Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal
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Food and Agriculture Organization of the United Nations
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Foreword

The Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal discusses overarching aspects of Nepalese law and jurisprudence dealing with the human right to food. Following a brief discussion of the international legal protection of the right to food in Nepal, the review, in particular provides a critical assessment of constitutional as well as legislative provisions and offers a thorough analysis of Supreme Court jurisprudence pertaining to the right to food. In addition to judicial remedy, the review also covers non-judicial means of remedy against the violation of food rights.

FAO believes that this review comes at an opportune moment in the sense that Nepal's constitution-making process is yet to be completed and there are also a number of ongoing legislative and policy initiatives towards protection and promotion of the right to food. FAO is proud to launch this review, which provides detailed knowledge to concerned stakeholders on normative and implementation gaps in relation to the right to adequate food. With the view of assisting Nepal in this process, the review also offers a set of concrete recommendations, touching upon a wide range of aspects of the human right to adequate food.

The initial findings and recommendations of the review were shared through a validation workshop convened on 24 August 2013 in Kathmandu. The workshop was attended by a wide range of stakeholders, including senior government officials, civil society organizations, lawyers and human rights activists. Similarly, the 'jurisprudential analysis part' of the review was separately presented during a "South-South Seminar on Right to Food: Experiences from India and Nepal", jointly organized by the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs and FAO, Nepal. The comments and suggestions received from both events have been duly incorporated in the review.
This work was undertaken under the global project entitled “Integrating the Right to Adequate Food and Good Governance in National Policies, Legislation and Institutions” (GCP/GLO/324/NOR Right to Food at Country Level) run by FAO. The project aims to address country challenges by promoting human rights-based approach in efforts to achieve food security at all levels, in legislation, policy and programme design and formulation, decision and implementation. By producing this analysis, FAO aims to assist the Government of Nepal, the Constituent Assembly, the Judiciary, the National Human Rights Institutions, and civil society organizations in their initiatives towards advancing the human right to adequate food.

This review was undertaken by the legal consultant Mr Raju Prasad Chapagai, based in Kathmandu, under the general supervision of the FAO Representative in Nepal, the technical supervision and guidance of Ms Margret Vidar, Legal Officer in FAO Headquarters in Rome, and with the overall support and coordination of Ms Serena Pepino, Project Officer at FAO Headquarters in Rome.

Dr Somsak Pipoppinyo
FAO Representative in Nepal
Food is, first and foremost, a human rights issue. No human rights instrument is needed to tell us that food is a right for all persons. Access to adequate, affordable, and culturally acceptable food is of paramount importance to a life of human dignity and indeed, to life itself. In fact, the right to food is a fundamental underlying determinant of the right to life. And yet hunger and malnutrition remain a grave threat to more than 870 million people in the world today. This problem, as we know, is not one of resources but of distribution of resources, of inequality, discrimination – when the hunger for profit actually fuels hunger for food – on a global scale. Such an unacceptable situation of hunger and non-accessibility to food undermines a country’s sound development and often leads to social instability.

The explicit inclusion of the right to food in the plethora of international human rights instruments, including the International Covenant on Economic Social and Cultural Rights (ICESCR), can and must be brought to bear for its realization. As observed by the Committee on ESCR in its recent concluding observations (E/C.12/TGO/CO/1, CESCR, 2013) following the 2013 review of Togo, the state party is obligated to ensure that: (a) the legal framework of the right to food is strengthened; (b) the activities conducted are aimed at implementing the right to food… and (c) the responsibilities of the various stakeholders are clearly defined.

In recent years countries have come to face new challenges in protecting and promoting the right to food. While globalization of trade and investments has created opportunities for economic growth for many countries, it has at the same time made many low-income countries increasingly dependent on food-imports, and hence vulnerable to the risks of highly volatile food prices in the international market. Similarly, increasing environmental degradation and the negative impact of climate change are also among the factors threatening sustainability of food production and thereby contributing to worsening local food insecurity.

It is therefore crucial that governments carve out adequate legal and policy space to realize the right to adequate food for all, and to take active measures to respect, protect and fulfil this right. The right to food is now protected under a number of national constitutions directly or indirectly through other rights. National courts, including the Supreme Court of Nepal, have also been active in adjudicating and providing legal remedies on the right to food. States have also been making efforts to respond to challenges on the right to food at the global level. FAO Member States have developed several standards relevant to the realization of the right to food, including the Right to Food Guidelines (2004), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012), and most recently, the Principles for Responsible Investment in Agriculture and Food Systems that will be adopted later this year. These guidance documents integrate not only the right to food but also other human rights and human rights principles such as business and human rights and the rights of indigenous peoples.
Against this background, Nepal merits recognition for integrating the right to food sovereignty in its Interim Constitution as well as for ongoing Constituent Assembly deliberations towards integrating more explicit right to food guaranteed in its future constitution. Efforts to realize the right to food are also in line with the commitments made by Nepal under the outcome of the Universal Periodic Review of the UN Human Rights Council in 2011, as well as the follow-up to the recommendations made by the CESCR in 2008 on Nepal’s implementation of the ICESCR. I have no doubt that this commendable study based upon a rigorous analysis of national law and jurisprudence will serve as an enormous contribution to assist in further solidifying Nepal’s legal protection of the right to food.

Lastly, I commend the FAO for its assistance to Nepal for integrating the right to food and other human rights in its normative framework. OHCHR too provided support to national stakeholders in Nepal on the right to food, including support to develop human rights indicators on economic, social and cultural rights. Under the One UN initiative and the mainstreaming of human rights, we hope that we can continue supporting Nepal to respect, protect and fulfil the right to food.

Jyoti Sanghera
Chief,
Human Rights, Economic and Social Issues Section,
UN Office of the High Commissioner for Human Rights
I am pleased to be able to contribute with a few words, in my capacity of Supreme Court judge, to this significant review concerning the legislative framework and jurisprudence pertaining to the right to adequate food in Nepal.

For Nepal, the right to adequate food is not only a matter of international human rights commitment, because of it being a party to a significant number of international human rights treaties including ICESCR, but also a matter of constitutional imperative. Nepal has a well-established constitutional tradition of protecting basic rights and freedoms as “fundamental rights” under a written constitution. The Interim Constitution of Nepal, 2007 not only contains civil and political rights but also a plethora of economic and social rights, including the right to food sovereignty, the right to live a dignified life and the right to social security. Such fundamental guarantees are also combined with a number of directive principles and policies that are relevant to the right to adequate food.

Giving effect to the constitutional guarantees and the international human rights obligations, the Nepalese judiciary has to date played an active role in expounding the right to food jurisprudence. The Supreme Court has been able, in particular, to interpret the fundamental right to live with dignity to include a range of ESCR, including the right to food. Through its public interest litigation jurisdiction, the Supreme Court scrutinized a significant number of issues impacting upon the right to adequate food and held the concerned authorities accountable for not implementing constitutional and legal provisions related to the right to food. At the same time, the court ordered legislative reforms in line with the country’s international human rights obligations.

I am glad to see that most of the Supreme Court of Nepal’s decisions pertaining to the right to food have been critically analysed in the review and that the review appears to have pointed out the strengths and weaknesses in terms of judicial enforcements of the right to food violations. I hope that such an analysis of judicial enforcement will be an important asset for the legal and judicial sector stakeholders in Nepal.

I have every confidence that the analysis provided in this review represents a useful tool to all wishing to take forward the right to food issue in Nepal. I also hope that the review becomes a proven reference work for a wide range of stakeholders, including policy makers, parliamentarians, and rights activists, as well as members of the legal and judicial community.

Honorable Justice Kalyan Shrestha
Supreme Court of Nepal
I am delighted to write the foreword for this important research work 'Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal'.

The review offers a comprehensive analysis of the constitutional as well as statutory provisions dealing with the right to food. Most importantly, the review unpacks normative and implementation gaps and weaknesses in terms of the legal protection of the right to food. In addition, the review assesses the availability and use of judicial as well as non-judicial methods, including parliamentary oversight for remedying food rights violations.

Not only does the review identify legal gaps and weakness, it also refers to a number of affirmative provisions aimed at advancing the right to food under the abundant legislation dealing with the right to information, good governance, consumer protection, labour rights, and social protection for women, children and other vulnerable groups. As indicated in the review, such affirmative provisions truly deserve adequate efforts to ensure effective implementation.

Likewise, what really impresses me in this review is the comprehensive set of recommendations drawn from the analysis in relation to a wide range of legal issues impacting upon the right to food. Most of the recommendations seem worth considering in the context of ongoing constitution-making as well as legislative reform processes. I am fully in agreement with the recommendations, including the one that calls for strengthening parliamentary oversight in order to ensure effective implementation of prevailing legal and policy measures concerning the right to food.

I have every confidence that the review will be a resource for those who wish to initiate advocacy or undertake further research on any of the legal aspects of the right to food in Nepal. I also hope that the review will inspire its readers and that it will be a catalyst for some to plunge into the promotion of the right to food in Nepal.

Honorable Gagan Thapa  
Chairperson  
Committee on Agriculture and Water Resources  
Legislature-Parliament
The right to food is a fundamental human right. Its realization is essential to the fulfilment of other human rights, including the right to life and the right to health. Embracing such an understanding, the Interim Constitution of Nepal has incorporated fundamental rights provisions, including the right to food sovereignty and the right to social security, providing a strong basis for the realization of the right to adequate food. Similarly, the Supreme Court of Nepal has also played a vital role in developing and shaping the legal and jurisprudential base for the right to adequate food. However, there still remain numerous challenges: the myths and misconceptions about justiciability of ESCRs, in particular, the right to food, and lack of effective implementation of the affirmative provisions.

I am pleased to note that the Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal, together with offering an updated understanding of the international legal protection of the right to food, assesses constitutional as well as legislative provisions and a significant number of Supreme Court decisions pertaining to the right to food. I hope that the comprehensive analysis of laws and jurisprudence that the review offers will be a valuable tool in helping stakeholders address those problems.

Nepal is currently writing its new Constitution in compliance with its international human rights obligations, and there is an ongoing legal reform process that this review will undoubtedly contribute to, reinforcing a sounder right to food discourse within and outside the Constituent Assembly. In addition, the comprehensive set of recommendations included in the legal analysis will also be of great value for policy makers, human rights activists and other stakeholders in Nepal.

I am confident that this thorough analysis will guide those involved in implementing, adjudicating, promoting and advocating the right to adequate food in Nepal. On behalf of the Nepal Bar Association, I would also extend gratitude to FAO for publishing the review. NBA will remain open to continue taking forward the implementation of the recommendations incorporated in the review.

Hari Krishna Karki
President
Nepal Bar Association
Acknowledgements

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## List of abbreviations and acronyms

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<th>Description</th>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
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<td>CPA</td>
<td>Comprehensive Peace Agreement</td>
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<td>CRC</td>
<td>Committee on the Rights of the Children</td>
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<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<td>DAO</td>
<td>District Administration Office</td>
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<td>DDCs</td>
<td>District Development Committees</td>
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<tr>
<td>ESCR</td>
<td>Economic Social and Cultural Rights</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic Social and Cultural Rights</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>NDC</td>
<td>National Dalit Commission</td>
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<tr>
<td>NGOs</td>
<td>Non-governmental organizations</td>
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<tr>
<td>NHRC</td>
<td>National Human Rights Commission</td>
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<tr>
<td>NHRI s</td>
<td>National human rights institutions</td>
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<tr>
<td>NMC</td>
<td>National Muslim Commission</td>
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<tr>
<td>NWC</td>
<td>National Women Commission</td>
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<tr>
<td>POPs</td>
<td>Persistent Organic Pollutants</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>VDCs</td>
<td>Village Development Committees</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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Executive summary

The Review of the Legislative Framework and Jurisprudence Concerning the Right to Adequate Food in Nepal provides a critical assessment of constitutional as well as legislative provisions related to the right to food in Nepal. It also offers a thorough analysis of relevant Supreme Court jurisprudence and covers non-judicial means of remedy against the violation of food rights.

Nepal has a very good track record in terms of ratifying international human rights treaties. By virtue of being a party to numerous international human rights treaties, including the International Covenant on Economic Social and Cultural Rights (ICESCR), Nepal has made commitments to respect, protect and fulfill a wide range of human rights of the Nepalese, including the right to adequate food.

Similarly, Nepal has the tradition of constitutional protection of basic rights and freedoms as “fundamental rights”. The protection of economic and social rights, including the right to food sovereignty, the right to live a dignified life, and the right to social security under the Interim Constitution are of particular importance in terms of the right to adequate food. Such fundamental guarantees are also combined with a number of directive principles and policies impacting upon the right to adequate food. The ongoing constitution-making process of Nepal offers a historic opportunity to strengthen further the constitutional protection of the right to adequate food.

In light of the constitutional guarantees, as well as treaty obligations, the Nepalese judiciary has also taken positive action on the right to food. The Supreme Court has been able to scrutinize a significant number of issues impacting upon the right to adequate food through its public interest litigation jurisdiction. There has also been scope for non-judicial remedy through NHRIs, in particular the National Human Rights Commission. The committee system under the Legislature-Parliament also offers an important opportunity to exercise parliamentary oversight in relation to the enjoyment to the right to adequate food by the Nepalese. However, these systems of non-judicial remedies need to be utilized better.
Nepal also has a significant legal framework for many of the key areas relevant to the right to food. However, the existing legislative framework falls short in terms of giving effect to the right to food related guarantees under the Interim Constitution. Similarly, numerous legal provisions that empower the State to take actions towards remedying social and economic insecurities fail to internalize a human rights-based approach. At the same time, numerous protective legal provisions are not implemented. The implementation gap is not just in terms of legal provisions, it also applies to judicial decisions pertaining to the right to food.

Drawing on the assessment, the review contains a comprehensive set of the recommendations that, *inter alia*, call for enacting framework legislation on the right to food, strengthening constitutional protection, including through explicitly guaranteeing freedom from hunger as an enforceable fundamental right, and also incorporating a fuller term of the right to an adequate standard of living. Similarly, the Government is called upon for the effective implementation of affirmative and protective provisions, strengthening judicial compliance, prompting legislative reform on various areas of laws impacting upon the enjoyment of the right to adequate food, exercising effectively the mandate of NHRIs in order to remedy food rights violations, ratifying the Optional Protocol to ICESCR, ensuring protection from forced eviction, and mainstreaming gender and social inclusion perspectives in law.
Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal

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1 Introduction

1.1 Overview of the review

The Review of the Legislative Framework and Jurisprudence Concerning the Right to Adequate Food in Nepal discusses overarching aspects of Nepalese law and jurisprudence dealing with the human right to food. Following a brief discussion of the international legal protection of the right to food in Nepal, the review, in particular provides a critical assessment of constitutional as well as legislative provisions and offers a thorough analysis of Supreme Court jurisprudence pertaining to the right to food. In addition to judicial remedy, the review also covers non-judicial remedy mechanisms against the violation of food rights.

The constitutional part of the review examines fundamental rights provisions and the relevant directive principles impacting upon the right to food. Based on the analysis, the review unpacks numerous shortcomings from a right to food perspective and suggests several areas for improvement. In view of the Interim Constitution and the International Human Rights Treaties to which Nepal is a party, the review also provides a critical overview of a wide range of statutory provisions in different sectors of particular relevance to the realization of the right to adequate food. These pertain to food safety and consumer protection; nutrition; food in emergencies; access to productive resources (land, forest and water); social protection; right to information and freedom of association; protection of women and children; and labour rights. The review then unpacks normative gaps and lapses, as well as gaps in terms of implementing the positive legal provisions, and signals numerous issues and areas that deserve genuine reforms.

