFM welcomed the state's submission in 2007 of a periodic report to the CESCR. FFM members also noted the introduction of several important provisions in the Interim Constitution of Nepal, including:

- Specific mention of the "right to food sovereignty;"
- Land reform provisions;

- Abolition of all forms of discrimination with specific measures to improve political participation of women and minority groups;
- Elevation of the status of the NHRC to a constitutional body.

The FFM noted specific policies and programs that could become important components of a national strategy on the human right to food:

- Renewal of the NHRAP for a further three years;
- Enactment of the Bonded Labour (Prohibition) Act, the amendment of the Country Code to abolish discrimination in inheritance laws, and the impending ratification of ILO Convention 169;
- Establishment of a quota guaranteeing the participation of 33% of women in all committees, councils, and decision-making bodies;
- Community forestry and protected area buffer zone management systems with benefit sharing.

Areas Requiring Improvement

Information gathered in preparation for or during the mission revealed insufficient progress toward the elimination of hunger in Nepal. At its current pace, Nepal will not achieve its millennium objective of reducing the proportion of hungry people by half by 2015. Nor has it taken sufficient steps in accordance with the available resources to meet core, immediate obligations related to the human right to adequate food, specifically those related to non-discrimination.

The members of the FFM acknowledge that the state faces immense obstacles in seeking to provide sustainable access to food for all its citizens. These obstacles include difficult terrain, remoteness and associated lack of infrastructure, and rigid social structures that entrench discrimination and social exclusion. Nevertheless, the FFM identified a number of areas in which the state has failed to take the minimum action required to confront these challenges and implement its right to food obligations. They include:

- Failure to adopt a comprehensive right to food strategy, including adoption of a food security policy and monitoring procedure;
- Failure to develop an appropriate institutional or legislative framework for implementation of right to food strategies and application of effective remedies;
- Failure to enforce non-discriminatory application of laws and policies affecting living standards, livelihoods, and access to adequate food;

- Insufficient implementation of agrarian reform objectives;
- Failure to coordinate food security policies and programs between the capital, regions, districts, and government ministries.

These structural and procedural weaknesses assume different characteristics as they are experienced at the community level. The following mapping attempts to illustrate this point by grouping community experiences documented during the FFM according to the levels of state obligation as described in General Comment 12: respect, protect, and fulfil (facilitate and provide). The mapping provides the framework for the presentation of the mission findings related to national compliance.

Potential Right to Food Violations in Nepal

Obligation to respect	Displacements related to protected area policies
	Restricted access to natural resources
Obligation to protect	Forced evictions by landlords or other dominant groups
	Labour rights violations
	Insufficient regulation or monitoring of industrial activity
Obligation fulfil (facilitate)	No strategy or institutional framework to address hunger
	No genuine agrarian reform
	Insufficient attention to agricultural development
	Lack of adequate rehabilitation plans for ex-bonded labourers
Obligation fulfil (provide)	Food distribution does not reach the most vulnerable
	Relief measures are ad-hoc and lack sustainable resettlement plans
International co-operation	Donor community fails to integrate a Human Rights approach to development
	Neighbouring states fail to respect extra-territorial human rights obligations

The Obligation to Respect the Human Right to Food

The obligation to respect existing access to adequate food requires states parties not to take any measures that result in preventing such access.

(General Comment 12, para. 15)

The obligation to respect refers to acts of commission or omission by the state itself. The state may not interfere with the ability of people to access adequate food. In the implementation of its various policies and programs, the state must apply the over-arching human rights principles of non-discrimination, accountability, participation, and access to remedies for its people.

The FFM observed that displacement of people by the state, or evictions by landowners with complicity of the state, generally occur without appropriate consultation or consent and without adequate resettlement provisions and compensation. Clearly, the state has not effectively addressed the unintended



Discriminatory practices limit the access of indigenous communities to traditional resources. This Chipeng community was displaced by flooding in Makawanpur District.

negative impact of protected area and forest management policies on equitable and fair access to natural resources. Displacement and insecurity of land tenure are serious impediments to sustainable access to adequate food in Nepal.⁵⁵

Displacement Related to Protected Area Policies

Although alienation from ancestral lands began decades ago, the continued marginalization of indigenous communities—through fraudulent land registration practices and the state’s implementation of the protected areas system—has had a negative impact on their enjoyment of traditional or culturally appropriate food.

Chepang and Tharus communities currently living inside the Parsa Wildlife Reserve are in the process of being relocated by authorities to an area outside of both the reserve and its buffer zone. As a result, the communities are losing not only their traditional land and livelihood, but also access to the benefit-sharing plan that distributes a portion of revenue from the reserve to those living within its buffer zone. This link between displacement and subsequent exclusion from traditional resources was also reported by communities living around Chitwan National Park.

The MoFSC acknowledges that the government has not been able to provide suitable compensation (for example by restoring rights to traditional land or allocating land of equivalent value) or livelihood alternatives (such as training for park-associated jobs). There are no specific provisions for indigenous peoples in the new land reform policy, which does not recognize traditional systems of collective land ownership. Displacement of indigenous peoples from their land without their free, prior and informed consent constitutes a failure of the state to respect its human rights obligations.⁵⁶

Restricted Access to Natural Resources

In wildlife reserves and national parks, equitable access and sustainable management of natural resources is administered by an innovative system of buffer zones. Buffer zones are bands of land surrounding the protected

⁵⁵ For guidelines on development-based evictions and displacement, see *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*. UN Economic and Social Council doc. E/CN.4/2006/41, March 2006.

⁵⁶ The concept of “free, prior, informed consent” is included in ILO Convention 169 (not yet ratified by Nepal) and in the Convention on the Elimination of Racial Discrimination.

area and managed by user groups federated into user committees and then to management councils. Buffer zone residents receive a share of the protected area revenue and are permitted certain privileges such as harnessing natural resources, such as wood, fish, and traditional plants, on the condition that they not sell or market any of these resources. The user committees make collective decisions about how to spend the additional shared benefit allocation they receive. For example, they might decide to construct a road, build a school, or conduct skills training.