Similarly, the judicial component of the review discusses existing judicial powers to enforce the right to adequate food and offers a critical overview of the significant number of Supreme Court decisions enforcing the right to adequate food and other associated rights.
Most of the decisions analysed in this review were handed down by the Supreme Court under its public interest litigation jurisdiction post-1990 (2050 BS). In addition, the review examines the law and practice of non-judicial remedies – under the jurisdiction of National Human Rights Institutions and the Parliamentary Committees – vis-à-vis the violation of the right to adequate food in Nepal. Referring to the underlying challenges in terms of ensuring effective enjoyment of food rights, the review finally offers a comprehensive set of recommendations, touching upon all aspects covered in the review.

1.2 Background

Seven years have elapsed since signing the Comprehensive Peace Accord (CPA) that formally put an end to the decade-long armed conflict in Nepal. However, Nepal is still in a transitional phase, pending the writing of a new constitution founded on the democratic values and universal principles of human rights and initiatives addressing the consequences, as well as the causes, of the armed conflict. It is therefore imperative not just to deal with the consequences of violations that took place during the conflict period of 1993–2003 (2050–2060 BS), but also to prioritize efforts towards addressing the root causes of the conflict and thereby promote sustainable peace.

It is widely recognized that the denial of economic, social and cultural rights, together with entrenched discrimination and inequality, were among the root causes of the ten-year armed conflict in Nepal. Notably, the 40 Point Demands put forward by the Communist Party of Nepal (Maoist) before launching the armed struggle included a significant number of issues related to the denial of Economic, Social and Cultural Rights (ESCR). Out of 40 demands, 17 were directly related to the right to food. Key issues included the equal property rights of women, elimination of the practice of untouchability and caste-based discrimination, meaningful decentralization of power so as to ensure control of natural resources by local communities, establishing land ownership of actual tillers, confiscation of land from landlords and distribution among the landless people, guarantee of the right to work and employment, unemployment allowance until a work opportunity is provided, liberation of poor farmers from agricultural debts/loans, accessibility to fertilizers and seeds at affordable prices, humanitarian assistance to victims of natural disasters, control of inflation, legal protection of minimum wages including for agricultural labourers, access to drinking water, promotion of cottage industries, control of black-marketing, corruption and financial indiscipline, and special attention to vulnerable groups including orphans, the disabled, the elderly and children.

1 The Nepalese calendar is also known as the Bikram Sambat (BS) Nepali calendar and it is approximately 56 years and 8 and months ahead of the English calendar, which is termed the Gregorian calendar or AD.
Referring to inequality and discrimination as causes of the conflict, the Comprehensive Peace Agreement of 2006 (2063 BS) also stresses the need to ensure the effective enjoyment of economic, social and cultural rights by all members of society in Nepal.\(^3\)

It is noticeable that there has been an official acknowledgement that the policies adopted by the State failed to address the structural problems, including inequitable access to productive resources and means. Also, the acceptance that the State failed to secure desired improvements in the economic and social conditions of women, Dalits, Adivasi Janajati (as comprehensively referred to in the report A/HRC/12/34/Add. 3, which followed a visit to Nepal by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples), Madhesis, the Muslim community, and the residents of the Karnali zone. Such a situation not only promoted conflict but also provided additional energy to it.\(^4\) There is a growing realization that unless root causes of the conflict, including endemic inequality, caste-based discrimination and untouchability remain unresolved, they could contribute to future instability.\(^5\)

In view of the importance of addressing the root causes of the conflict, including denial of ESCR, a set of recommendations was generated during the Universal Periodic Review (UPR) of Nepal’s human rights situation in 2011 (2068 BS) Such recommendations call upon Nepal to step-up efforts to achieve the effective realization of economic, social and cultural rights for the marginalized and vulnerable groups by ensuring that they are provided with adequate access to food, health, education and fair employment; taking appropriate measures to narrow the gap between the rich and the poor; and improving food safety of vulnerable groups, particularly indigenous people, former bonded labourers, Dalits, Muslims, those with disabilities and those infected with HIV/AIDS.\(^6\)

The nexus between the conflict and denial of ESCR, including the right to adequate food, is not peculiar to Nepal. It has been recognized as a global phenomenon.\(^7\)


of infrastructure. This signifies the importance of addressing the food rights issues in the post-conflict scenario.  

Similarly, it is also notable in this regard that FAO and WFP recognize unsustainable livelihood systems and poor food security outcomes as one of the five characteristics of protracted crises in 2010.

Against this backdrop, the root causes of conflict deserve to be addressed in order to achieve sustainable peace through preventing the recurrence of similar conflict in the future. It is therefore significant to tailor the post conflict legal as well as institutional reform initiatives towards effectively addressing the root causes of the violent conflict, including the denial of the right to adequate food. In the present context Nepal has opportunities to move towards achieving the goal of sustainable peace, including through constitution-making and legislative reform processes to address the root causes of the conflict. Furthermore, the ongoing initiatives of the Government of Nepal to prepare a National Human Rights Action Plan and a Concept Paper for the new National Development Plan for Nepal, serve as important opportunities to prioritize the legislative reform agenda in relation to the right to adequate food in the Government’s plans.

The Nepal Treaty Act, 1990 (2047 BS), a key piece of legislation, specifies the status of international law in the Nepalese legal system. Section 9(1) of the Treaty Act provides that in the case that the provision of a treaty to which Nepal is a party conflicts with the provisions of prevailing Nepalese laws, the latter assumes primacy over Nepalese law. Thus the effect of the provision is that in the case of conflict, the provisions of the human rights treaties, including the ICESCR, are applied as Nepalese law.

1.3 Existing situation

The right to adequate food demands the ability of all, including vulnerable groups, to either produce or procure food that is sufficient, safe and adequate to satisfy their nutritional needs. However, food and nutritional security represent a serious problem in Nepal, in particular in the hills and mountains of the mid- and far-western regions.

Poor capacity of farmers for food production, low agricultural productivity, substantial food loss, poor natural resource management, misuse of food and poor perceptions of local/indigenous food, dependency syndrome on food aid, poor food distribution, high levels of poverty, poor government capacity, regional disparities and social discrimination,

10 Interview with Mr Ramesh Dhakal, 15 March 2013.
11 Under the authority of Article 126(1) of the 1990 Constitution (identical to Article 156(2) of the Interim Constitution of Nepal), the Nepal Treaty Act was enacted by the then parliament.
poor basic services, high levels of malnutrition and lack of nutrition awareness, HIV incidence, rising food prices, poor political economic situation, limited functioning of traditional/indigenous community food safety net and high probability of disaster have all been identified as key factors affecting food and nutritional security in Nepal. According to WFP, malnutrition rates in Nepal are among the highest in the world. Forty-one percent of children under five are stunted, 29 percent are underweight and 11 percent are wasted. The prevalence of stunting in the hills and mountains of the mid- and far-western regions is extreme, with rates above 60 percent. Micronutrient deficiencies are also widespread; in particular, 46 percent of children 6–59 months, 35 percent of women of reproductive age and 48 percent of pregnant women are anaemic. In order to remedy such a situation, strong legal and institutional arrangements are crucial.

2 The right to adequate food under international human rights treaties

2.1 International legal protection of the right to adequate food in Nepal

Nepal has taken a positive step in terms of ratifying a significant number of international human rights instruments including the International Covenant on Economic Social and Cultural Rights (ICESCR).\textsuperscript{15} Other important international human rights instruments to which Nepal is a party include the International Covenant on Civil and Political Rights (ICCPR),\textsuperscript{16} the Child Rights Convention\textsuperscript{17} the Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),\textsuperscript{18} the International Convention on the Elimination of all Forms of Racial Discrimination (CERD),\textsuperscript{19} the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)\textsuperscript{20} and the Convention on the Rights of Persons with Disabilities (CRPD).\textsuperscript{21} In addition, Nepal is a party to a number of International Labour Organization (ILO) conventions protecting the interests and rights of wide range of groups, embracing labourers, children and indigenous people, and including the Worst Forms of Child Labour Convention (No. 182), Minimum Age Convention (No. 138) and ILO Forced Labour Convention (No. 29) and the ILO Convention No. 169 (which deals with the rights of indigenous and tribal peoples). However, Nepal is not a party to the Optional Protocol to ICESCR. Moreover, Nepal did not support

\textsuperscript{15} Accessed on 14 September 1990.
\textsuperscript{17} Accessed on 14 September 1990.
\textsuperscript{18} Ibidem.
\textsuperscript{19} Accessed on 13 January 1971.
\textsuperscript{20} Accessed on 22 April 1991.
\textsuperscript{21} Accessed on 7 May 2010.
The right to adequate food under international human rights treaties

The recommendation to ratify the Optional Protocol made by the member states during the first UPR of Nepal’s human rights situation.\(^{22}\) If it had ratified the Optional Protocol, Nepal could have further strengthened its commitment to realization of ESCRs, including the right to food.

The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly of the United Nations (UN) in 1948, is the first significant instrument that recognizes the rights to adequate food, together with a range of other human rights indispensable to live a life with human dignity. As provided under Article 25, everyone has the right to a standard of living adequate for the health and well-being of themselves and their family, including food among other necessities. Subsequently, the UDHR provision was further elaborated in the ICESCR.\(^{23}\) It is also noteworthy that the Covenant obligates all state parties to take measures to ensure that all are free from hunger, including through adopting measures aimed at promoting “production, conservation and distribution and measures designed to secure an equitable distribution of world food supplies in relation to need”.\(^{24}\)

To date crucial efforts have been made at different levels towards shaping and developing the normative framework of the right to food. In particular, the Committee on Economic, Social and Cultural Rights in 1999 elaborated on the normative contents and scope of the corresponding state obligations in relation to the right to adequate food through adopting a comprehensive analysis of the relevant part of Article 11 of the ICESCR.\(^{25}\) Similarly, the extensive commentaries on the various aspects of the right to adequate food produced by the respective UN Special Rapporteur\(^ {26}\) are also commendable in terms of sharpening the authoritative understanding of this right. The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines) are also important, and were adopted by the Council of the Food and Agriculture Organization of the UN at its Hundred and Twenty-seventh Session in November 2004. The Right to Food Guidelines provide guidance on how to understand and implement better the right to adequate food in nineteen different policy areas.

While unpacking the normative contents of the right to food and clarifying the corresponding state obligations through its General Comment no. 12, the Committee acknowledges the fact that the roots of the problem of hunger and malnutrition are


\(^{23}\) ICESCR, Article 11(1).

\(^{24}\) ICESCR, Article 11(2).

\(^{25}\) CESCR. 1999. General Comment No. 12: The Right to Adequate Food (Art. 11).

not lack of food but lack of access to available food because of the poverty experienced by a large segment of the world's population. According to the committee, food must be available “in a quantity and quality sufficient to satisfy the dietary needs of individuals”.  

Stressing the need for enhancing access to resources, including land, water and credit, in order to secure availability, the United Nations Special Rapporteur on the right to food observed that “the problem of hunger in rural areas is linked to the lack of access to resources such as land, lack of secure tenure, unjust sharecropping contracts, and lack of sufficient land to grow enough food to feed themselves”.  

Together with the need for increased availability of food, that which is available must be “free from adverse substances”, that is to say safe and must also be “acceptable within a given culture”. By virtue of cultural acceptability, there is a need to take into account the symbolic significance of food and food consumption, together with the awareness of the consumers regarding the nature of accessible food supplies. Last but not least, such food must be accessible, both physically and economically, and not only for now but also for the future. As stated by the Committee, economic accessibility means, “personal or household financial costs associated with the acquisition of food for an adequate diet that should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised”. By physical accessibility, adequate food must be within the reach of everyone. This also relates to the particular needs of those differently situated: who are not able to work, who are in prison, and who at a given time are neither in a position to grow food nor to earn money to buy it.

Accessibility now and for the future means food security or sustainability, that is to say, the availability and accessibility of food supplies for present as well as future generations. As stated by the Special Rapporteur, the right to adequate food does not mean “handing out free food to everyone”; rather it denotes that the states are “obliged to ensure for everyone under their jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger”.  

From an overall perspective, the right to adequate food guaranteed under international human rights law entails three levels of state obligation: obligation to respect, obligation to protect and obligation to fulfil. As elaborated by the Committee, the obligation

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31 Ibidem, para. 3.
32 Ibidem, para. 12.
33 Ibidem, para. 14 & 15.
to respect demands that the state refrain from measures that prevent access to adequate food. On the other hand, the obligation to protect requires the state to implement or enforce the regulations designed to ensure that the third parties (e.g. enterprises and individuals) do not deprive people of their access to adequate food. The obligation to fulfil entails proactive steps to facilitate access to food and strengthen food security. It also entrusts the state with a duty to become the “provider of last resort”, with appropriate arrangements to deal with emergencies and other situations in which people are not in a position to feed themselves.

While talking of the practical compliance with the aforesaid obligations, the issue of resource constraints comes at the forefront. However, it cannot be taken as a pretext to justify every failure of the state. Under the covenant, the state parties are required to take steps to realize the rights recognized "to the maximum available resources, with a view to achieving progressively the full realization of the rights recognized". In its General Comment 3 on the nature of state party obligations, the CESCR emphasized that even where the available resources are demonstrably inadequate, the obligation remains for a state party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. The Committee also considers that there are some aspects that must be regarded as seeking immediate effect. This includes the core minimum obligation to ensure freedom from hunger, meaning that the state must provide it irrespective of its available resources. Similarly, the guarantee in Article 2(2) of the covenant of non-discrimination in the exercise of the right to adequate food also takes an immediate effect. By virtue of these provisions, states are charged with the obligation to prove that they have made every effort to use the entirety of the resources at their disposal and to obtain international assistance. This is also understood to imply that the state is obligated to move as expeditiously as possible towards ensuring adequate food for all. While full realization of the right to food may take time, positive steps must be undertaken within a reasonably short time after ratification of the ICESCR, and should be deliberate, concrete and targeted.

34 ICESCR, Article 2.1.
36 CESCR. 1999. General Comment No. 12: The Right to Adequate Food (Art. 11), para. 14–17. According to the CESCR, the notion of the ‘minimum core’ of fundamental rights expresses the idea that the state must give priority to the most urgent needs of individuals.
37 Ibidem, para. 17.
38 States must guarantee that the right to food will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
39 ICESCR, Article 2.2. See also CESCR. 1999. General Comment No. 12: The Right to Adequate Food (Art. 11), para. 18 & 26.
The right to food has also been a part of a wide range of other binding and non-binding instruments, at international as well as regional level. Some of these international instruments are discussed below. Though the ICCPR, which was adopted in 1966 together with the ICESCR, does not contain any specific provision on right to food, the right to life guaranteed under Article 6 has been interpreted by the UN Human Rights Committee as requiring states parties to take positive steps "to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics". Such broad interpretation of right to life clearly indicates the inherent connection between food and other human rights.

The CEDAW is another significant instrument that prohibits discrimination against women, including in the field of employment, health care and in other areas of economic and social life. Bearing in mind the situation of women in poverty, the CEDAW establishes the right of women to adequate nutrition during pregnancy and lactation and requires states to take measures to ensure that rural women also have access, among other things, to resources, services and economic opportunities. Similarly, the Committee on the Rights of the Children (CRC) recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. In case of need, states parties are also obligated under the CRC to offer material assistance and support programmes, including those in relation to nutrition, clothing and housing. Furthermore, states are under the obligation to combat diseases and malnutrition, including through the provision of nutritious food and drinking water.

The right to adequate food is not only a matter of serious concern from the perspective of international human rights law but also as part of international humanitarian law. The 1949 Geneva Conventions and the Related Protocols, which form a body of International humanitarian law applicable to Nepal, prohibit the starvation of civilians as a means of combat and the destruction of objects indispensable for the civilian population,

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41 Such instruments include declarations, recommendations and resolutions.
42 The body responsible for monitoring implementation of the Covenant.
43 Human Rights Committee. 1999. General Comment No.6: The right to life, para. 5 (...the protection of this right requires that states adopt positive measures. In this connection, the Committee considers that it would be desirable for States Parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics).
44 Article 12.
45 Article 14.
46 Article 27.1.
47 Article 27.3.
48 Article 24.2.c.
49 By virtue of being State Party to the conventions and the optional protocols.
50 It should be noted that intentional starvation of civilians as a method of warfare is considered a war crime when committed in international armed conflict under the 1998 Rome Statute establishing a permanent International Criminal Court.
such as foodstuffs, agricultural area for food production, crops, livestock, drinking water installations, drinking water supplies and irrigation works. Under the 1949 Geneva Conventions, state parties to an armed conflict must allow humanitarian and impartial relief operations – including those aimed at providing food – when supplies essential for the civilian population are lacking. In addition, states must facilitate and protect these operations and must not divert or obstruct the passage of humanitarian assistance.

The Universal Declaration on the Eradication of Hunger and Malnutrition, 1974 explicitly recognizes the right to be free from hunger and malnutrition as an inalienable right of every man, woman and child and also declares that governments have responsibility to work together for higher production and more equitable and efficient distribution of food. The Declaration further provides that each state is responsible for removing obstacles to food production and providing proper incentives to the agricultural producer by policy reform.

The FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines) provide practical guidance to states and recommend actions to be undertaken in order to build an enabling environment for people to feed themselves in dignity and to establish appropriate safety nets for those who are unable to do so. The Right to Food Guidelines are not legally binding on states: they are encouraged to apply them in developing their legislation, strategies, policies, and programmes aimed at the realization of the right to food at the domestic level. The Right to Food Guidelines contain recommendations for state actions in the most important areas related to the realization of the right to food.

51 Article 54 of the Protocol Additional to the Geneva Conventions Relating to International Armed Conflicts, and Articles 69 and 70 of the Protocol Additional to the Geneva Conventions Relating to Non-International Armed Conflicts.

52 Article 55 of the Geneva Conventions of 1949 on the Protection of Civilian Populations in Times of War. See also Articles 70 and 71 of the Additional Protocol I.


54 See Articles 1 & 2.

55 Such actions include: promoting democracy and the rule of law including through implementing state policies in accordance with the principle of accountability and transparency; assessing the economic and social situation of the country including the degree of the food security and its causes; adopting a holistic and comprehensive approach to hunger and poverty reduction and promoting sustainable economic development; the instruments for achieving this comprise investment in productive activities and projects, improving the functioning of markets, access to employment and productive resources, etc.; improving the organization and structure of relevant public institutions and strengthening their performance; developing or strengthening national legal frameworks on the right to food (constitutions, bills of rights or legislation, regulations etc.) and providing appropriate mechanisms to protect those rights (through administrative, quasi-judicial and judicial procedure); addressing other right to food aspects relating to access to resources and assets (labour, land, water, sustainability, services),
They urge states to promote international cooperation, technical cooperation, external debt relief measures, international trade, official development assistance as well as international food aid.

Nepal’s performance in terms of the implementation of economic, social and cultural rights obligations, including in relation to the right to food, has been scrutinized by the CESCR through considering Nepal’s reports in relation to ICESCR. The Committee has so far considered the initial and the second periodic report of Nepal on the implementation of the ICESCR and adopted a set of concluding observations respectively. Nepal’s third periodic report is under consideration of the Committee. A number of concluding observations issued by the Committee relate to the right to adequate food. The Committee, in particular, recommended:

- strengthening the efforts to promote labour-intensive industries and increase productivity in the agricultural sectors;
- expanding the special programmes for ex-Kamaiyas and ex-Haliyas, Dalits, indigenous peoples and groups, and particularly women belonging to these groups, in the rural areas as a matter of priority;
- setting up minimum wage at a sufficient level to enable workers and their families enjoy an adequate standard of living and also carry out periodic reviews of the minimum wage;
- establishing specific mechanisms and procedures to monitor the implementation of such strategies and evaluate the progress achieved in combating poverty effectively, including among the most disadvantaged and marginalized groups;
- taking urgent steps to ensure food security and access to water for all, particularly those belonging to the most disadvantaged and marginalized groups;
- making sure that agricultural policies are aimed effectively at improving not only productivity and commercialization but also access and distribution;
- implementing specific measures with a view to enhancing the participation of the lower castes in the production, distribution and consumption of food.

At the same time, the Committee sought detailed information about the extent of food insecurity, the groups most vulnerable to it, and the concrete measures envisaged to address it. Also the Committee drew the attention of Nepal to its general comment 12 (1999) on the right to adequate food and general comment 15 (2002) on the right to water.
2.2 Status of international human rights treaties in Nepalese law

The above discussion informs us that Nepal is under international legal obligations to respect, protect and fulfil a wide range of human rights for the Nepalese, including the right to adequate food. By virtue of its supremacy clause, the Interim Constitution is the supreme law of the land. The Supreme Court also clarified in a number of cases under the 1990 (2047 BS) Constitution, the Constitution being supreme over all laws, including international law. The Interim Constitution does not include provisions relating to how international law (either treaty or customary law) should be treated under the Nepalese legal system. Though it does not directly deal with the question of whether international law is to be deemed part of the law of the land, the Interim Constitution in its Chapter on Responsibilities of the State does refer to the obligation to implement effectively the international treaties and agreements to which Nepal is a party. This provision is yet to be interpreted, especially with respect to how this responsibility should be met. But, as a constitutional obligation of the state, it entrusts the judiciary, as a part of the state, to make harmonious interpretation so as to facilitate the effective implementation of the international treaties to which Nepal is a party.

Under Article 132 of the Interim Constitution, the NHRC is under a constitutional duty to ensure respect for, protection and promotion of human rights and their effective implementation. As defined by the National Human Rights Commission Act, 2012 (2068 BS), ‘human rights’ means “rights related to life, liberty, equality and dignity of a person provided by the Constitution and other prevailing laws and this term also includes the rights contained in the international treaties regarding human rights to which Nepal is a party”. It clearly mandates the Commission to act upon the human rights treaties even if there is no domestic legal provision supporting the particular right in question.

It is also notable that the Constitution empowers the courts to deliver justice not only in accordance with the constitutional provisions and other laws but also in accordance with “recognized principles of justice”, which offers an opportunity for the courts to read into this phrase the legal principles and standards that are incorporated under the international treaties to which Nepal is a party.

56 For detailed discussion, see Chapagai, R.P. 2009. Empowering Women Through Combating Gender Discrimination: Litigation Experiences of Nepal, Nayadoot (English Special Issue), Nepal Bar Association, Kathmandu.
58 Interim Constitution of Nepal. 2007. Article 33(m).
59 Under Article 100(1) of the Interim Constitution, the “courts” are defined to include the Supreme Court, Appellate Court and District Court, as well as special types of courts, judicial institutions or tribunals established and constituted by law for the purpose of hearing special types of cases.
60 Interim Constitution of Nepal, 2007. Article 100 (1).
The Nepal Treaty Act, 2047 (1990)\(^{61}\) remains the key piece of legislation dealing with the subject of treaties. This Act sets out norms governing the ratification process of treaties as well as describing their effect in Nepal. A key provision is Article 9(1), which provides, “In case the provision of a treaty to which the Government of Nepal has become a party following its ratification, acceptance or approval by the Parliament conflict with the provisions of current laws, the latter shall be invalid to the extent of such conflict for the purpose of that treaty, and the provisions of the treaty shall be applicable in that connection as Nepal law”.\(^{62}\) Thus the effect of the provision is that in the case of conflict between provisions under ratified treaties and those under Nepalese laws, the provision(s) of Nepalese law is invalid to the extent of such conflict. In these circumstances, the provisions of the human rights treaties including the ICESCR are applied as Nepalese law in such a context. Thus, these constitutional and the Treaty Act provisions provide a strong basis for the judiciary to benefit from the treaties in order to shape and develop the Nepalese legal regime on the right to adequate food. There has so far been an increasing judicial trend to use treaty provisions for invalidating legislative and administrative actions, for ordering the Government to take legislative and other measures towards protection and promotion of human rights and for filling in the gap of law to prompt practical enjoyment of the rights.\(^{63}\)

In the context of the ongoing constitution-making process, there has also been a discussion on what should be the status of international human rights law within the framework of a new constitution. One of the suggestions made by the human rights communities is that the status of international human rights treaties be upgraded through including an explicit provision in the new constitution\(^{64}\) or stipulating a requirement for the courts to interpret constitution and law in harmony with international human rights law.\(^{65}\)

\(^{61}\) Under the authority of Article 126(1) of the 1990 Constitution (identical to Article 156(2) of the Interim Constitution), the Nepal Treaty Act was enacted by the then parliament.

\(^{62}\) As defined by the Section 2(M) of the Interpretation of Statute Act, Nepalese law does not include constitutional provisions.

\(^{63}\) See, chapter on Judicial Remedies.

\(^{64}\) E.g. Constitution of Argentine Nations, section 75(22): This article provides certain international human rights instruments, including the ICESCR, with “constitutional hierarchy”. Similarly the Kosovo Constitution 2008 also provides for direct application of certain international human rights instruments.

\(^{65}\) E.g. South African Constitution. 1996, Article 39: Under this article, South African courts, and other legal bodies are obligated to consider international law when interpreting the Bill of Rights under the South African Constitution.
3 Legal framework concerning the right to adequate food

3.1 Constitutional protection of the right to adequate food

Following the (CPA), the Interim Constitution was adopted with the aim to write a new constitution through a Constituent Assembly elected by Nepali people. The Constituent Assembly elected in 2008 came to its dissolution with the termination of its extended term without adopting the new constitution. The Constituent Assembly has been elected for its second term in November 2013 and is currently working to accomplish the constitution making process.

Against this backdrop, the Interim Constitution of Nepal, 2063 (2007) ("Interim Constitution") remains a key source of Nepalese constitutional law that provides a fundamental legal basis for the protection and promotion of human rights of all Nepalese people. Though Nepal has the tradition of constitutional protection of basic rights and freedoms as “fundamental rights”, constitutional protection of economic and social rights is a new phenomenon. Until the adoption of the Interim Constitution, the fundamental rights were essentially confined to civil and political rights. Unlike previous constitutions, the Interim Constitution lists a comprehensive catalogue of fundamental rights that

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66 Interim Constitution came in force on 15 January 2007 replacing the 1990 Constitution. The Interim Constitution is intended to exist until a new Constitution is adopted by the Constituent Assembly of Nepal.

67 Interim Constitution came in force on 15 January 2007 replacing the 1990 Constitution. The Interim Constitution is intended to exist until a new Constitution is adopted by the Constituent Assembly of Nepal.

68 Interim Constitution of Nepal. 2007. Article 1, clause 1: this Constitution is the fundamental law of Nepal. All laws inconsistent with the constitution shall, to the extent of such inconsistency, be void.

69 Previous written constitutions of 1951, 1959, 1962 and 1990 had also guaranteed a number of rights and freedoms as “fundamental rights”.
substantially include a significant number of ESCRs. At the same time, the Constitution, under the chapter of state obligations, directive principles and policies, prioritizes a number of state obligations, principles and policies which are relevant for the right to adequate food. Key fundamental rights and directive principles are discussed below.

### 3.1.1 Fundamental guarantees in relation to the right to adequate food

The *Interim* Constitution guarantees a significant number of economic, social and cultural rights impacting upon the enjoyment of the right to adequate food. Most importantly, Article 18 of the *Interim* Constitution provides that “every citizen shall have the right to food sovereignty as provided for in the law”. Similarly, this also protects the right to employment for every citizen and the right to social security for women, labourers, the aged, disabled as well as incapacitated and helpless citizens. Both are also subject to the provision made by law. As the constitution has made these rights subject to the legislation, there is need for a parliamentary Act in order to make concrete claims under these rights guaranteed by the constitution. It is also noticeable that the subsequent processes of judicial review and public interest litigation before the Supreme Court of Nepal have resulted in ordering the Government to adopt legislative and other measures consistent with these constitutional provisions. However, such laws are yet to be enacted. The right to social justice under Article 21 entitles women and other marginalized groups to participate in state structures on the basis of proportional inclusion. Effective implementation of this provision is supposed to influence the decision-making at different levels in favour of such groups.

With regard to the right to adequate food, the constitutional right to live with dignity is also of particular importance. The constitution declares that every person shall have the right to live with human dignity. Subsequently the Supreme Court has recognized the link between the right to food and other ESCR with the right to live with dignity in a number of cases. This has formed a strong basis for making constitutional claims in relation to the right to adequate food.

Similarly, the Constitution provides for a comprehensive regime on the right to equality and non-discrimination. The right to equality clause under the *Interim* Constitution

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70 See, *infra* notes 574 & 575.

71 *Interim* Constitution of Nepal. 2007. Article 12, Clause 1: Every person shall have the right to live with dignity, and no law which provides for capital punishment shall be made.

72 See, discussion of the Supreme Court decisions in Chapter 4.

73 *Interim* Constitution of Nepal. 2007. Article 13. “(1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws. (2) There shall be no discrimination against any citizen in the application of general laws on grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction or any of these. (3) The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, gender, origin, language or ideological conviction or any of these. Provided that nothing shall be deemed to prevent the making of special provisions
guarantees "equality before the law" and "equal protection of law" to everyone regardless of race, caste, gender, religion, tribe, origin, language or ideological conviction or any of the stated grounds. Similarly, it prohibits discriminatory application of the law against any citizen by the state. The same clause reinforces that the state does not discriminate among citizens on the stated grounds. At the same time, this also empowers the state to make a special legal arrangement for the advancement and empowerment of special categories of people, including women, Dalits, indigenous ethnic tribes, children, disabled and other economically, socially or culturally marginalized people. This provision has been utilized to rationalize the adoption of affirmative action or protective measures including a quota system or reservation policy in relation to the stated categories of people. Equal remuneration and social security between men and women for the same work is also ensured under Article 13(4) of the *Interim* Constitution.

Together with the prohibition of discrimination on the basis of caste under Article 13, the Constitution also provides for a separate guarantee of the right against untouchability and caste discrimination. Under Article 14, no form of caste discrimination and untouchability is allowed. It establishes criminal liability of the perpetrator and entitles the victim to compensation. This also prohibits denial of access or use of any public places, goods, services or conveniences on the basis of caste. Demonstration, dissemination and encouragement of caste superiority or discrimination are also prohibited and punishable by law.

The *Interim* Constitution has also given special consideration to children by stipulating a separate fundamental right clause. A set of child rights guarantees under the Constitution includes the right to identity and name; right to be nurtured, basic

by law for the protection, empowerment or advancement of women, Dalits, indigenous ethnic tribes [Adivasi Janajati], Madhesi or farmers, labourers or those who belong to a class which is economically, socially or culturally backward, or children, the aged, disabled or those who are physically or mentally incapacitated. (4) There shall be no discrimination with regard to remuneration and social security between men and women for the same work”.