Although the buffer zone program has had many positive aspects, government authorities have not given adequate attention to the obstacles faced by marginalized communities as they seek to participate in user groups dominated by local elites. For example, in Chitwan National Park, displaced communities were resettled in the buffer zone area, but existing user groups demanded proof of savings and fees to participate in their decision-making processes. Communities also complained that user group projects were not relevant to their needs (information technology training) and so they saw no purpose in trying to participate. In the case of the Parsa Wildlife Reserve, displaced communities interviewed by the mission are not being resettled within the buffer zone. Consequently, they will not be part of any user group and will certainly be denied access to park resources.

Access to community forest resources is managed in a similar manner through a system of user groups. There is, however, no additional revenue sharing because community forests do not have a profit-earning dimension. The FFM heard testimonies from both Dalit and indigenous communities about exclusion from forest resources and the user groups that manage them. Exclusion in some cases appeared to result from unclear land title or misinformation provided by local landlords about participation rules. Some communities did not appear to even know that user groups existed, despite assurances from officials at the MoFSC that policies require representation of vulnerable groups.

Authorities at Chitwan National Park reported that the National Parks Department had undertaken an impact assessment that identified indigenous groups as the most vulnerable and requiring specific programs.⁵⁷ The responsive programs described by authorities, however, focused on decreasing dependence of indigenous groups on forest resources, not on prioritizing access to traditional or culturally appropriate food.

⁵⁷ Park officials were unable to provide a copy of the report and subsequent inquiries failed to locate it.

The MoFSC acknowledges the link between management of forest resources and food security and that the poorest and most vulnerable generally obtain food from forest gathering. So far, however, the MoFSC has focused its attention primarily on the environmental aspects of forestry. Social exclusion and hunger are viewed as second-generation issues, according to a ministry spokesperson. The MoFSC is currently revising its forestry guidelines and is planning to include poverty reduction in its objectives with specific guidelines designed to reinforce the participation of Dalits and indigenous peoples.

Although FFM members were impressed by the innovative participation schemes of buffer zones and community forestry, they concluded that state implementation of these policies has had unintended negative impacts on the human right to adequate food for vulnerable groups. These impacts have not been adequately addressed by authorities, and there are few, if any, recourse measures available to affected communities.

The Obligation to Protect the Human Right to Food

The obligation to protect requires measures by the state to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.

(General Comment 12, para. 15)

States are required to protect those living within their jurisdictions from the activities of non-state actors, whether those activities originate from within or from outside the country. Such activities include protection against fraud, the negative impacts of trade, and the dumping of hazardous waste.⁵⁸

Repeatedly, the FFM received testimony about forced evictions, fraud, violence by landlords, labour rights violations in sharecropping arrangements, and corporate activities' negative impact on the human right to food. Considerable concern was also expressed about the negative impact of dams constructed outside of Nepal's borders. While it was outside of the FFM's scope to fully address the impacts of international trade and investment on enjoyment of the right to food in Nepal, persistent allegations related to the dumping of rice from India appeared worthy of further study.⁵⁹

⁵⁸ Asbjorn Eide, *The Right to Adequate Food and to be Free from Hunger*, UN Economic and Social Council, doc. E/CN.4/Sub.2/1999/12, 1999, para 52.b as explained by George Kent in *Freedom from Want: the Right to Adequate Food*, Georgetown University Press, 2005.

⁵⁹ Nepal was the first LDC to join the WTO on April 23, 2004. Nepal is also a member of the South Asian Free Trade Agreement (SAFTA).

INDIGENOUS FISHER COMMUNITY LOSES ACCESS TO RIVER

VDC: Rajhar VDC, Ward No. 3, Piprahar

District: Nawalparasi

For decades, this indigenous community (Majhi-fisherman, Bote-boatman) has lived as fishers on the periphery of what is now the Chitwan National Park. When the Park area was established, the community was displaced to the opposite banks of the river where they received license to settle. Last year, the community was displaced again, this time by flooding, and it now lives on a nearby highland in extremely poor, temporary conditions.

Traditionally, the community's primary source of food was fish supplemented by fruits, yams, roots, and vegetables gathered from the nearby forest. Additional cash for the purchase of food was earned from work as ferryman and by panning for gold in the river sands. These means of securing adequate food were lost with the establishment of Chitwan National Park. A ban on fishing in the Narayani River has been imposed (the park has a mandate to protect and breed crocodiles, which require abundant amounts of fish to survive), panning for gold is now prohibited, and exclusive license to operate ferries in the park area has been awarded to a private company. Buffer zone benefits do not accrue to the fishers, and community members cannot access the projects funded through the benefit-sharing scheme, partly because they are not members of the user committees and partly because the benefit-sharing projects are irrelevant to community needs (for example, computer training).

As hunger drives community members to circumvent the new regulatory constraints, park authorities have become more aggressive in their attempts to enforce park regulations, often characterizing the Majhis and Botes as poachers and traffickers of wild animals. The community reported a series of police beatings and fines imposed for fishing in protected areas. These obstacles to the access to food are exacerbated by a downstream dam located across the border inside India. The dam blocks the natural migration of fish during the winter and then sweeps fish away during the annual monsoon season, thereby threatening the sustainability of the fishery for future generations.

Forced Evictions by Landlords or Other Dominant Groups

Cases of forced evictions reported to FFM members were often linked to local land conflicts, particularly in the Terai. In several cases, eviction was linked to fraudulent or non-transparent land registration processes. The evictions, which were sometimes violent and carried out with impunity, were executed by landlords often with the tacit approval of local officials. Some communities in the Terai reported that they had been evicted repeatedly over the years and live in constant fear of being evicted again.



Community interview near Accham.

In the Siraha District (Terai), communities reported that local elites had registered land in their own names under the guise of assistance, thus defrauding individuals who were illiterate or unaware of registration procedure. Local government officials appeared to be either complicit in such activities or did not find them to be worthy of attention.

Labour Rights Violations

The improvement of economic conditions sufficient for sustainable access to adequate food depends in large measure on the implementation of minimum wage provisions. This is particularly true for low-caste agricultural labourers and freed bonded labourers. For this reason, failure of the state to enforce existing minimum wage provisions can result in right to food violations.