74 *Ibidem*, Article 13(3) (Proviso).
75 *Ibidem*, Article 14. “Right against untouchability and racial discrimination (1) No person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability in any form. Such a discriminatory act shall be liable to punishment and the victim shall be entitled to compensation as provided by the law. (2) No person shall, on the ground of caste or tribe, be deprived of the use of services, conveniences or utilities available to the public, or be denied access to any public place, or public religious places, or be prevented from performing any religious act. (3) No person belonging to any particular caste or tribe shall, in relation to the production or making available of any goods, services or conveniences, be prevented from purchasing or acquiring such goods, services or conveniences; and no such goods, services or conveniences shall be sold or distributed only to members of a particular caste or tribe. (4) No one shall be allowed to purport to demonstrate superiority or inferiority of any person or a group of persons belonging to any caste, tribe or origin; or to justify social discrimination on the basis of caste and tribe; or to disseminate ideas based on caste superiority or hatred; or to encourage caste discrimination in any form. (5) Any act contrary to the provisions of clauses (2), (3) and (4) shall be punishable in accordance with law”. 


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health and social security; right against physical, mental or other form of exploitation; right of helpless, orphan, mentally retarded, conflict victim, displaced, vulnerable and street children to special facilities from the state; right of minors against their employment, engagement or use in a factory, mine or similar other hazardous work or in the army, police or conflict.  

The Interim Constitution also provides a stand-alone fundamental right guaranteeing protection of women from all forms of gender-based violence and discrimination under Article 20. According to Article 20(3) of the Interim Constitution, no physical, mental or any other form of violence shall be inflicted on any woman and such violence shall be punishable by law. In addition, Article 20 recognizes reproductive health and other reproductive rights as a fundamental right. Following the gender equality jurisprudence developed by the Supreme Court of Nepal, the equal rights of sons and daughters to ancestral property are guaranteed under Article 20(4).

Consistent with the jurisprudence developed by the Supreme Court under the 2047 [1990] Constitution, the Interim Constitution also guarantees the right to live in a healthy environment. It is also noteworthy that Article 27 of the Interim Constitution contains an explicit right to information. Under this provision, every citizen is entitled to demand and obtain information on any matter of concern to themselves or to the public. Other important constitutional guarantees include the right against exploitation under Article 197 and other labour rights under Article 30. By virtue of Article 19, every person is protected against human trafficking, slavery, bonded labour. Similarly, the guarantees under Article 30 contain the right of every employee and worker to proper work practice and every employee and worker is entrusted with “the right to form trade unions, to organize themselves and to engage in collective bargaining for the protection of their interests as provided for in the law”. The Interim Constitution guarantees the right to constitutional remedy against the violation of the aforesaid fundamental rights.

76 Ibidem, Article 22 (1) reads, “Every child shall have the right to his or her own identity and name. (2) Every child shall have the right to be nurtured, to basic health and social security. (3) Every child shall have the right not to be subjected to physical, mental or any other form of exploitation. Any such act of exploitation shall be punishable by law and any child so treated shall be compensated as determined by law. (4) Helpless, orphaned or mentally retarded children, children who are victims of conflict or displaced and street children at risk shall have the right to receive special privileges from the State to ensure their secure future. (5) No minor shall be employed in factories, mines or in any other hazardous work nor shall be used in army, police or in conflicts”.

77 Ibidem, Article 29 (1) reads, “ Every person shall have the right against exploitation. (2) No person shall be exploited in the name of custom, tradition and practice, or in any other way. (3) No person shall be subjected to human trafficking, slavery or bonded labour. (4) No person shall be subject to forced labour. Provided that nothing in this clause shall prevent the enactment of a law requiring citizens to be engaged in compulsory service for public purposes”.

78 Ibidem, Article 32.
The constitutional remedy clause reads; “The right to proceed in the manner set out in Article 107 for the enforcement of the rights conferred in this Part is guaranteed”. By virtue of this provision, no one aggrieved person is required to invoke alternative remedy. Everyone has direct access to the extraordinary jurisdiction of the Supreme Court under article 107 of the constitution.79

3.1.2 Directive principles

The Interim Constitution has also followed the constitutional tradition of prescribing a set of directive principles of state policies that are considered to guide the executive and legislative actions. Under Article 33 of the Interim Constitution, the state is under a number of corresponding obligations impacting upon the enjoyment of the right to food. Key obligations include: adopting a policy to establish the right of citizens to food security,80 housing, and employment, enabling marginalized and disadvantaged groups to participate in all state structures on the basis of proportional inclusion;81 eliminating all forms of feudalism through formulating a common minimum programme on social transformation,82 adopting a policy on scientific land reform,83 protecting and promoting national industries and resources,84 and adopting a policy of ensuring socio-economic security including through providing land to the landless, bonded labourers [Kamaiyas], tillers [Haliyas], farm labourers and shepherds.85 The state is also under an obligation to eliminate discriminatory laws86 and effectively implement international treaties to which Nepal is a party.87

Similarly, numerous other directive principles of state policies relate to the right to food. Under Article 34, the state is ordained to promote conditions of welfare and thereby protect the lives, property, equality and liberty of the people and eliminate all types of discrimination.88

79 See, detailed discussion about judicial powers of the Supreme Court in Chapter 3.
80 Clause (h): To pursue a policy of establishing the rights of all citizens to education, health, housing, employment and food sovereignty.
81 Clause (d1): To enable Madhesi, Dalits, indigenous ethnic groups [Adivasi Janajati], women, labourers, farmers, the physically impaired, disadvantaged classes and disadvantaged regions to participate in all organs of the state structure on the basis of proportional inclusion.
82 Clause (e): To formulate a common minimum programme for socio-economic transformation to eliminate all forms of feudalism and implement it gradually.
83 Clause (f): To pursue a policy of adopting scientific land reform programmes by gradually ending feudalistic land ownership.
84 Clause (g): To follow a policy of protecting and promoting national industries and resources.
85 Clause (i): To adopt a policy of ensuring socio-economic security and provide land to the economically backward classes, including the landless, bonded labourers [Kamaiyas], tillers [Haliyas], farm labourers and shepherds.
86 Clause (m): To implement effectively international treaties and agreements to which the state is a party.
87 Clause (n): To repeal all discriminatory laws.
88 Sub-article (5): The social objective of the state shall be to establish and develop a healthy social life
The state is obligated to adopt a policy of raising the standard of living of the general public by fulfilling basic needs, developing the agricultural sector, making special provision for social security, making provisions for reservations, accelerating rural development, adopting special provisions on positive discrimination for minorities and other marginalized groups, providing a minimum required piece of land for settlement to the liberated bonded labourers [Kamaiyas] having determined their exact numbers, and making legal provision for allowances to the aged, incapacitated women and the unemployed.  

**Gaps and weaknesses**

FAO recognizes the importance of the ongoing constitution-making process of Nepal for strengthening the constitutional protection of human rights of all within Nepal. The constitution-making process offers an important opportunity to assess the existing constitutional guarantees in light of Nepal’s treaty obligations and address the shortcomings. With the aim of assisting the authorities and the community in this process of crafting human rights provisions of the new constitution, FAO offers the following comments that focus in particular on different aspects impacting upon the right to adequate food.

**Implementing Legislation:** Despite the fact that there are a number of food-rights-related guarantees under the *Interim Constitution* and the international human rights treaties, there is a lack of a framework legislation that gives effect to these guarantees. However, it appears that there has been a growing realization within the government that there is a need for specific food rights legislation in view of the international human rights

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89 Sub-article (1): The state shall pursue a policy of raising the standard of living of the general public by fulfilling basic needs such as education, health, transportation, housing, and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development of the country. (6) The State shall develop the agriculture sector as an industry by encouraging farmers and increasing productivity, and by creating conditions for economic progress of the majority of the people who are dependent on agriculture. (9) The State shall pursue a policy of making special provision for social security for the protection and welfare of single women, orphans, children, the helpless, the aged, disabled, incapacitated persons and tribes on the verge of extinction (10) The State shall pursue a policy which will help to uplift the economically and socially backward indigenous ethnic groups [Adivasi Janajati], Madhesis, Dalits, as well as marginalized communities, and workers and farmers living below the poverty line by making provisions for reservations in education, health, housing, food security and employment for a certain period of time. (13) The State shall pursue the policy of creating conditions to gradually accelerate rural development, keeping in view the welfare of majority of the rural population. (14) The State shall pursue a policy of making special provision on the basis of positive discrimination for the minorities, landless, squatters, bonded labourers, persons with disability, backward communities and sections, and the victims of conflict, including women, Dalits, indigenous tribes [Adivasi Janajati], Madhesis and Muslims. (15) The State shall pursue a policy of providing a minimum required piece of land for settlement to the liberated bonded labourers [Kamaiyas] having determined their exact numbers. (17) The State shall pursue a policy of making legal provision for allowances to the aged, incapacitated women and the unemployed.
law and the Interim Constitution. While considering legislative initiatives, consideration should be given to addressing the gaps of a normative framework dealing with food security issues. It is important for such legislation to ensure that the effective legal protection, as well as institutional apparatus necessary to implement such law, is in place.

Right to equality (Article 13): Though Article 13 of the Interim Constitution contains important guarantees of non-discrimination, it does not prohibit all internationally prohibited forms of discrimination, including those based on property, birth or other status. At the same time, it does not deal with grounds that come to be established as prohibited grounds of discrimination through human rights jurisprudence: including disability, sexual orientation and age. It is of great value to get these grounds added as prohibited grounds of discrimination, leaving the list open-ended. In order to reflect the varied forms in which discrimination occurs, especially in the context of economic, social and cultural rights, the Constitution may also include a more elaborated understanding of discrimination: in particular to include references to both direct and indirect discrimination. Similarly, in its current form, Article 13 does not fully guarantee the right to substantive equality; rather, it only empowers the state to make special legal arrangement for specified groups. In order to ensure that formally equal rules do not lead to discrimination against a particular group, the Constitution could explicitly recognize the obligation of the state to ensure substantive equality between persons and groups. It is positive to note that equal remuneration for work of equal value is guaranteed between men and women. However, this provision fails to recognize the caste-based discrimination in terms of wages. The prohibition can be extended to protect people from the practice of discriminatory wages on the basis of caste.

Right to Social Security (Article 18): Instead of being expressed to be applicable to all, the right to social security under the Interim Constitution is limited to “women, labourers, the aged, the disabled, as well as incapacitated and helpless citizens”. By way of contrast, under the ICESCR, state parties recognize the “right of everyone to social security, including social insurance”.

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90 Interview with Ramesh Dhakal, Joint-Secretary/Head of Human Rights Division, Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu, dated 15 March 2013.

91 For example, Article 9(3)(4) of the South African Constitution provides: 3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; 4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

92 ‘Substantive equality’ requires one to take into account relevant differences between groups in order to provide for equal treatment: e.g. recognizing that to provide equal access to public buildings for able and disabled persons, it is necessary to provide for purpose built, easy access to buildings. Another example is that it is part of recognizing the right to access to health services to recognize women’s right of access to women’s reproductive health services.
To make it into line with ICESCR and the major ILO conventions, this provision should be revised to make the right available to all, including the stated categories.

Rights of women: Article 23 contains an important recognition of the right not to be discriminated against on the basis of gender, women’s rights to reproductive health and a prohibition on violence against women, women’s equal rights to ancestral properties, and a right to participation in the structures of the state. This clause could be further strengthened if the constitution had a more explicit statement recognizing that men and women are equal and are entitled to equal rights to enjoy all human rights including ESCR. Consideration might also be given to recognizing the range of ESCR outlined in CEDAW as well as explicitly recognizing, as a result of notions of substantive equality, rights to maternity leave.

Right to work: While proper work practices are protected under Article 30(1), there is no detailed protection of fair wages, a decent living, safe and healthy working conditions, equal opportunity to be promoted in his/her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence, rest leisure and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays (Article 7, ICESCR). Consideration might be given to revising this article to incorporate all relevant work-related rights protected under the ICESCR.

Limitations on rights: At present, the scope of many of the economic, social and cultural rights, including the right to food sovereignty recognized in the Interim Constitution, is limited by references to the existing rights to the extent that they are provided for ‘by law’. Such rights, among others, include: the right to employment as provided for in the law (Article 18(1)), the right to food sovereignty as provided for in the law, the right to social security as provided for in the law for women, labourers, the aged, disabled, incapacitated, and helpless citizens (Article 18(2)), the right to form trade unions, organize themselves and engage in collective bargaining in accordance with the law (Article 30(2)), and the right to legal aid to indigent people as provided for in the law. These provisions indicate significant potential limitations on the rights as they can be restricted by existing and future laws. For example, if the Constitution provides that legal aid for the indigent is to be “in accordance with the law”, and no law provides for such assistance, or it provides for only nominal assistance the Constitution has not provided a real guarantee.

Similarly, the Interim Constitution not only fails to guarantee the freedom from hunger as an enforceable fundamental right, but also to fully incorporate the right to provide an adequate standard of living for a person and his/her family, including adequate food,

94 For example: Section 17 of the East Timor Constitution provides, “Women and men shall have the same rights and duties in all areas of family life and political, economic, social, cultural”. 
Legal framework concerning the right to adequate food, clothing and housing, and to the continuous improvement of living conditions protected under Article 11 of ICESCR. Instead of such unqualified references to existing/future laws, it would be preferable for rights to be stated in their full form in the Constitution. It is therefore important to give serious consideration to including ESC rights consistent with the ICESCR in the fundamental rights chapter of the Constitution.

Compensatory rights: Similarly, there are a number of entitlements provided for under the *Interim* Constitution whose real effect is not defined in the Constitution, but left to later law. Examples of this include the right to compensation if discriminated against on the basis of caste, descent, community or occupation, as provided by the law (Article 14(1)), the amount/basis of compensation of requisitioning/acquisition of property by the state as prescribed by law (Article 19(3)), and compensation for exploitation of children as determined by law (Article 22(3)). While the detail of some of these topics is appropriately left for later legislation (e.g. the mechanism for claiming compensation), the principle of fair and adequate compensation for violations should be set out in the Constitution.

Enforceability of directive principles: Some aspects of economic, social and cultural rights picked up in other chapters of the *Interim* Constitution, including under the Responsibilities of the State, under Directive Principles of the State and under State Policies are not justiciable rights. Article 36 stipulates that “no questions [are] to be raised in any court as to whether provisions in this part are implemented or not”. Since there has been already a clear judicial trend of enforcing the directive principles if found to be disregarded by the Government, it may not be appropriate to provide for non-justifiability of the provisions under this chapter. Bearing in mind the judicial precedents in favour of the enforceability

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95 Article 11 reads: "(1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. (2) The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need". (Emphasis added).

96 Article 33 (d), (e), (f), (h), (i), (m), (n).

97 Article 34 (1), (2), (4), (5).

98 Article 35 (1), (3), (4), (5), (7), (8), (9), (10), (14), (15), (17) & (18).

99 In Yogi Narahari Nath et al. v. Rt. Honourable Prime Minister Girija Prasad Koiralaa and Others [1996] NKP 33, Supreme Court held, “Despite the non-enforceability of the Directive Principles and state policies provided under the constitution, the Court can allude to any decision of the Government made disrespecting the Directive Principles and the policies”. 
of the directive principles in certain circumstances, it would be preferable for the new Constitution not to have such a provision that bars justiciability outright.