In the case of Dalit communities receiving food as payment for their labour, minimum wage equivalency is clearly not respected and actual earnings are

EVICCTIONS OF 27 DALIT HOUSEHOLDS

VDC: Govindapur, Ward N° 5, Manikdaha

District: Siraha

This Dalit community lives in a food surplus area, but due to caste discrimination and lack of access to productive resources, it faces chronic hunger and malnutrition. Eight years ago, the community was tricked by local landlords into signing away the rights to their land in exchange for alternate land in a nearby forest. The VDC chairman and other local officials supported the landlords. The community settled in the forest but later forest officials forcefully evicted them citing protected area policies. The community subsequently leased land from local landlords and later, with assistance from civil society groups and the CPN (Maoist), was moved to more secure government land beside a religious pond and was provided with a bore well to access water.

The size of land provides space for shelter but not for cultivation. Although the community is located beside a community forest, its members are not permitted access to its resources. Food is obtained as payment for labour in the fields of local landlords. Agricultural work is compensated by four kilos of paddy per day per person (value of approximately 40 NPR), far below minimum wage. Community members sell part of the paddy to purchase other food from the market. The balance provides one meal per day. Children also work for the landlords instead of going to school. Their labour herding and dung gathering earns approximately 1000 NPR per year. When family earnings are insufficient for the purchase of adequate food, the community seeks loans from the landlord employer. Loans are repaid by working for half compensation leading to increased levels of hunger and malnutrition and a downward spiral of food insecurity.

Insecurity of land rights entrenches the hunger vulnerability of the community, which is now facing renewed threats of eviction by local elites who claim the community is too close to the religious pond. Government representatives do not enforce laws and regulations designed to protect access to land.

insufficient to provide adequate food. In fact, there are significant levels of discrimination within the wage scale itself, with different rates paid to Dalits and non-Dalits, and to men and women within the Dalit group itself.

In Jumla and Dadeldhura, the FFM interviewed Haliyas and freed Haliyas who commonly accept work at exploitative rates. Our observations indicated that government officials devote little attention to the questions of equity, enforcement of minimum wage regulations, or their impact on sustainable access to sufficient food.

The authority for grievance handling and implementation of minimum wage regulations for informal workers is under the jurisdiction of the District Administration Office. Labourers themselves, however, have little access to the remedies that the office might provide because of financial constraints and lack of information. The government has an obligation to protect victims of human rights violations and facilitate access to recourse mechanisms, be they administrative or judicial.

Insufficient Regulation and Monitoring of Industrial Activity

States are required to ensure that the activities of the private sector, including those of foreign investors, are regulated in the interest of human rights protection. During the mission, testimony revealed that the state had not adopted adequate regulation or that it did not enforce existing regulation.



Toxic waste dump maintained by the Nepal Agricultural Inputs Corporation in the Parsa buffer zone.

In Chitwan National Park, communities reported that a paper mill and a brewery on the bank of the Narayani River release untreated waste directly into the water, killing fish that are a primary source of food. Local park officials said that existing policies require waste to be treated before its release but inspection falls under the jurisdiction of a different ministry and park officials themselves have no mandate to monitor community complaints or to impose penalties upon those responsible.

A short drive from the Parsa Wildlife Reserve entrance area, within a buffer-zone area, the FFM observed a storage unit for toxic waste, maintained by Nepal Agricultural Inputs Corporation. The dump is located in a human settlement area, beside agricultural land and next to a river from which people fish. The chemicals, which had been imported or provided through development assistance during the 1980s, had been removed from use and placed in the storage unit following an international ban based on health risks. Local residents reported that fumes and strong, acrid odours regularly emanate from the dump. A secondary school and health post are located beside the dump and community members reported that many children had become ill and that one had died. There are additional concerns that the chemicals may be leaching into the ground and contaminating the local food supply. In recent years, there have been several agitation campaigns and protests demanding that authorities remove the chemicals from the community. To date, there is no response from government authorities.

The Obligation to Fulfil (Facilitate) the Human Right to Food

The obligation to fulfil (facilitate) means the state must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security.

(General Comment 12, para. 15)

In a country with high levels of food insecurity and where children suffer one of the highest rates of malnutrition in the world, adoption of a food security policy should be a priority of the state. Instead, the FFM observed a general lack of analysis and responsive policies—weaknesses that are reflected in uncoordinated and ineffective interventions. In fact, there was no observed disaggregated data collection system to determine who is food insecure, to fully implement and monitor agrarian and agricultural reform policies, or to enforce appropriate policies for the rehabilitation of freed bonded labourers.



Land allocated for resettlement is insufficient for food production. This family was displaced by floods near Accham.

No Strategy or Institutional Framework to Address Hunger

The Ministry of Agriculture and Cooperative (MoA) has official responsibility for “food security,” while the NPC holds the mandate for development of policies and the Ministry of Law and Justice for implementing human rights. Other ministries also hold important responsibilities, such as the Ministry of Health and Population with policies on migration and HIV/AIDS; the Ministry of Land Reform and Management (MoLR) for landlessness; the MoFSC for natural resources; the Ministry of Home Affairs for natural disasters and relief; the MoWR for flood control and irrigation; the NFC for food distribution; and the Central Bureau of Statistics for data collection.

According to MoA representatives, pieces of a food security strategy are in place; however, the MoA’s primary focus is agricultural production and commercialization, not food security at the household level. The NPC is currently conducting a study to assess malnutrition, education, and health

to inform policy making, but has not considered linking the study to the implementation of the NHRAP.

There appeared to be little in the way of effective inter-ministry coordination and certainly none focused on food security or human rights, especially economic, social and cultural rights. Apart from UNDAF and the NHRAP (2004), existing plans and policies make no real attempt to incorporate or implement Nepal's human rights commitments. Most officials interviewed had never heard of the NHRAP. Some remembered the drafting process but said it was not being implemented.

The FFM team also witnessed a serious lack of coordination between capital, regions, and districts as well as lack of guidance from the central level to local authorities. This disconnect is reinforced by the fact that many government officers are new and implementation of policies is currently in a transition phase.

No Genuine Agrarian Reform

The ICESCR requires that states reform agrarian systems to achieve the "most efficient development and utilization of natural resources." Access to land is inextricably linked to access to adequate food, for freed bonded labourers and for other marginalized groups in Nepal. There has been some land redistribution but efforts focus on resettlement for living space (shelter), not food production. Ceiling levels are too high and land above ceiling is not being confiscated. The current land reform program allows several entry points for fraud.

The FFM team noticed a general lack of information related to land reform. At the local level, there is a lack of technical capacity and no policy guidance from the central government. Local authorities have no margin for manoeuvre, which leads to a complete standstill. Although the government has abolished dual ownership, only 230,000 tenants have been able to register for tenancy rights. The remaining tenants are not registered in government records.

Women, especially those in female-headed households, are among the most food insecure because they do not have access to land. Of the total land holdings, only 8% is under female ownership, leaving 92% for men, which grants them power at all levels. One of the reasons for low female ownership, the FFM was told, is that women have limited rights to parental property, including land: "Women do not own land because it is not necessary for them to do so. They own it jointly with their husbands."

Provisions for a “scientific” (objective) land reform program are included in the Interim Constitution. Implementation will be guided by an international team of experts coordinated by the ADB. The MoLR plans to measure land holdings across the country and to confiscate land above ceiling. However, the Minister insisted that nothing would be done until the Constituent Assembly is elected and there is a new constitution.

The increasing number of dams being planned across Nepal may complicate land reform. Given Nepal’s richness in water resources and hydropower potential, displacement of large numbers of people and the flooding of huge tracks of land to provide electrical power to Kathmandu and neighbouring India will certainly have an impact on land reform, living standards, and the human right to food. According to the MoWR, there is currently no policy regarding the resettlement of people displaced by dams. However, guidelines are to be drafted by the NPC.

Insufficient Attention to Agricultural Development

Agricultural policy focuses on production and commercialization but does not address accessibility and distribution. The strategy of the MoA is to increase production and focus on value-added crops. In the coming years, a series of agricultural commercialization projects will be launched under the auspices of the World Bank and ADB.

In food deficit regions such as Karnali, there is no long-term sustainable development plan. Local NGOs interviewed in Jumla were critical of government efforts to fly in subsidized rice rather than developing local production and technologies for traditional crops.⁶⁰ Currently, the only plan appears to be to produce more apples for trade with other regions in Nepal. The budget allocated to agricultural development has been cut over the last decades and appears inconsistent with the strategy to eradicate poverty through agricultural growth. NGOs are trying to fill the gap but there is a lack of coordination with government programs.

Lack of Adequate Rehabilitation Plans for Ex-Bonded Labourers

Although the MoLR provides shelter for the landless and rehabilitation programs for ex-Kamaiyas, there has been inadequate attention to the

⁶⁰ Some civil society groups are developing innovative alternate agricultural models in selected areas of Nepal. For example, see <http://www.atasia.org.uk>

FREED HALIYA COMMUNITY

Municipality: Amargadhi Municipality-8 / Dhangadhi Ward No. 8

Community: Khanbada Tole

District: Dadeldhura (Zone: Mahakali)

These 25 Dalit families all worked as Haliyas for the same landlord until they were freed in 2001. They worked between 90 and 120 days a year, tilling the land, carrying manure, gathering firewood, and grazing cattle. They were not given any salary (only some rice and clothes) as their work was considered to be interest for past loans.

Individual loans ranged from 7 to 27,000 NPR. Beginning with just a few hundred rupees to buy food and clothes, families said their loans accumulated over the years. Some families were in the system for over 13 years, working to repay the full amount. In some cases, the debt had been transferred from one generation to the next.

They all agreed that they have less food security now than they did before they were freed. The landlord is angry with them and says they have taken his money. He has threatened them several times and refuses them access to the lease held forest and public land. They are frustrated to see that some of the land they used to cultivate now remains idle, while they are hungry. They have received some government assistance in the form of goats and vegetable seeds but have no access to land for grazing. They go to the nearby town to get day work, but it is not always available. They cannot turn to the landlord for loans anymore. Some are thinking of migrating to India.

development of corresponding programs designed to provide sustainable alternate livelihoods and access to adequate food.

In 2000, 18,400 households were freed from the Kamaiya (bonded labour) system. Since then, the government has distributed 2,400 bighas of land to rehabilitate 12,019 ex-Kamaiya families. The plot size is sufficient only for shelter, not for cultivation.⁶¹ According to the MoLR, almost 15,000 ex-Kamaiya households have yet to receive land. The government has developed some income generation and rehabilitation programs with the assistance of international NGOs and donors but says that coverage has been inadequate because large numbers of people are claiming ex-Kamaiya status.⁶²

Although Haliyas are covered by the Bonded Labour (Prohibition) Act 2002, many agreed to be freed before receiving guarantees of compensation or

⁶¹ Government of Nepal "periodic report" to the CESCR, 2007. A bigha is 2603.7 square metres. www.ohchr.org/english/bodies/cescr/cescrs38.htm

⁶² Ibid.

support for viable alternate livelihoods. They describe their current situation as more vulnerable than before. Site visit interviews revealed that many Haliyas and Haruwas are now choosing not to leave the bonded labour system because of the lack of viable alternatives.

The Obligation to Fulfil (Provide) the Human Right to Food

Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, states have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters.

(General Comment 12, para. 15)

The obligation to provide food in times of extreme need, emergency or disaster may be limited by lack of budgetary resources. However, in such cases, the state is required to move forward as expeditiously as possible to the maximum of its available resources and without any discrimination. The FAO Voluntary Guidelines suggest that food safety nets should be designed to assure reliability of access to minimum amounts of food required for life. Safety nets would provide support in times of natural disaster but also for cases of health emergencies such as the growing numbers of people living with or affected by HIV/AIDS. This approach requires attention to targeting, particularly in relation to the delivery of food aid.⁶⁴³

Food Aid Distribution Does Not Reach the Most Vulnerable

Food aid distribution in Nepal targets food deficit districts, not food insecure people. Therefore, hungry communities in food surplus districts do not have sufficient access to food aid or subsidized food such as rice. Government policy encourages private sector distribution in accessible areas, with the consequence that NFC operates only in inaccessible areas (30 districts, 15 of which have no road access).

Interviews with communities in Jumla revealed that food distribution rules are not clear. There is a general lack of transparency regarding how much food is distributed and by whom, and there appears to be no way to ensure that proper attention is given to lower caste people. The FFM heard reports from Dalit organizations that during food distribution, Dalits had to remain

⁶³ In its 2006 *State of the Food and Agriculture Report*, the FAO recommends the following study: *Targeting of Transfers in Developing Countries: Review of Lessons and Experience*, David Coady, Margaret Grosh and John Hoddinott, Washington, 2004.

at the end of the queue and often the food ran out before their turn. They reported that police used disproportionate force to disperse the villagers once there was no food left. In one case, an old woman lost her eye when she fell after being pushed by police. In another case, a man lost his hand due to police violence.