**Right to constitutional Remedy (Article 32):** While there is the right to seek a constitutional remedy under Article 32, there is no other general provision concerning the right to a remedy for human rights violations, or recognition of the state’s obligation to ensure access for gaining a remedy and effective redress, including reparations. It is noticeable that the text fails to provide an adequate guarantee of the right to effective remedy and reparations.

As mere stipulation of the right to seek constitutional remedy is insufficient, the right to constitutional remedy clause needs to be amended to ensure that any person whose rights or freedoms (including ESCR) are violated shall have an effective remedy (constitutional and legal) and adequate reparations (compensation, restitution, rehabilitation, satisfaction and guarantee of non-repetition of violations). It would also be of benefit to provide for a separate interpretive clause, which requires the provisions of the Constitution be interpreted consistently with the meaning of human rights in the international human rights treaties to which Nepal is a party. This would create harmony among the constitutional provisions, the treaty provisions, facilitating courts and those administering the Constitution to draw upon the extensive international jurisprudence on human rights issues.

### 3.2. Review of statutory and regulatory provisions related to the right to adequate food

#### 3.2.1 Framework law on the right to food

As discussed above, the *Interim* Constitution of Nepal sets out a strong constitutional basis to move towards the progressive realization of the right to adequate food. In addition, the ongoing constitution-making process also offers a wonderful opportunity to strengthen the constitutional protection. However, unless such fundamental legal provisions are translated into statutory norms, the rights-holders hardly benefit from the constitutional guarantees. Even eight years after the promulgation of the *Interim* Constitution, there is no framework legislation that gives an effect to the constitutional guarantees, including the right to food sovereignty and social security.

The framework legislation is a *sine qua non* order to supplement constitutional provisions, enumerate state obligations and provide for principles that underpin all food security programmes and policies that are left without legal backing. While ensuring better coordination among responsible institutions, it can also pave the way for more constructive participation of civil society.
It is noticeable that the UN Committee on ESCR, in its General Comment No. 12,\(^{100}\) presents the framework legislation as a major instrument in the implementation of the national strategy concerning the right to food. As enunciated by the Committee, the framework law should include provisions on its purpose; the targets or goals to be achieved and the time frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures.

In order to guide states in their efforts towards legislating the right to food, FAO published the *Guide on Legislating for the Right to Food* in 2009. As observed in the Guide, framework laws are considered useful measures to articulate the right to food in more detail and to provide a means of enforcement at the administrative, judicial and quasi-judicial levels. It further elaborates on constitutionally guaranteed rights in a way to make them operational in practice. Moreover, the framework law can give a precise definition of the scope and content of this human right, set out obligations for state authorities and private actors, establish necessary institutional mechanisms and provide the legal basis for subsidiary legislation and other necessary measures to be taken by the competent state authorities. By clarifying the normative content of the right to food, a framework law would also provide individuals with a legal entitlement that they can enforce before the competent administrative and judicial authorities. In this way, it can also be the basis for strengthening the role of the judiciary in implementing the right to food among these, thereby enhancing accountability of the Government for its actions or inactions affecting the realization of the right to food.\(^{101}\)

The Guide further elaborates on purposes that can be fulfilled through adopting such framework legislation as it can assist public officials in avoiding possible infringements of the right to food in the first place and establish or provide the basis for the establishment of the institution that will take the lead in the coordination of its enforcement. Its role is also obvious in defining the entitlement to the minimum amount of food that persons have and that the state is required to provide immediately and offer a legal basis for adopting special measures needed to correct for existing inequalities within society with respect to access to food or to means for its procurement. Even the legislation implementing the right to food can stipulate the financial arrangements needed for its realization in practice.\(^{102}\)

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\(^{100}\) CESCR. 1999. *General Comment No. 12: The Right to Adequate Food (Art. 11).* E/C.12/1999/5. (General Comments, Benchmarks and framework legislation).


\(^{102}\) *Ibidem.*
Drawing on the comparative experiences on the right to food, the Special Rapporteur on the right to food presents a list of the advantages of the framework legislation. These include: (1) institutionalization of a coherent and integrated approach, through the creation of an independent council formed by relevant Government ministries and institutions and members of civil society, associations of food producers and the private sector, which will provide advice to the Government on matters related to food and nutrition security; (2) grounding of national policies and programmes in a society-wide consensus, increasing their survival in the face of changes in governments; (3) predictability and ring fencing of resources for food and nutrition programmes, possibly through the establishment of a national fund; (4) strengthened accountability and institutional oversight of food and nutrition security programmes, including on the way information is collected and programmes assessed, increasing transparency and safeguards against the use of political criteria in the targeting of programmes.\(^{103}\)

In Nepal, there has been increasing dialogue and discussions accentuating the need for specific legislation on right to food that gives effect to all-important aspects, including food security and sovereignty. For instance, the FAO workshop of stakeholders convened in August 2013 came up with a strong recommendation for adoption of a framework law.\(^{104}\) Similarly, a recent civil society consultative meeting of stakeholders on identifying policy issues for future framework legislation on the rights to adequate food in Nepal also stressed the need for a special law that addresses food-rights-related grievances, imposes penalties and provides compensation to the affected individuals, groups and populations and also offers a measure of remedy if violation of the right occurs or is likely to occur. The necessity of the framework was realized by the participants, among others to define who constitute vulnerable groups in relation to the enjoyment of the right to adequate food and make an institutional arrangement responsible for advising on policy issues. Nutritional security, access to remedy, entitlements to get food and cash transfers, recognition of the right to seed and local agricultural production, and cultural elements embedded in the way people produce, store and consume food (i.e. Tharus, Bote and Majhi) are among the other issues that the participants suggested the framework legislation addresses.\(^{105}\)


3.2.2 Social protection and security

While food insecurity is found throughout Nepal, it affects certain groups more than others. Dalits, women, children, Adivasi Janajati, Kamaiyas, Haliyas and Haruwas (bonded labourers) and people living with or affected by HIV/AIDS are among the most vulnerable.\textsuperscript{106} For those individuals or groups unable to enjoy the right to food by the means at their disposal, it is the duty of the state to ensure social protection so as to enable them to enjoy the right to food. The legislative framework for social security and entitlements play pivotal roles in providing legal entitlements and creating conducive environments for these groups to enjoy the right to food. It is therefore important to create a set of social protection entitlements under law.

Although no comprehensive legislative framework on social security exists, there are a number of constitutional and statutory provisions that directly or indirectly deal with the access of individuals and groups to resources and other means in terms of realizing their food rights. The \textit{Interim} Constitution’s important guarantees in this regard include the right to live with dignity,\textsuperscript{107} the right to employment and social security,\textsuperscript{108} and the right to food sovereignty.\textsuperscript{109} Similarly, the guarantee of non-discrimination, including with regard to remuneration and social security, the right against untouchability and racial discrimination are also notable. The Constitution has also made provision for protective discrimination with the objective of uplifting specific groups.\textsuperscript{110} Also, the Chapter of Directive Principles and Policies of State also refers to food security, employment, food sovereignty, social security of oppressed and depressed classes, providing relief and rehabilitating victims of armed conflict etc.\textsuperscript{111} The state policies especially focus on the social security of the weaker sections.\textsuperscript{112}

The Country Code’s Chapter on Pauper provides for social protection of people living in extreme poverty. Destitute children, the elderly and women unable to subsist due to lack of property, employment or other reasons are entitled to protection from the state.\textsuperscript{113}

\textsuperscript{107} \textit{Interim} Constitution of Nepal, 2007, Article 12(1).
\textsuperscript{108} \textit{Ibidem}, Article 18(2).
\textsuperscript{109} \textit{Ibidem}, Article 18(3).
\textsuperscript{110} \textit{Ibidem}, Article 13(3). The provision reads: “provided that nothing shall be deemed to prevent the making of special provision by law for the protection, empowerment or advancement of the interest of women, Dalit, indigenous ethnic tribes, Madheshi, or peasants, labourers or those who belongs to a class which is economically, socially or culturally backward and children the aged, disabled and those who are physically or mentally incapacitated”.
\textsuperscript{111} \textit{Ibidem}, Article 33.
\textsuperscript{112} \textit{Ibidem}, Article 33 (J).
\textsuperscript{113} Muluki Ain (Country Code), Chapter on Pauper, Clauses 3, 4 & 5.
The local authorities, including the Chief District Officer, Municipalities and Village Development Committees, are obligated to arrange for their subsistence and maintenance. While distributing rations to the protected persons, priority is given to the disabled, orphans and destitute children, the sick and women without earnings and ability to farm. Though these provisions have been in force since the time the Code came in existence in 1964, those living in extreme poverty have rarely benefited from these provisions due to the lack of initiatives in implementation.

The Poverty Alleviation Fund Act of 2006 is a special item of law dealing with poverty. For the first time, the Poverty Alleviation Fund Act, 2006 has provided a broad statutory definition of ‘poor’, covering a person or a group that falls below the national or regional poverty line specified by the Government. This further includes persons or groups marginalized in view of human development indicators such as education and health, and people excluded from the national development process in view of gender or social exclusion. Most importantly, the Act has established the Poverty Alleviation Fund, in particular to raise economic and social status of poor persons, ensuring their access to state facilities, building their capacity to exercise their right and make claims, extending cooperation to poor to enhance their economic and social status, and identifying the root causes of poverty at local level. By virtue of the Act, the Fund is a dedicated entity for operating a poverty alleviation programme with the participation of poor and marginalized people. The Act entrusts the Fund with responsibilities to increase the access of the poor to basic services by enabling their capability, identifying people or communities below the poverty line (BPL) and launching a special programme to raise their social and economic standards. However, the Act does not contain any specific provision enabling people living in poverty to make a claim for protection from the state.

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114 Ibidem.
115 Ibidem, Clause 8.
116 The Poverty Alleviation Fund Act, 2006, Section 2(c).
117 Ibidem.
118 Ibidem, Sections 5 & 6.
119 Ibidem.
This is according to the welfare-based approach. Consideration can be given to incorporating a set of legal rights for people living in poverty. Under the Act, the process of identifying the poor and distributing identity cards to them has not yet been completed.\textsuperscript{121} On the one hand, it is supposed to help poor people seek social protection while on the other, it will be helpful for the authorities in reaching out to populations living in poverty. As the identification of poor households will be an important step forward, the process deserves to be completed as expeditiously as possible.

Following the Supreme Court’s decision\textsuperscript{122} requiring the Government enacting a separate law, the Senior Citizens Act was adopted in 2006. The Act aims at offering social protection.\textsuperscript{123} The Act not only imposes a duty on respective family members to maintain and care for senior citizens\textsuperscript{124} but also empowers the authorities to protect and empower senior citizens.\textsuperscript{125} The Act has established the Central Senior Citizen Welfare Committee to formulate policies, plans and programmes offering social security to senior citizens and monitoring the implementation of the activities carried out pursuant to the policies and plans.\textsuperscript{126} District level senior citizen welfare committees have also been provisioned.\textsuperscript{127} With a view to satisfy the funding need, the Act has also created a Senior Citizen Welfare Fund.\textsuperscript{128} The Act also paves the way for the establishment and operation of Elderly Care Homes and Day Service Centres.\textsuperscript{129} Not only the Government but also any person or association may establish and run such care centres subject to approval from the concerned authority.\textsuperscript{130} Especially the helpless and incapacitated senior citizens are offered alternative care facilities at such homes and centres operated under the Act. It is a duty of everyone to inform the nearby care centre, day service centre, police office, Village Development Committee or Municipality about abandoned senior citizens so as to facilitate the process of offering the necessary protection.\textsuperscript{131} However, the implementation of this provision appears weak. The Old Age Home located in the premises of the temple Pashupati Nath (Pashupati Bridrashram) is the only shelter for destitute elderly people run by the Government and which was established in 1976 as the first residential facility for elders, accommodating only 230 elderly people. Apart from this, there are about 70 organizations registered with the Government (GCN 2010) and spread throughout

\textsuperscript{122} Chandrakanta Gyanwali v. Office of the Prime Minister and Council of Ministers, 7 May 2006.
\textsuperscript{123} The Senior Citizens Act, 2006, Preamble.
\textsuperscript{124} \textit{Ibidem}, Section 4.
\textsuperscript{125} \textit{Ibidem}, Section 7.
\textsuperscript{126} \textit{Ibidem}, Section 13 & 14.
\textsuperscript{127} \textit{Ibidem}, Section 15.
\textsuperscript{128} \textit{Ibidem}, Section 17.
\textsuperscript{129} \textit{Ibidem}, Section 20.
\textsuperscript{130} \textit{Ibidem}, Section 21.
\textsuperscript{131} \textit{Ibidem}, Section 24.
Nepal. Most of them are charity organizations with about 1,500 elders currently living in them.\textsuperscript{132} The current Human Rights Action Plan has provisioned for establishing an Old Age Home in each development region. Under the Act, the Government of Nepal may categorize senior citizens on objective grounds and provide subsistence allowances or facilities.\textsuperscript{133} With this provision, there exists an old-age allowance scheme. Though appreciated as an important move towards developing a non-contributory social security scheme, this has been criticized for inadequacy of volume of allowance, unjust age threshold for eligibility and discrepancies in distribution of allowances.\textsuperscript{134}

The Protection and Welfare of Disabled Act, 2039 (1982)\textsuperscript{135} was adopted by the then Parliament (Rastriya Panchayat) as a legal framework governing the disability issues.\textsuperscript{136} This Act was adopted against the backdrop of an evolving disability rights movement at the international level. Unfortunately, no genuine efforts were made to implement the Act and it took more than 11 years to adopt the Regulation required by the Act.\textsuperscript{137} The Act contains a significant number of provisions impacting upon the enjoyment of the right to adequate food by disabled people. The Act ensures the right to equality and non-discrimination for every disabled person.\textsuperscript{138} No one, on the basis of disability, is denied entry into any association, club or community providing education or training.\textsuperscript{139} Similarly, no disabled person is deprived of the right to economic and social security, the right to live with dignity, the right to be engaged in any employment or any other productive and meaningful occupation.\textsuperscript{140} Similarly, the Government is empowered to make all necessary arrangements for appropriate training and employment in order to make the disabled persons economically independent.\textsuperscript{141} The Act also directs the Government to devise specific employment schemes such as self-help industry and other necessary facilities for enabling them to maintain their normal livelihood.\textsuperscript{142}

\begin{enumerate}[132]
\item The Senior Citizens Act, 2006, Preamble, Section 24.
\item Date of Royal Seal and Publication 2039-8-6 (B.S.). 1982. Act No. 13 of the Year 2039 (BS).
\item See, Preamble. The Act was adopted in order achieve a set of objectives: to protect and promote the interest of the disabled persons: to prevent and abolish the circumstances leading one to be disabled; and to make the disabled persons capable members as well as actively productive citizens of the society, by making necessary welfare provisions for the health, education, care, training of the disabled persons and their right to equality and employment as well.
\item The Protection and Welfare of Disabled, Regulation was adopted in 1994.
\item Ibidem, Section 5.
\item Ibidem, Section 6.
\item Ibidem, Section 8.
\item Ibidem.
\end{enumerate}
Furthermore, arrangements may be made by the Government to enable disabled citizens to operate cottage and small-scale industry by providing basic facilities, including raw materials, loans and marketing arrangements. In addition, if any homeless disabled person needs land to build a house or to engage him/her in farming, the Government may provide the necessary land or allow cultivation of land. Tax exemption may also be offered to advance the welfare of disabled persons. Nevertheless, the provisions of the Act aimed at enhancing access to employment, income generation opportunities and livelihood support lack effective implementation. Though there are some small-scale training and vocational initiatives implemented by different ministries, there is no comprehensive programme in operation to give effect to these provisions. Neither are targeted beneficiaries fully aware of these provisions, nor is there an established practice of involving stakeholders in designing the programmes giving effect to such provisions. The experience indicates that unless a judicial intervention is made, the Government does not make any effort to implement the Act. One of the solutions to this issue is to revise the legal regime and convert welfare responsibilities into legal entitlements. One of the important social security measures is subsistence allowance for disabled persons under the social security programme. This is neither sufficient to meet the basic living requirement nor is there easy access to the allowance distribution system for disabled people. Consideration should be given to ensuring that each and every disabled individual receives an adequate allowance without hindrance.

The longstanding practice of untouchability and caste discrimination remains a serious impediment for the Dalit community in terms of enjoying the right to adequate food. Untouchability prevents Dalits from accessing water sources, entering temples, or being able to marry someone from the so-termed higher castes, and severely curtailing opportunities to participate in society. It affects their access to education, health care and employment, and as such their ability to secure an adequate standard of living. The Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2068 [2011] (Untouchability Act), enacted by the Legislature-Parliament on 25 May 2011, provides a legal framework for criminalization of caste-based discrimination and untouchability. The law outlaws caste-based discrimination in both the public and the private spheres. The Act further contains a significant list of actions considered to amount to caste-based discrimination and untouchability, which, inter alia, includes:

143 Ibidem, Section 11.
144 Ibidem.
145 Interview with Sudarshan Subedi, Executive Director of Association of Village Development Committees, 16 July 2013.
147 The Caste-based Discrimination and Untouchability (Offence and Punishment) Act 2011, Preamble.
148 Ibidem, Section 4.
prohibiting the entry or expelling a person from public places; depriving him or her from using public services; prohibiting a person from engaging in any occupation or business or refusing to employ based on caste, ethnicity or origin. There is no doubt that the effective implementation of this law would bring positive impact to Dalits for their effective participation in social protection schemes and meaningful enjoyment of human rights, including the right to adequate food. However, the implementation remains a challenge, especially due to a number of factors including the lack of awareness among stakeholders and the lack of ability of Dalits to invoke the justice system.

In order to advance the interest of indigenous peoples (Adivasi Janajati) that have their own language, distinct customs, cultural identity, social structure and written or unwritten history, there exists a separate legal instrument. The National Foundation for Development of Indigenous Nationalities Act, 2002 established the National Foundation for Development of Indigenous Nationalities. The Foundation aims to secure overall advancement of the indigenous nationalities through formulating and implementing the programmes relating to the social, educational, economic and cultural development and uplifting of Adivasi Janajati. The Act has also elaborated on the specific duties and powers of the Foundation that, in particular, relate to the promotion and preservation of traditional skills and technology, and special programmes to enhance economic and social status of poor and disadvantaged people within the Adivasi/Janajati. As this is specific to establishment and functioning of the Foundation, there is a gap in the law to ordain other state entities to adopt measures towards social and economic empowerment of the indigenous communities. At the same time, this Act does not contain any specific provision to create social protection entitlements for the indigenous communities. Consideration should be given to adopting legal measures for enabling the indigenous communities to make legal claims for their empowerment, inclusion and enhanced access to productive resources.

Apart from the stated thematic Acts, there exists the Social Welfare Act enacted in 1992 (2049 BS) with a view to promoting governmental and civil society activities in relation to social welfare. The Act empowers the Government of Nepal to operate special welfare programmes, activities and services in order to secure a number of objectives: serving the interest of children, the elderly, helpless or disabled people; fostering participation of women in development and promoting and protecting their rights and interests; helping the unemployed, poor and illiterate to live a life with dignity and taking effective measures

149 Ibidem.


152 Ibidem, Section 6.

for the welfare of marginalized communities. In order to facilitate the stated objectives, the Act has created the Social Welfare Council as an important institutional mechanism to run smoothly the social welfare activities, help out the associations engaged in social welfare, develop coordination and synergy among the associations, and provide advisory services to the Government on social welfare activities. Though the Council is supposed to develop and carry out social welfare activities under the Act, its function is very much limited to regulating and supervising the social organizations. Similarly, since it is confined to Kathmandu, there is a problem for most of the grassroots and local social institutions, especially those working in food deficit areas, to access the Council and seek its approval for receipt of funding from donor agencies.

The Local Self-Governance Act, 1999 [2055B.S] is aimed at enhancing the participation of a wide range of people including the ethnic communities, indigenous people, down-trodden and socio-economically marginalized groups in the development and to bring about social equality. Under this Act, all levels of local government – Village Development Committees (VDCs), Municipalities and District Development Committees (DDCs) – are obligated to carry out certain activities promoting social protection and welfare. For example, Municipalities have a duty to carry out programmes that serve the interests and welfare of women and children. While formulating plans, priority must be given to projects providing direct benefits to women, children and marginalized groups. Similarly, DDCs are under a legal duty to prepare and implement a plan for the uplifting of women and carrying out activities in the interest of orphans, helpless women, elderly and disabled persons, and carrying out activities aimed at wiping out social malpractices and ensuring protection of girls and women. While formulating an annual plan, DDCs are also required to prioritize income-generating and skills-oriented development work for women and children. The VDCs are also entrusted with similar duties and obligations. They are required to maintain an inventory of the helpless, orphan and disabled children within their jurisdictions and make appropriate arrangements for their care. Also, they are obligated to carry out activities regarding the protection of needy children and women, elderly, disabled and incapacitated persons and carry out or cause to be carried out

154 Ibidem, Section 4.
155 Ibidem, Section 9.
156 Telephone Interview with Hari Prasad Adhikari, Chairperson, District Coordination Committee of Good Governance Clubs, Surkhet, dated 21 July 2013.
157 The Local Self-Governance Act, 1999, Preamble.
158 Ibidem, Section 96.
159 Ibidem, Section 11(4).
160 Ibidem, Section 189(1)(f).
161 Ibidem, Section 195.
162 Ibidem, Section 28.
activities targeted at eliminating social malpractices and reinforcing the protection of girls and women. In formulating the plans, the VDCs are required to give priority to projects that contribute to the alleviation of poverty through raising living standards, income, employment and direct benefits to rural people and the projects that provide direct benefits to the women as well as marginalized groups and children. Under the Act, the Government has the power to regularly monitor whether local government has carried out its mandated functions, giving priority to marginalized communities, women and children and issue direction as per the necessity. The respective local body is obligated to abide by such a direction from the Government.

Though the provisions are very progressive with reference to protecting and promoting the right to adequate food at local level, their implementation remains very weak for a number of reasons, including the lack of effective monitoring. Under the law there is a mandatory provision to allocate at least 30 percent of the budget to the targeted groups, including women, children and the marginalized. However, in practice, it is not generally respected. On the one hand, allocation percentages are not always respected and there is lack of capacity and skills in designing and selecting projects envisioned by the Act. On the other hand, the absence of elected representatives has left bureaucrats unaccountable. There are also numerous discrepancies in relation to distribution of social security allowances. Though the legal authority has been entrusted by the Act, the Government has rarely exercised its monitoring and directory power to enhance effective implementation of the provisions.

There are also other scattered provisions aimed at proving food-related social protection in different ways. For instance, the Country Code’s Chapter on Illegal Detention prohibits detaining any person without providing victuals that include food and drinking water. If a person is detained without providing food and drinking water, such behaviour is considered to constitute an offence. The Black Marketing, Social Crime and Punishment Act, 1975 (2032 BS) has provided a coupon system for distribution of goods that are not easily available in the market. But such a ration coupon system has not been

163 Ibidem.
164 Ibidem, Section 43(3).
165 Section 234 (1) reads: Government of Nepal may regularly monitor as to whether the Local Body has carried out the functions entrusted to it pursuant to the prevailing law, whether it has accorded necessary priority to the backward communities, women and children, whether such matter as the ecological balance has been encouraged, and may give necessary directions.
166 Section 334(2) reads: It shall be the duty of the concerned Local Body to abide by the directions given by Government of Nepal pursuant to Sub-section (1).
167 Interview with Mr Prasuram Upadhyay, Executive Director of Association of Village Development Committees, 16 July 2013.
168 Muluki Ain (Country Code), 1964, Chapter on Illegal Detention, Clause 1.
169 Ibidem, Section 2.
introduced yet for providing food. There is also a provision for establishing a fair price shop to enable poor people to purchase essential commodities at affordable prices.\textsuperscript{171} It has also been a matter of momentary will as it has been applied on an ad hoc basis, for example during the festival season. The Nepal Food Corporation Regulation, 1997 provides for the purchase, processing, sale and transportation of foods with a view to ensuring food security. However, there is a gap in the law dealing with food security transfer in terms of reaching out to the vulnerable groups. The Corporation Bylaws do not incorporate any provision regarding the supply of food to food-deficit districts or to vulnerable groups, and no subsidy system has been implemented. Despite the fact that the Government is providing transportation subsidy for food to supply food-deficit districts, it is not mentioned in the legal and institutional mandate and such a subsidy scheme is dependent on the interests of the Government and donor communities.

Against the backdrop of the above-discussed legal perspective, there exist a number of programmes offering social protection related transfers implemented by the Government with or without funding support from international agencies. Such programmes include: the Social Security Programme, the Food for Education Programme, the Rural Community Infrastructure Works Programme (Food for Work), the Small Scale Irrigation Special Programme (cooperative irrigation), the seed and fertilizer transportation subsidy, the transportation subsidized food supply in food deficit districts and the Emergency Relief in Disaster.\textsuperscript{172} The Social Security Programme, implemented by the Ministry of Local Development, has taken forward an important initiative that aims to provide allowances to senior citizens, single women, ethnic minorities, Dalit populations and people living in the Karnali Zone. Although there is no specific legislation pertaining to this popular programme, there are a few provisions under different laws\textsuperscript{173} that provide direction for developing such provision of allowances. Although there is a lack of direct reference to social security, the Local Self Governance Act, 1999 (2055 BS) obligates the Government to provide an annual grant for different purposes. Section 236(1) of the Act reads: “The Government of Nepal shall have to provide the Local Bodies each year with minimum grant prescribed additional grants on such basis as population, level of development, possibility and capability of mobilizing revenues, necessity of financial resources, regular record keeping of incomes and expenditures, situation of auditing and financial discipline of concerned local body”. A separate Social Security Programme Operation Procedure, 2065 has been developed and implemented by the Government under the

\textsuperscript{171} Consumer Protection Regulation, Sections 12 & 13.

\textsuperscript{172} For detailed discussion of these programmes see, Basanta Prasad Adhikari, Food Security-Related Safety Nets and Legal Empowerment of Poor in Nepal (Case Studies on Access to Justice, Rule of Law and Human Rights Perspectives), Submitted to FAO, December 2009.

\textsuperscript{173} For example, the Protection and Welfare of Disabled Act, Section 24 reads: The Government of Nepal may categorize senior citizens, helpless senior citizens, incompetent senior citizens on be prescribed grounds and provide allowance or facility as prescribed.
Local Self-Governance Act, 2055. The Procedure specifies the target groups and governs the distribution of allowances, maintaining and updating the information and transparency and monitoring the efficiency.

While the coverage by the old-age pension scheme is concentrated on formal sector employees and there are no statutory unemployment benefits, the social security programme offering an old age allowance and subsistence allowance to other categories of people is noteworthy in terms of the right to adequate food. Currently the Government is providing an old age allowance of Rs 500 per month to people aged 70 and above. The Government provides Rs 500 per month to widows over the age of sixty. The allowances are managed by the Ministry of Women, Children and Social Welfare and distributed through the local units of the Ministry of Local Development at the village level. A study revealed that 58 percent of this social security allowance is spent on buying basic necessities, including food.

Similarly, there exists a specific social protection transfer programme targeted at remote and disadvantaged areas in Nepal, the Karnali Zone, to offer social protection through short-term employment and to create or preserve social and economic assets. The programme is called the Karnali Employment Programme (KEP) offering ‘One family one job’. The Government of Nepal announced the Karnali Employment Programme through the budget speech of 2006.

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174 Section 236 (2) reads, "Government of Nepal may prescribe the process of, and procedures for, the expenditure of the grant amounts to be obtained under Subsection (1)".

175 The Government has a pension scheme for retired public servants and their widows and children. The Government also adds ten percent to the total pension to those aged 75 years and above. However, only less than seven percent of elders in Nepal benefit from this pension system. Most of the population receive no pension and must depend on family support and personal savings. There are also a number of legislations that provide for contributory social protection schemes. The 1974 Bonus Act requires private-sector enterprises to provide basic medical benefits to employees and their dependents. The 1992 Labour Act requires employers to pay 100 percent of wages for maternity leave of up to 52 days before or after each birth for up to two births. It also requires employers to pay 50 percent of wages for sick leave for up to 15 days a year. The 1992 Civil Servant Act provides maternity leave to employed women for up to 60 days before or after childbirth, for up to two births. For Government employees, annual medical expenses may be reimbursed up to the equivalent of 12 to 21 months of salary. Free medical treatment is provided to people aged 75 or older in Government hospitals.

176 The universal flat rate pension of Rupees 100 to all above 75 years of age was first announced in Nepal on 26 December 1994. Five districts from the five development regions of Nepal were selected on a pilot basis and the first disbursement of the Old Age Allowance Programme (OAP) was made on 2nd July 1995 for a six month period from January–June. During the financial year, 1995–96, OAP was extended to the entire country.


179 The Karnali Zone, with the five North-western districts of Dolpa, Humla, Jumla, Kalikot and Mugu, is the poorest region of Nepal: income poverty is estimated at 50 percent, due to the region's lack of productive cultivable land, poor climate, remoteness and mountainous terrain. For additional information see, Gabriele Koehler, Social Protection and Socioeconomic Security in Nepal, IDS working paper, Volume 2011, Number 370, page 12 (available at: www.ids.ac.uk/files/dmfile/Wp370.pdf).
KEP was initiated as a scheme to provide 100 days of guaranteed wage employment to at least one unemployed family member in every household. The average number of days of employment in KEP is 13 per year with an average wage of Rs 201 per day, which is lower than the market rate and the statutory minimum wage rate. Payment of wages is not timely and is also not made all at once. The average income of a household amounts to Rs 56,629.

Given the pervasive unemployment problem underlying the poverty witnessed throughout the country, this programme deserves to be reconfigured to address the stated problems and include skill development training as a core component to help find more permanent employment or self-employment and introduce a monitoring and supervision system to ensure programme effectiveness. At the same time, this should be expanded to cover people living in extreme poverty in other parts of the country.

Through implementing these schemes and programmes the state has no doubt acknowledged the existence of socio-economic insecurities in society. However, the question arises as to whether the current social protection schemes are appropriate and adequate. Some social protection instruments are universal, by category, such as old age pensions and education stipends, the child grant, and geographical payments such as KEP, while others are targeted, with clearly defined recipients so that they come close to being categorical transfers. Most social protection schemes come from the fiscal budget and are tax-financed, with only a few pilots financed by donors. One of the deficiencies of these social protection transfers is the low level of actual monetary benefits. Similarly, there is a low level of public awareness of schemes for which they are eligible and to which they have a right. Although there are many types of transfers, none are directed at building productive assets at household level. Ultimately, however, productive assets in the household are the only substantive way to overcome poverty, and social protection transfers aimed at asset building could at least help address some structural poverty. The major issues and challenges associated with the social security programme include the limited capacity of the institutions to ensure smooth distribution of the allowance, age threshold for eligibility inconsistent with the Senior Citizens Act, and inadequacy of the amount.