Food distribution does not target women or women-headed households and therefore presents particular challenges to pregnant and breast-feeding women, widows, and the children who are dependent on them for food.

The NFC agreed there should be a policy in place ensuring food is provided to communities proportionally in terms of vulnerability. Nevertheless, actual distribution is left in the hands of the District Food Management Committee, which decides on the attribution of quotas and sources subsidized rice from NFC warehouses. Rules are applied differently in each district and there are no national guidelines for food distribution. The NFC claims that food is distributed throughout the year, but this does not match reports from site visit interviews. NGOs expressed additional concerns that rice distribution by the NFC and the WFP in regions where people traditionally eat other grains is changing food habits and decreasing support for local agricultural production.

There were complaints about the effectiveness of the food distribution. In Jumla, the FFM was told that a large proportion of the subsidized rice received is reserved for civil servants and the police. Local NGOs said, "Rice is seen as a high status food and is therefore given out to higher status people. It is only given to the communities during festival times, when rice becomes important to celebrate and provide for relatives." They added that only people living close to the district headquarters are able to benefit from food distribution programs because the small quantities provided (less than 5kg of rice per person) do not merit the long walk from distant villages. In Jumla, the Chief District Officer (CDO) said that he wanted to distribute food to the poor and therefore gave a quota to local parliamentarians for distribution to the poorest in their jurisdictions. However, there was no monitoring mechanism and results of the program could not be evaluated.

While there are no reliable complaint mechanisms to address such concerns, the Supreme Court has recognized that the Government of Nepal is responsible for supplying food grains to the people. In the case of *Madhav Kumar Basnet vs. Prime Minister and others*, the petitioner claimed that the government had not paid serious attention to the food shortage in several districts, including Jumla. The court decided in favour of the government,

LACK OF SAFETY NETS THREATENS FOOD SECURITY

Dalit community

VDC: Hirminiya, Pahari Purwa

District: Banke

The Pahari Purwa community is a low caste Dalit group. Their traditional occupation is begging and, as such, they are looked down upon by the surrounding communities. It is very difficult for their children to go to school because of discrimination and because they cannot afford to buy books and uniforms. The community has no land but is gathered in a group of 65 households on public land, where it has lived for seven generations.

Government surveyors would not register their land because it was designated as public land, and the community fears eviction because it does not have an ownership certificate. Without a land certificate, community members are also ineligible for government programs, such as irrigation structures for their fields.

The community cultivates the land and is self-sufficient in food for two to four months each year. The rest of the time they have to find work as sharecroppers, or migrate to cities to work as professional beggars. While they are away, their homes are unprotected and vulnerable to confiscation. There are no safety nets or policies applied to provide minimum needs for security or survival. The community reported having no contact with VDC or DDC officials and no government programs appeared to reach them.

but acknowledged that the state is responsible for providing adequate food in times of need, thereby providing a legal precedent.⁶⁴

Disaster Relief Measures are Ad-Hoc and Lack Sustainable Resettlement Plans

Natural disasters such as floods or severe weather put affected communities in a highly vulnerable situation. Disaster relief is the responsibility of the Ministry of Home Affairs and the NFC has a buffer stock of 40,000 metric tons of grain for use in times of such emergencies.

The FFM visited communities where immediate relief had been provided, either by the government or by NGOs. Some communities reported that, since the immediate aftermath of the disaster, they had not received any attention or food aid from either government or NGOs. Some communities visited

⁶⁴ Nepal's second periodic report to the CESCR, June 2006, p. 65.

were facing acute hunger particularly in the monsoon season. Government representatives interviewed appeared to rely upon NGOs to monitor the affected areas and to provide relief as needed.

There did not appear to be any strategy or program for long-term resettlement of victims of floods or other disasters. Measures that were observed, including provision of some building materials for shelter, were insufficient and ad hoc. Some communities interviewed reported that they had not received adequate services because the land from which they had been displaced had never been officially registered.

HIV/AIDS AFFECTED FAMILIES

VDC: Payal

District: Achham

In Payal, the FFM team met with a group of eight single women whose husbands had died from AIDS. One woman has tested positive for the HIV virus. The few women among them who own land (less than 1 ropani) say that this season's wheat will feed them for one and a half months. Some explained that they mortgaged their land to pay for health care or other expenses. They can only get the land back if they repay the loan in total, which is difficult given their circumstances. Most of these women cultivate other people's land. They are unaware of the minimum wage and receive around 60 to 70 NPR per day when they manage to find work. They estimate that they need at least 100 to 150 NPR daily to feed their families.

All of their husbands who were infected with HIV/AIDS had gone to find to work in Mumbai, India about 10 years ago. Back then, the women said, their husbands would bring back nice clothes and could afford to buy good food. But now there is nothing left and their situation is worse. The women said that without documents to prove their husbands died of AIDS, they couldn't claim anything from the local government. They also said they face shame and discrimination from other community members. With tears in her eyes, one woman said, "When my husband died, all of the villagers, including his own brother, refused to touch the corpse. There was nobody to take him to the funeral pyre and burn him. He had to be wrapped in plastic and buried. They refused to touch the body due to fear of infection." The women receive some food assistance from local NGOs but it is not sustainable. They say they would like to get land and feed themselves.

INTERNATIONAL COOPERATION

States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

(ICESCR, Art. 11.1 on the right to an adequate standard of living, including food)

The CESCR's General Comment 2 on international technical assistance recommends that development agencies recognize the "intimate relationship... between development activities and efforts to promote respect for human rights."⁶⁵ The FAO Voluntary Guidelines, referring to Article 56 of the UN Charter, urge the international community to take action in support of national efforts to implement the human right to food. Unfortunately, however, development strategies promoted by the donor community in Nepal appear to focus on commercialization, not on human rights.

Donor Community Fails to Integrate a Human Rights Approach to Development

Interviews with donor country representatives reveal that a human rights framework for development assistance is not applied even though the UNDAF requires it. Foreign governments active in Nepal are focused heavily on the transition to democracy, institutional development, and the promotion of market liberalization. There appears to be insufficient attention paid to the causes of the conflict itself—social exclusion and poverty—and little if any attention to implementation of economic, social or cultural rights as an effective remedy for sustainable solutions to the conflict. As one foreign

⁶⁵ See www.ohchr.org/english/bodies/treaty/comments.htm

government representative admitted, “Rights-based approaches imply long term reforms and attention to equitable access. Lack of equity is what led to the political conflict in the first place, but it is not being addressed by donor countries.”