181 Ibidem.
182 The Government has specified the age threshold of 60+ for Dalits and residents of Karnali zone and 70+ for others as the criterion for allowance entitlement. This has been a major issue. There has been a growing demand not only from the beneficiaries but also from key informants that the age threshold should be reduced to 60+ for all.
183 Under Section 2(a) of the Senior Citizen Act, “senior citizen” means a citizen of Nepal who has reached the age of 60 years.
184 The present amount of Rs 500 has been considered grossly inadequate and there have been suggestions to increase it. The demand ranges from Rs 1,000 to 3,000 per month. See, Government of Nepal National Planning Commission. 2012. Assessment of Social Security Allowance Program in Nepal, Singh Durbar, Kathmandu, Nepal, p. 63.
Gaps and weaknesses

Comprehensive legal framework on social security: Though there are several social security schemes, they seem to have suffered from a number of shortcomings. These include the low level of monetary benefits, the low level of public awareness of schemes for which they are eligible and to which they have a right, lack of focus on building productive assets at the household level, limited capacity of institutions to ensure smooth distribution of the allowance and age threshold for eligibility inconsistent with the Senior Citizens Act. Against this backdrop consideration should be given to enacting a comprehensive legal framework on social security to address the stated shortcomings effectively. Through such a law, statutory guidance on guarantee of non-retrogression, non-discrimination and mandatory budgetary allocation at central as well as local level could also be provided. Likewise, such a law can set national standards and procedures for establishment and implementation of transfer programmes related to social protection. The existing inconsistencies in the institutional mandates could also be remedied through the law. At the same time, this law could also create a legal entitlement for vulnerable groups to benefit from transfer programmes.

Human rights-based approach: The existing fragmented legal regime on social justice empowers the state to take actions towards remedying the social and economic insecurities that exist in society. However, that fails to internalize a rights-based approach that enables the citizen to make a claim for a protection from the state. Future legislative initiatives should focus on converting prevailing welfare-based provisions into ones that are rights-based. Therefore, the scattered provisions aimed at promoting social justice should be revised in light of the Interim Constitution and the ICESCR that offer the guarantee of a minimum supply of essential foods for everyone.

Implementation gap: There appear to be numerous protective legal provisions under a significant number of Acts, which generate a welfare-based approach. However, most of them have suffered from lack of implementation for a long time. This is also linked to the weaker formulation of rights language under these laws. However, by virtue of the state’s obligations to social protection under international human rights law and the Interim Constitution, the state authorities are supposed to take a rights-based approach in implementing these legal provisions. It is therefore recommended to take the necessary budgetary, programmatic and other measures to implement the protective provisions under the law effectively. In order to promote equal participation of Dalits in social protection schemes and meaningful enjoyment of human rights, including the right to adequate food, consideration should also be given to ensuring effective implementation of anti-untouchability and caste discrimination laws by creating awareness among stakeholders and enhancing the ability of Dalits to invoke the justice system.
Access to justice: The country lacks an effective redress mechanism in relation to existing social security schemes. Because of the lack of an accountability mechanism, most of the discrepancies linked to the social security schemes go either unnoticed or unaddressed. It is therefore of utmost importance to address the gap of an accountability mechanism that can be used to exercise oversight, receive complaints and administrate necessary remedial measures. In either case – the adoption of a stand-alone law or an amendment of existing laws – priority should be given to creating the mechanisms mandated to ensure accountability and access to justice.

Role for local governments: Though the Local Governance Act entrusts local governments with a number of duties concerning creation a social protection net at local level, these laws remain textually confined. The Government’s power to monitor regularly as to whether the local governments have carried out the mandated functions, giving priority to marginalized communities, women and children, has not been properly exercised. At the same time the absence of elected representatives has resulted in unaccountability. It is therefore recommended to ensure effective monitoring of local government performance in relation to social justice and serious consideration should be given to restoring the representativeness of local government through electing local governments as a matter of priority.

Strategic target: The social security programmes (old age allowance) targeting senior citizens and food supply through the Nepal Food Corporation are very important food related Government transfer programmes. Unless targeted to the poor and vulnerable households, such programmes will not promote the goal of social justice and equity. Even if there are people suffering from hunger living beyond specified food insecure districts, at present they are not covered by the food-related transfer programmes. Consideration should also be given to modifying the existing transfer programmes to target food insecure people and communities regardless of geography. The Government should consider bringing in a sustainable food-related transfer programme targeting poor people in both urban and rural areas. There should also be an adequate annual budget for addressing the increasing demand for food transfers through the National Food Corporation.

Anti-poverty initiative: People living in poverty are yet to be comprehensively identified in Nepal. The ongoing process of identifying the poor and issuing them with an identity card must be completed as expeditiously as possible in order to pave the way for reaching out to the needy. Similarly, institutional mechanisms such as the Social Welfare Council, Poverty Alleviation Fund and National Foundation for the Development of Indigenous Nationalities should effectively exercise their mandate, including through development and implementation of substantive social protection programmes targeted at people living in poverty. Consideration should also be given to decentralizing the service of these institutions at the local level.
Coordination: Nepal lacks effective coordination among the national and international organizations involved in delivering social protection services. Consideration should be given to strengthening horizontal, vertical and cross-sector coordination among the different layers of Government.

3.2.3 Labour rights

There is substantial legislation dealing with labour issues in Nepal. The Labour Act, 1992 (2048 BS) is a key item of legislation that provides national labour rights standards. The Act defines the ‘enterprise’ as including any factory, company, organization, association, firm, or group thereof, established under the prevailing laws for the purpose of operating any industry, profession or service, where ten or more workers or employees are engaged. The Act denies legal protection to workers engaged in enterprises where fewer than ten workers are engaged and where workers are engaged in the informal sector, in particular, agriculture and domestic work. However, as a matter of exception, there are a few provisions dealing with minimum wages of workers engaged in the informal sector. Among such workers, women are primary sufferers. Women constitute 51.5 percent of the total population of Nepal, more than 90 percent of whom are engaged in agriculture related work, including food production and processing, and supply of firewood, forage, and water. Similarly, with scarce opportunities for formal employment in Nepal, domestic workers constitute a significant proportion of the national workforce and remain among the most marginalized. Domestic work is mostly carried out by women and children, many of whom are migrants or members of historically disadvantaged communities. In such a situation, there is a pressing need to bring agricultural and domestic workers within the ambit of the labour laws.

The labour rights standards incorporated under the Act include the requirement to offer an appointment letter with clear mention of the terms and conditions of employment, the right to be registered as an employee, the right to be protected from unfair termination, 188

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185 The Labour Act 1992, Section 2(b).
187 Employing women and children as domestic workers is becoming common in rural and urban areas of Nepal. Poverty is one of the key push factors for these people to take up domestic work, but a lack of formal employment opportunities as well as poor employability also play a role.
188 Ibidem, Section 4.
189 Ibidem, Section 9.
190 Ibidem, Section 10.
minimum age of employment, regular payment of salary and minimum wage, a weekly rest maternity leave and sick leave, and occupational safety and health. Similarly, there is a legal requirement that a worker is not deprived of education, has social security as well as decent working conditions, is protected against all forms of abuse and harassment, has fixed working hours (eight hours per day), is paid extra for overtime and receives minimum remuneration when employed in the enterprises under this Act.

The Act also provides for a mechanism to fix minimum wages and requires that enterprises pay workers at least the minimum wage for all hours they work. Upon recommendation of the Minimum Remuneration Fixation Committee, the Government of Nepal can fix the minimum remuneration, cost allowances and facilities of workers or employees. The Minimum Remuneration Fixation Committee is a tripartite mechanism constituted by the Government, bringing together equal numbers of worker or employee representatives, managers and Government representatives. This Act concerns the minimum fixed wage at the national level, but the Local Self Government Act also empowers the District Development Committees (DDC) to set minimum wages in consideration of the economic status of the concerned district. Under the Kamaiya Act, the Government of Nepal may fix the minimum wage rates of agricultural workers by publishing a notification in the Nepal Gazette. No person is permitted to employ agricultural workers at wages below the minimum wage fixed according to the Kamaiya Act.

The Labour Act also offers protection from unfair deduction of remuneration except in certain specific situations. Section 25 enables the worker to lodge a complaint with the labour office against an employer who denies payment as per the respective service contract and violates other labour standards. Such complaints must be filed within six months from

191 Ibidem, Sections 2(i) & 32A.
193 Ibidem, Section 18.
194 Ibidem, Section 40.
195 Ibidem, Chapter 5
197 Local Self-Governance Act, 1999, Section 189(i).
198 Kamaiya Act, Section 13(1).
199 Kamaiya Act, Section 13(2).
200 See, Labour Act, Section 24. The statutory exemptions under Section 24 include: (a) In the case it is required to realize any fine. (b) In the case it is required to deduct against absence; (c) In the case it is required to deduct against loss or damage of cash or kind of the enterprise caused intentionally or negligently; (d) In the case it is required deduct in respect of providing prescribed facilities; (e) In the case it is required deduct in respect of advance or over payment of remuneration; (f) In the case it is required to deduct in respect of the period of suspension; (g) In the case it is required to deduct under the order of a Government office or the court (h) In the case it is required to deduct as per the notification of the Government of Nepal published in the Nepal Gazette; or (i) In the case it is required to deduct in respect of income tax or any other tax levied under prevailing laws.
the date of the violation of labour standards. Given the socio-economic context and the level of labour education in Nepal, it is not appropriate to provide a hard and fast rule of statutory limitation to file a complaint. If it is established that the remuneration payment requirement has been violated, the office orders the concerned employer to make the payment.\textsuperscript{201} In the case that the complaint is found baseless, the office may penalize the complainant with a fine of up to one thousand rupees.\textsuperscript{202} The party dissatisfied with the order issued by the office may file an appeal to the Labour Court within thirty-five days of the receipt of information of such an order and the decision of the Labour Court shall be final.

The Labour Act also provides for welfare of workers, including through requiring the establishment of a Welfare Fund. In the case that a worker is physically wounded, seriously hurt or dies at work, compensation must be paid to the victim or the victim’s family out of the fund.\textsuperscript{203} The gratuity, provident fund and facilities relating to medical expenses must also be provided to workers and employees as prescribed.\textsuperscript{204} Under the Act workers are entitled to public holidays, sick leave, annual leave, maternity leave, obsequies leave and special leave.\textsuperscript{205} An enterprise with fifty or more female workers is obligated to make provisions for a health room for children of such female workers and employees. A trained nurse, including some necessary toys, must also be available. The female workers and employees are provided time, as necessary, for breastfeeding their babies.\textsuperscript{206} Though these provisions are very important in encouraging women employees, implementation is weak. The lack of child care and breastfeeding facilities and the inadequacy of maternity leave for working women were challenged in the Supreme Court. In response, the Government was also directed to enforce the Labour Act provisions regarding child care\textsuperscript{207} and to formulate and enforce national maternity leave standards, taking into account ILO maternity leave standards.\textsuperscript{208}

The Act provides for a separate set of provisions for specified enterprises including tea estates.\textsuperscript{209} The Labour Act provides for the appointment of a welfare officer in an enterprise where 250 or more workers or employees are engaged and one additional Assistant Welfare Officer shall be appointed where there are more than 1000 workers or employees.\textsuperscript{210} This has become subject to a specified number of employees. There can be an alternative arrangement if there are fewer than 250 workers, including through designation of one

\textsuperscript{201} Ibidem, Section 25.
\textsuperscript{202} Ibidem, Section 26.
\textsuperscript{203} Ibidem, Section 38.
\textsuperscript{204} Ibidem, Section 39.
\textsuperscript{205} Ibidem, Section 40.
\textsuperscript{206} Ibidem, Section 42.
\textsuperscript{207} Prakash Mani Sharma et al v. HMG, Ministry of Labour et al., WPN 34 of the year 2059 BS, (2 May 2005).
\textsuperscript{209} Prakash Mani Sharma et al v. HMG, Ministry of Labour et al., WPN 34 of the year 2059 BS, (2 May 2005).
\textsuperscript{210} Ibidem, Section 68.
employee with the responsibilities of Welfare Officer. Such a requirement would also be usefully considered for enterprises with fewer than 250 employees.

The Act empowers the Government to offer an exemption from application of any provision under the Act in consultation with the Central Labour Advisory Board. Also, the Government is empowered to fix minimum wages and other facilities where fewer than ten workers or employees are engaged.211 As an exception, the First Amendment of the Act introduced a provision empowering the Chief District Officer (CDO) to enforce remuneration beyond the formal sectors. If not paid as per the agreement, the Labour Office or CDO (in the case that a Labour Office does not exist) can be approached by the aggrieved worker to ensure payment as agreed.212 It is a statutory duty of the respective employer to pay as agreed. Such an authority makes the employer pay remuneration within 15 days.

Following Nepal’s ratification of the ILO Minimum Age Convention (No. 138), the Child Labour (Prohibition and Regulation) Act, 1999, was enacted and brought in force. The Child Labour Act lists specific occupations as hazardous213 and prohibits the use of children below 16 years of age from undertaking certain work.214 Similarly, the Act regulates hours of work for children aged 14–16 and provides that no child shall be engaged in work during a period from 6 pm to 6 am.215 Furthermore, it prohibits the engagement of children below 14 in any kind of employment.216 This indicates that the Act is flawed as it fails to make all forms of child labour that stop children from enjoying their fundamental rights and freedoms illegal and does not meet the ILO standard that sets the minimum age of employment at 17 years of age. Similarly, the implementation of the Act remains very weak due to the lack of effective monitoring and inspection of child labour in the prohibited occupations and provides a state of de facto impunity for those violating the law. As a consequence, a significant number of children are engaged in hazardous work. A joint report of the Government and ILO reveals that about 19.7 percent of working children in Nepal (621,000 or eight percent of children as a whole) work under hazardous conditions. This is about 38.8 percent of the child labour population. Distributed by sex, about two-fifths of children engaged in hazardous work (248,000) are boys and three-fifths (373,000) are girls.217

211 Ibidem, Section 84.
212 Ibidem, Section 84A.
213 The Child Labour (Prohibition and Regulation) Act, Section 3 and Schedule 1.
214 Ibidem, Section 3(2).
215 Ibidem, Section 9.
216 Ibidem, Section 3(1).
Similarly, the Kamaiya Act was adopted in 2002 (2058 BS), following a decision by the Council of Ministers on 17 July 2000 to “liberate” all Kamaiya labourers. The Kamaiya Act abolishes and prohibits Kamaiya labour and aims to rehabilitate and raise the living standard of liberated Kamaiya labourers. Under the Kamaiya Act, Kamaiya labourers are not required to repay loans, and any bonds and written or unwritten agreements between creditors and Kamaiya labourers are cancelled. At the same time, creditors who obtained property from Kamaiya labourers as mortgage or security are required to return such property. Local governments (Village Development Committees and District Development Committees) and the Kamaiya Committees are responsible for monitoring and inspecting whether or not any person is being employed as a Kamaiya labourer in contravention of the Kamaiya Act and for submitting reports to the Kamaiya Committee. The Welfare Officer is obligated to submit such reports to the Government (Ministry of Land Reform). Any persons found violating the prohibition against Kamaiya labour are subject to fines ranging from Rs 1000 – 25,000. The (CDO) is designated as the adjudicating authority for such cases. The Kamaiya Act provides for establishment of Freed Kamaiya Rehabilitation and Monitoring Committees (Kamaiya Committees) at the district level. The Kamaiya Act also contains a provision for the designation of an officer-level Government employee as a Welfare Officer in each district. Welfare Officers are responsible for acting as the Secretary of the Kamaiya Committee and performing other functions designated by the Kamaiya Committee. The Kamaiya Act also provides for the establishment of a fund to be used to advance the rights and interests of freed Kamaiya labourers.