Some donor country representatives interviewed during the FFM alluded to pressure from the ADB to refrain from human rights approaches such as targeting. This claim was reflected during a discussion with an ADB representative in Kathmandu. He agreed that subsidizing agricultural inputs, for example, might be a positive approach for promoting food security, but objected to targeting those subsidies to the poorest or most food-insecure because it would be market distorting.

Without sufficient donor recognition of the state’s human rights obligations and as foreign donors and international NGOs assume greater responsibility for delivery of emergency assistance, the capacity of the state to assume its human rights responsibilities is diminished. For example, the WFP operates a series of food-for-work programs in the far-west, mid-west and high mountain regions of Nepal and distributes emergency food aid to drought-affected people in mid- and far-western Nepal as well as in the eastern Terai.⁶⁶ Despite the importance of emergency assistance in times of crisis, the FFM heard a number of complaints about the malfunctioning of WFP food-for-work programs and several donor agencies interviewed in Kathmandu expressed the opinion that WFP programs create dependency and destroy local markets. The focus on service delivery, they argue, has displaced the government’s role and contributed to the current weakness of the state in implementing its human rights obligations.

Lack of coordination of objectives, policies and programs between donors emerged as a crosscutting problem. Concerns were expressed about the number of development and poverty alleviation plans that exist on paper, with inadequate coordination or implementation mechanisms. Development assistance policy is coordinated through the Nepal Development Forum, whose members include donor countries, international financial institutions and UN agencies. Meetings are held every two years; the most recent was held in the UK in 2007.

The OHCHR in Kathmandu has recently organized a field mission to recommend how to integrate human rights into Nepal’s national poverty reduction strategies. In April 2007, the OHCHR hosted unofficial visits by the UN Special Rapporteur on the Rights of Indigenous Peoples, the Special Rapporteur

⁶⁶ The WFP reports its current number of beneficiaries to be 400,000.

FLOOD VICTIMS DUE TO LAXMANPUR DAM, INDIA

District: Banke

VDC: Holiya

In 1998, the Laxmanpur Dam was built close to the Nepal border in the Indian state of Uttar Pradesh. The dam results in regular floods on the Nepali side of the border. Reportedly, the Laxmanpur Dam was constructed without the agreement of Nepal, and therefore violates international agreements between India and Nepal.

The FFM was informed that 36,000 people in Banke were affected in last year's flood. In Holiya VDC, the community leader said that 6-7,000 households were affected and 75% of crops were lost. The government's only disaster plan was to tell communities to sit on their roofs or plant a large pole to climb. Every year, the local DDC and CDO appeal to the Government Disaster Committee as well as to local NGOs. Local people have established their own disaster cooperatives to save for times of flood. In some cases, people were saved by helicopter in an emergency operation, but they were dropped on higher land where there was no food or shelter, so they could not stay there long. The community was very critical of helicopter costs, which they thought would be better spent on aid and long-term solutions.

Some people are now demanding compensation from the Government of India. They believe that India should negotiate a permanent solution allowing natural water flow. The MoWR informed the FFM that an agreement had been reached with India in August 2006 to open the river to its natural flow, but although the issue is solved on paper, nobody knows when or if the work will begin. Furthermore, the community alleged that the village had once been surrounded by the Indian military and they felt threatened if they complained.

on Racism, and two members of the CESCR. The visits addressed access to justice for violations of economic, social and cultural rights, access to land and productive resources, and self-determination. Their conclusions may inform the forthcoming UNDAF.

Neighbouring States Fail to Respect Extra-Territorial Human Rights Obligations

International cooperation demands that states give adequate attention to the potential human rights impact of their domestic policies and activities in other countries. This is particularly true in the example of dams constructed in India close to the Nepal border. Without cooperation from the Government of India, it is unlikely that the Government of Nepal could effectively

negotiate in the interests of protecting its people from the negative impacts of such projects.

In Chitwan, communities reported that Indian dams alternately flooded land and blocked water flow resulting in the inability of fish to migrate to spawning areas. This had a negative impact on both food security and livelihoods for Nepali fishers. In Banke, it was reported that a series of Indian dams are having a significant impact on livelihoods and access to food and water for cross-border communities in Nepal. Even as Nepal appears powerless to do anything about Indian policies, India exercises considerable control over what Nepal can do with its water resources. India has reportedly objected to Nepal's plans to build dams and irrigation projects on its side of the border near Banke.

RECOMMENDATIONS

To Government

Adopt a 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's new three-year interim development plan, including the possible creation of a high level body with responsibility for food and nutrition security in Nepal.
- Adopt a national "zero hunger" strategy, including attention to sustainability and equity in the food supply chain and using the FAO Voluntary Guidelines as a roadmap.
- Establish a legislative and institutional framework for oversight of the zero hunger strategy, including provisions for monitoring and implementing effective remedies.
- Give attention to the concluding observations of the CESCR and create an inter-departmental working group to implement its recommendations.

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.
- Reform reporting procedures to encourage more effective monitoring of industrial pollution affecting access to food, particularly dumping of toxic waste into rivers.

- Support the creation of local level complaint centres 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

- Formulate an integrated land reform policy, possibly through the creation of a high level commission, with special attention to multi-stakeholder participation including of the landless.
- Quicken the pace of land reform and land redistribution including the provision of remedial mechanisms.
- While enforcing existing land ceiling levels, take steps to reduce those ceilings.
- Provide appropriate resettlement programs for ex-bonded labourers, including provision of fertile land for cultivation.
- Following ownership surveys and taking into account the quality and price of land, redistribute available land to its landless tillers.
- Identify and restore traditional land to indigenous peoples.
- Grant ownership or tenancy rights to registered or unregistered tenants who have been tilling the land since before 1996.

Enforce labour rights

- Ratify the core conventions of the ILO, including Convention 169.
- Eliminate all bonded labour systems in practice, such as Haliya, Haruwa, Charuwa and Kamaiya and abrogate outstanding debts.
- Enforce minimum wage legislation with special attention to disparity between men and women.
- End impunity for labour rights violations, including various forms of exploitation, fraud, and usury.

Improve targeting policies and practices

- Develop a government-owned targeting procedure to facilitate the delivery of special programs to the most vulnerable, taking into account lessons learned from the existing WFP food security surveillance system.
- 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 on need, not district).
- Conduct a gender vulnerability analysis related to women's access to adequate food and its connection to 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 human right to food violations, access related government documentation, and assist victims as they seek access to remedies.

To Donors and UN Agencies**Reinforce and encourage efforts by the Government of Nepal to meet its human rights obligations**

- Assist the Government of Nepal to implement recommendations provided in the Concluding Observations of the Committee on Economic, Social and Cultural Rights, June 2007.
- Support initiatives within the Constituent Assembly to include protection of economic, social and cultural rights within the new Constitution of Nepal.
- Urge the Government of Nepal to adopt a "food security strategy" and associated legislation.

- Support genuine land reform and encourage the Government of Nepal to ratify ILO Convention 169.

Adopt policies and programs designed specifically to address hunger and the right to food in Nepal

- Adopt the human rights framework for development assistance as proposed in the UNDAF.
- Support budget allocations designed to address hunger through agricultural development, expansion of extension services, and targeted subsidies to vulnerable groups.
- Encourage inter-ministry processes and donor cooperation to address hunger.
- Support training programs for human rights monitoring, statistical documentation, and training of judges and lawyers.
- Support the NHRC.
- Target emergency food aid and subsidized food based on need, not district, and include pilot programs that deliver food aid directly to women.
- Refrain from imposing economic reforms that may narrow policy space needed by government to implement human rights obligations.

To Civil Society

Coordinate efforts to promote economic, social and cultural rights, including the human right to food, in Nepal

- Develop collaboration mechanisms for civil society organizations in Nepal, giving special attention to linking the grassroots associations to national level human rights organizations and campaigns.
- Link human rights advocacy, including the campaign to end hunger in Nepal, to the constitutional and electoral process.
- Promote the concept of a cross-sector “zero hunger” campaign in Nepal including a proposal for framework legislation on the human right to food.
- Establish closer working relations with duty bearers including parliamentarians and government.

- Participate in the MoFSC's process to revise its forestry guidelines, ensuring that adequate attention is given to the issue of displacement.

Document violations of the human right to food

- In collaboration with the NHRC of Nepal, the OHCHR, and local level community organizations, create a methodology for documenting violations of the human right to food in Nepal.
- Establish a centralized documentation system, publicly accessible, with attention to ongoing monitoring procedures.
- Create a mechanism for urgent action response, including reporting of violations to both national and international authorities.
- Monitor implementation of the scientific land reform process.

Build civil society capacity related to human rights, including the human right to food

- Organize a series of workshops and training seminars on various aspects of the human right to food, such as targeting, monitoring, and justiciability.
- Develop learning materials in Nepali language and other local languages to facilitate human rights training at the local level.
- Engage media, including radio, to share information and popularize human rights, including the human right to food.
- Consolidate linkages with international civil society organizations and social movements working on the human right to food in the region and internationally.
- Make efforts to participate in international events and conferences related to economic, social and cultural rights, including the human right to food.

ANNEX I

MISSION DELEGATION

National Delegates

JAGAT BASNET, *Community Self-Reliance Centre (CSRC)*

BIDHYA NATH BHURTEL, *Informal Sector Service Centre (INSEC)*

BASANTA KUMAR KARKI, *Lutheran World Federation Nepal*

ARJUN KARKI, *Rural Reconstruction Nepal (RRN)*

KESHAV KHADKA, *All Nepal Peasants Federation Association (ANPFA)*

ILA SHARMA, *Action-Aid Nepal*

RAM BAHADUR THAPA MAGAR, *Nepal Federation of Indigenous Nationalities (NEFIN)*

International Delegates

PRISCILLA CLAEYS, *Rights & Democracy (Canada)*

MOHAN DHAMOTHARAN, *FIAN International (Germany)*

ALBERTO SALDAMANDO, *International Indian Treaty Council (USA)*

The Human Right to Food in Nepal

CAROLE SAMDUP, *Economic and Social Rights Program, Rights & Democracy (Canada)*

MILDRED SHARRA, *Action-Aid Malawi (Malawi)*

International Observers

ANDREAS VON BRANDT, *UN Food and Agriculture Organization (Italy)*

SALLY-ANNE WAY, *Office of the UN Special Rapporteur on the Right to Food (Switzerland)*

ANNEX 2

SITE VISITS

Eastern and Central Region

Gobindapur, Siraha

- Dalit communities
- Village Development Committee Secretary
- Local representatives of political parties (Nepali Congress, CPN (UML), Nepali Congress (Democratic), CPN (Maoist))
- Local civil society groups (Manab Adhikar Sanjal, Rastriya Bhumi Adhikar Manch (Bastipur), Dalit Jankalyan Yuwa Club, Dalit Samaj Sewa Sangh (Lahan), Organization of Rice Exporting Countries (Bastipur), Jilla Bhumi Adhikar Manch, Mahila Manav Adhikar Rakshak, Nepal Red Cross (Siraha), Rastriya Dalit Kalyan Sangh)

Inerwa, Abhe Nagar, Siraha

- Dalit communities
- Village Development Committee Chairman

District Headquarters, Siraha

- Chief District Officer and Deputy Chief District Officer
- District Development Committee, Local Development Officer

Parsa Wildlife Reserve, Makawanpur

- Wildlife Reserve Officials, Buffer Zone Council
- Chepang community (Manahari)
- Local civil society support groups

Chitwan National Park, Nawalparasi and Chitwan

- Fisher community in the buffer zone (Rajhar)
- Displaced people (Mahjis and Bote) resettlement camp
- Assistant Warden, representatives of Buffer Zone Council
- Senior Team Leader, Food Security, Action-Aid
- Local civil society support groups

Chitwan National Park, Chitwan

- Park officials (Kasara)
- Buffer Zone Council

Mid West Region**Nepalgunj, Banke**

- Local civil society group, Sahakarmi Samaj
- National Human Rights Commission Representative

Indrapur, Banke

- Adhivasi community (Kushbandhiya)

Hirminiya, Banke

- Dalit community (Pahari Purwa)

Holiya, Banke

- Flood victim communities
- Village Development Committee Secretary
- Chief District Officer

Khalanga, Jumla

- Ranka village
- Local civil society support groups
- Chief District Officer
- Representatives of the National Planning Commission

Far West Region**District Headquarters, Mangalsen, Achham**

- Local Development Officer, Nepali Congress Member of Parliament, District Development Committee, Local CPN (Maoist) leader
- Assistant to Chief District Officer
- District Health Officer

Payal, Achham

- Women affected by HIV/AIDS

Safe Bagar, Achham

- Local civil society groups (Yes Nepal, Nawa Kiran Plus, Oppressed Class Women Awareness Centre, Himalayan Association Against STI and AIDs, Gangotri)

Gughurkot, Achham

- Flood victim communities

Amargadhi, Dadeldhura

- Dalit community of freed Haliyas (Khanbada Tole)

ANNEX 3

INTERVIEWS IN KATHMANDU

Government

Ministry/Department of Agriculture and Cooperative

GANESH KUMAR, Secretary

SURESH KUMAR VERMA, Joint Secretary

DEEP B. SWAR, Director General

Ministry/Department of Forests and Soil Conservation

TIRTHA RAJ SHARMA, Secretary

DEBYA DEO BHATTA, Director General

MOHAN DHUNGEL, Deputy Director General

DIWAKAR DUTTA PANDEY, Deputy Director General

Ministry/Department of Land Reform and Management

JAGAT BAHADUR BOGATI, Minister

NARAYAN GOPAL MALEGU, JOINT SECRETARY

JIT BAHADUR THAPA, Deputy Director General

SATRUGAN PUDASAINI, Deputy Director General

Ministry of Health and Population

RAM HARI ARYAL, Joint Secretary

NIRAKAR MAN SHRESTHA, Chief Specialist, Policy Division

Ministry of Water Resources

JITENDRA GHIMIRE, Joint Secretary

UMA KANT JHA, Director General, Department of Irrigation

N.P. Bhattarai, Director General, Department of Water Induced Disasters Prevention

National Human Rights Commission

DHRUBA NEPAL, Officiating Secretary

YAGYA PRASAD ADHIKARI, Protection Division Head

KEITH LESLIE, Senior Human Rights Advisor (UNDP)

GOPI PARAJULI, Project Officer

National Planning Commission

JAGDISH CHANDRA POKHAREL, Honorable Vice Chairman

Nepal Food Corporation

BENI BAHADUR RAWAL, General Manager

SUNDAR SHARMA, Deputy General Manager

Members of Parliament/Political Parties

KHIMLAL DEVKOTA, CPN (M)

MALLA K. SUNDAR, Independent

Inter-party Women's Alliance

SUPRABHA GHIMIRE, Nepali Congress

KALYANI RIJAL, Nepali Congress Democratic

RADHA GYWALI, CPN (UML)

URMITA PANDEY, Nepal Sadbhawana Party (Anandi Devi)

GANGA BELBASE, People's Front Nepal

United Nations

Food and Agriculture Organization (FAO)

BUI THI LAN, FAO Representative

LAXMAN GAUTAM, Deputy FAO Representative

Office of the High Commissioner for Human Rights (OHCHR)

SANDRA BEIDAS, Chief, Protection and Reporting Section

SUSHIL RAJ, Human Rights Officer

United Nations (UN)

MATTHEW KAHANE, Resident Representative (UNDP) and Humanitarian Coordinator (OHCHR)

United Nations Development Program (UNDP)

GHULAM ISACZAI, Deputy Resident Representative

World Food Program (WFP)

RICHARD RAGAN, Country Director

DOMINIQUE HYDE, Deputy Director

PUSHPA SHRESTHA, Field Surveillance Manager

Donors

Asian Development Bank (ADB)

PAOLO SPENTIGATI, Senior Country Program Specialist

GOBINDA P. GYAWALI, Environment Advisor

Canadian Cooperation Office

PRABIN MANANDHAR, Country Director

CHARLES PRADHAN, Program Coordinator

The Human Right to Food in Nepal

Department of International Development (DFID)

PETER NEIL, Acting Livelihoods Adviser

CHANDRA SHRESTHA, Assistant Infrastructure Adviser

German Technical Cooperation GTZ

FRIEDER KONOLD, Program Manager

Non-governmental Organizations

Action Aid Nepal

SHIBESH CHANDRA REGMI, Country Director

All Nepal Peasants' Federation Association

RAM DEV GOUTAM, Chairperson of ANPFA and of the South Asian Peasant Association

PREM DANGAL, General Secretary of ANPFA

Feminist Dalit Organization

Himalayan Human Rights Monitors (HIMRIGHTS)

RAMESH K. PAUDEL

Informal Sector Service Centre (INSEC)

Lutheran World Federation

KRISHNA RASEN

National Democratic Institute and Inter-Party Women's Alliance

DOMINIC CARDY, Country Director

LALITA PRADHAN, Program Officer

ANAMIKA RAI, Senior Program Manager

United Mission to Nepal (UMN)

LUMANATH ADHIKARI, Food Sovereignty Advisor

SMRITI SHRESTHA, Technical Advisory Team Coordinator

Women's Rehabilitation Centre (WOREC)

IN A WORLD THAT PRODUCES MORE THAN ENOUGH FOOD TO FEED ITSELF, more than 840 million people suffer from hunger and malnutrition every day. Three quarters of them are children. It is clear that both national and international policies have failed to deliver the conditions necessary to manage food production and distribution in a fair and equitable manner.

This report documents the experience of an international team of human rights advocates who joined forces with their Nepali counterparts and visited communities across the country to talk about the challenges faced in accessing sufficient, nutritious and safe food. What they learned was that hunger is prevalent across Nepal, affecting people living in both food surplus and food deficit areas. Community discussions revealed that access to food is often limited by discrimination and social exclusion and that efforts to bring about change will require attention to governance as much as to supply.

The report compiles its findings under the three levels of state obligation—respect, protect and fulfil—and it makes a series of recommendations to the Government of Nepal, the international community and civil society. The report will be of interest to human rights practitioners, social justice activists and development agencies who have adopted or who are considering the adoption of a human rights framework for poverty alleviation programming.

...the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

UNIVERSAL DECLARATION OF HUMAN RIGHTS