After the enactment of the Kamaiya Act, the Ministry of Land Reform put all Kamaiya households into four categories, based on ownership of land and housing: a) freed landless Kamaiya labourers; b) freed landless Kamaiya labourers residing on barren public land in temporary huts; c) freed Kamaiya labourers with a house and less than 0.068 ha of land d) freed Kamaiya labourers with a house and 0.068 ha or more of land. After categorization, the Government provided each freed Kamaiya labourer with an identity card and made efforts to get them rehabilitated. However, many of the problems of freed Kamaiya labourers have yet to be addressed.

218 Kamaiya Act, Preamble and Section 3.
219 Kamaiya Act, Sections 5 & 6.
220 Kamaiya Act, Section 7.
221 Kamaiya Act, Section 21.
222 Kamaiya Act, Section 16.
223 Kamaiya Act, Section 17.
224 Kamaiya Act, Section 8.
225 Kamaiya Act, Section 10
226 Kamaiya Act, Section 11.
227 Kamaiya Act, Section 12.
These include a significant portion of Kamaiya households that are yet to be rehabilitated; the land provided by the Government to Kamaiya households is of poor quality or insufficient for basic food security throughout the year; thousands of former Kamaiya households which were missed in the last survey conducted by the Ministry of Land Reform are still awaiting official identification and rehabilitation; in the absence of livelihood support after liberation, many former Kamaiya labourers are unable to meet their daily necessities, and their access to education, health facilities, employment opportunities, and resources such as community forests remains problematic; former Kamaiya labourers have been compelled to undertake a range of survival activities, mostly as highly vulnerable daily wage labourers and child labourers.\(^\text{228}\)

The Trade Union Act, 1992 (2049 BS) makes provisions regarding the registration and operation of trade unions for the protection and promotion of professional and occupational rights of workers engaged in enterprises and beyond. Not only are the workers in the enterprise, but also the agricultural labourers and others engaged in informal sectors, entitled to establish a trade union association. Under this Act, "five thousand agriculture labourers of at least twenty districts comprising one hundred persons from each district" or at least "five hundred workers or self-employees working in industry, trade, profession or service occupations from outside the enterprise" may constitute a trade union association by their mutual agreement.\(^\text{229}\) Though this allows trade union rights to the workers engaged beyond the formal sectors, the thresholds are seemingly stringent. The threshold needs to be relaxed in order to have an impact in terms of promoting the enjoyment of trade union rights by labourers engaged in informal sectors.

**Gaps and weaknesses**

*Dealing with informal sectors:* Keeping a huge labour force out of the arena of the Labour Act remains a serious problem. It is therefore important to amend the Labour Act to add "employer" in addition to "enterprise" as a duty bearer and the "ten worker threshold" under the Act must be removed. At the same time, consideration can also be given to setting out different standards for smaller employers and also for the informal sector. If amended thus, it will pave the way for bringing informal sectors into the arena of Labour Law.

*Effective implementation of minimum wages:* The regular update of the minimum wage based on the consumer index is a relatively recent phenomenon despite there being legal provision in force governing the minimum wage since the promulgation of the Act. Every two or three years the minimum wage is updated. The minimum wage-related legal regime could be further strengthened by creation of a specialized agency to fix and carry out routine monitoring of the enforcement in the formal as well


\(^\text{229}\) The Trade Union Act, 1992, Section 4.
as informal sectors. Such a mechanism can also take immediate effect based on the outcomes of the monitoring against violations of the standards. The law should also address the gap of penalty for failure to pay the minimum wage and for committing wage discrimination on prohibited grounds, including gender, disability and caste.\textsuperscript{230} Similarly, due consideration should be given to address the concern that the legal minimum wage in Nepal is considered low and does not provide a decent standard of living for workers and their families, particularly in the agricultural sector.\textsuperscript{231}

Access to redressing mechanisms: With a view to providing for legal settlement of labour disputes, the Labour Court\textsuperscript{232} was created as an independent judicial institution through the first amendment of the Labour Act. The Labour Court is not accessible to most workers as there is only one located in the capital. In such a situation, the appellate courts can also be given powers to adjudicate appeals over the decisions of Labour Officers where the Labour Court is not accessible. It is also important to consider decentralizing the Labour Court in places where there is a high concentration of industries. Similarly, the accessibility to first instance case hearing authority (Labour Offices) is also very restrictive as there have been to date only 10 Labour Offices throughout the entire country. The problem is also due to the minimum wage related disputes in the informal sectors being settled by the CDO who is apparently overburdened with other administrative responsibilities. Alternatively, the local bodies can also be empowered to deal with complaints related to the minimum wage at local level.\textsuperscript{233}

Labour Inspection: Despite its significance in terms of checking the non-compliance of labour standards, the Labour Inspection System in Nepal remains very weak as there are only 10 Labour Offices throughout the country and labour officers are responsible for carrying out the inspection. In this situation, the current Labour Inspection System must be expanded, strengthened and well equipped.\textsuperscript{234}

Weak implementation of welfare provisions: The implementation of the welfare related provisions has been problematic for employers and trade unions. This problem can be addressed through employing effective compliance monitoring and bringing clarity on availability of facilities to every worker irrespective of the mode of contract.

\textsuperscript{230} In view of the fact that discrimination in wage rates between women and men is frequently reported in the media, constitutional and statutory guarantee of “equal pay for equal work” should be instituted.


\textsuperscript{232} The Labour Act 1992, Section 72.

\textsuperscript{233} Telephone Interview with Mr Ramesh Badal, Lawyer concentrating on labour rights, dated 11 July 2013.

\textsuperscript{234} Ibidem.
Maternity leave: The maternity leave for working women under the Labour Act is very short (45 days). Despite a judicial decision, the leave standard has not yet been revised. As ordered by the Court, the national standard on uniform maternity leave for all working women should be adopted as expeditiously as possible in consultation with the concerned stakeholders.

Child and Kamaiya labour: It is noticeable that the protective and rehabilitative provisions under the legal framework governing child labour and Kamaiya labour remains poorly implemented. Due consideration should be given to ensure effective implantation of these legal provisions including through pro-active compliance monitoring, awareness building and enhanced access to justice.

Trade union rights and informal sector: Though the workers engaged beyond the formal sectors are also allowed to establish a trade union, the Trade Union Act sets stringent thresholds. As a result, there has not been effective exercise of this right by the informal sector labour force. Hence, the threshold needs to be relaxed in order to have an impact in terms of promoting the enjoyment of trade union rights by labourers engaged in informal sectors.

3.2.4 Food rights in emergencies

Nepal is vulnerable to several types of natural disaster\(^{235}\) that may result in human suffering as well as destruction of property and livelihood support systems. Such vulnerability is exacerbated by much more serious factors, resulting from the problems of gross inequality and poverty. According to the World Food Program, 3.4 million people are considered to be food insecure with 41 percent of the country’s population consuming less than 2,700 K Calories in their daily diet. Malnutrition rates in Nepal are among the highest in the world, with nearly 50 percent of children aged under five considered to be stunted and nearly 40 percent underweight.\(^{236}\) The combined problems of chronic vulnerability, poverty, poor governance and accountability and the high risk of disasters raise serious protection concerns in Nepal.

\(^{235}\) Nepal is highly vulnerable to the threat of seismic activities as the entire country lies along an active seismic fault-line. The country suffered major earthquakes in 1934 (more than 8,500 people died in an 8.4 magnitude quake in 1934, which destroyed half of the capital’s buildings), 1988 (a 6.6-magnitude earthquake killed more than 700 people) and recently on 18 September 2011 (a 6.8-magnitude earthquake originating from the Nepal Sikkim border killed eight people and destroyed about 1,700 houses in the eastern part of the country). Similarly threats of flood along the lowland region and of landslides in hill areas leave thousands of people vulnerable to displacement every year. In 2008, over 40,000 people were displaced as a result of the Koshi floods. With these known factors, it is perhaps not surprising that the United Nations and the Bureau for Crisis Prevention and Recovery rank Nepal 11th among earthquake-prone countries in the world. Also, see, FAO/WFP. 2007. Special Report of Food security Assessment Mission to Nepal, Kathmandu, p. 10.

Given the higher possibility of violation of rights to food in such a situation, immediate humanitarian assistance, including food support and evacuation of people and property, seem to be matters of urgency for Nepal. Having an effective legislative framework that, *inter alia*, provides an adequate legal basis for operating an emergency response system is a prerequisite to address such concerns effectively.

Though the *Interim* Constitution does not directly create a right to be protected from disasters or the right of people in an emergency access to humanitarian assistance, there are numerous guarantees that can be invoked to claim for the positive interventions from the state. For instance, there are constitutional guarantees of the right to live with human dignity, right to non-discrimination and equal protection under the law that entail the corresponding obligations of the state to take measures to protect life and property of people in crisis. The *Interim* Constitution, without any prior parliamentary approval, empowers the Government to mobilize the Nepalese Army in the event of a natural disaster.\(^{237}\) Similarly, an Emergency Fund can also be established for the purposes of dealing with an emergency.\(^{238}\)

A comprehensive legal framework that guarantees the rights of a population in crisis is still far from being fully developed in Nepal. The Natural Calamity Relief Act, 1982 (2039 BS) is the specific legislation\(^ {239}\) offering a marginal space to safeguard the rights of people affected by disaster. The Government of Nepal has overall responsibility for disaster management in Nepal. The Act defines "Natural Calamity" as including earthquake, fire, storm, flood, landslide, heavy rain, drought, famine, epidemic, industrial accident or accident caused by explosions or poisoning and any other kinds of disaster.\(^ {240}\) The provisions of the Act are, in particular, concentrated on the relief and evacuation during a natural disaster. Under the Act, the Government is empowered to declare an emergency zone in the area affected or likely to be affected by natural disaster.\(^ {241}\) Such a declaration is notified in the Nepal Gazette and valid for a specified period of time, which can be extended by another notification as needed. In such areas, the Government holds the power to issue any orders or conduct any activities prescribed in Section 4 of the Act. Such measures include the closing down offices or institutions for a certain period, banning activities that have or may have adverse effect on rescue work, mobilizing personnel and resources of any governmental or non-governmental agencies, evacuating people and goods, requisitioning property of any organizations or individuals for a certain period, taking preventive action to protect people and property, control and distribution of private or non-governmental relief items, deployment of aid groups, and the use of Government resources. When the Government utilizes private or non-governmental resources, the rent or cost of those goods and facilities shall be compensated at prevailing rates.

\(^{237}\) *Interim* Constitution of Nepal. 2007. Article 145(5).
\(^{238}\) *Ibidem*, Article 98.
\(^{239}\) *Sections 5, 5A, 5B and 5C*, Natural Calamity Relief Act 1982.
\(^{240}\) *Ibidem*, Section 2(a).
\(^{241}\) *Ibidem*, Section 4.
The Act also includes provisions for establishing committees responsible for coordinating all assisting actors at different levels. Such committees created by the Act include the Central Natural Disaster Relief Committee under the Chairpersonship of the Minister of Home Affairs represented by concerned Government agencies, the Sub-Committee on Relief and Treatment under the Chairpersonship of the Minister to Health and the Sub-Committee on Supply, Shelter and Rehabilitation under the Chairpersonship of the Minister of Housing and Physical Planning.242

Similarly, the Act contains a provision for constituting other Disaster Relief Committees at district and local level as required.243 These Committees are responsible for distributing relief materials, including food, medicine, construction materials with the coordination and involvement of social organization working for natural disaster relief.244 The Act also provides for the mobilization of local groups and organizations in coordination with the central, regional and district level committees. Local committees have responsibilities for preparing details of loss and recommendations for relief and rehabilitation, mobilizing volunteers, arranging immediate treatment for victims, evacuating the victims to a safe place and distributing relief materials. The Act has created obligation to help in relief and evacuation from natural disaster.245 The Act has also established a Natural Disaster Relief Fund at central, regional, district and local level.

There are also a number of scattered legislative provisions dealing with humanitarian assistance to people in crisis. Under the Police Act 1955 (2012 BS) and its Regulation 1992, it is the responsibility of the police to help a person who is unable and helpless, and to try to save people from accident and risk.246 The Police Regulation has created responsibilities for all ranked police officials to be actively involved in works relating to relief and evacuation of victims of a natural disaster.247 Similarly, the Armed Police Force Act 2001 sets an objective for the force to carry out rescue operations during disasters and epidemics. The force can be mobilized in order to provide humanitarian assistance to people in need following disasters and epidemics. The Emergency Fund Act 1959 provides for an emergency fund with the objective of using such a fund in times of emergency. The Commission for Investigation of Abuse of Authority (CIAA), a constitutional body established to control corruption in the country,248 is entrusted with the full authority to inquire and investigate improper conduct and corruption, including that in relation to disaster management.

242 See, Sections 5 to 9a.
243 Ibidem, Section 7.
244 Ibidem, Section 6.
245 Ibidem, Article 83, Section 12.
246 Section 15, Police Act 1955.
248 Article 120, Interim Constitution of Nepal.
The Civil Service Act, 2048 (1992 AD) and its regulations also contain provisions for ensuring proper use of authority, resources and materials. Also the Good Governance (Management and Operation) Act, 2008 requires all Government agencies to ensure good governance, including through maintaining transparency, conducting public hearings, garnering public ownership and handling grievances. If enforced effectively, these provisions can be useful in controlling misappropriation, fraud and unlawful diversion of resources in general, as well as during disaster response operations.

Similarly, under the Local Administration Act, 1971 (028 BS), one of the responsibilities of the regional administrator, is to take appropriate actions to control and manage extreme situations, such as disasters, epidemics and starvation. The Local Self-Governance Act, 1999 (2055 BS) aims to reduce the impact of disasters by mobilizing local bodies – Village Development Committees, Municipalities and District Development Committees – for conservation of local resources, plantation in open lands and river control. Taking necessary measures for controlling disasters is one of the duties of all local bodies under Sections 28, 96, 189 respectively. It is also noticeable that Rule 33 of the Local Bodies Financial Administration Regulation 2007 has a provision for establishing seven special funds in municipalities, one of which is the Disaster Rescue Special Fund. The Municipal Council may allocate the necessary amount out of its revenue.

The Nepal Food Corporation, established as a Government Corporation under the Corporation Act, 1964 (2021 BS), has some responsibilities in terms of supply of food to meet the needs of people in food insecure areas. The Nepal Food Corporation Regulation 1997, which is the governing law for the corporation, deals with the technical aspects of procurement, processing, transportation and sales etc. (quotation, price determination etc.). Though the Regulation is not focused on the distribution of food in food deficit districts, it has established provision for the District Food Management Committee with the responsibility to target the most vulnerable VDC and households according to the severity of the problem in the district.

**Gaps and weaknesses**

**Rights-based approach:** The legislation including the Natural Disaster Relief Act was not made from a rights-based perspective. Therefore, there is no potential for people in need of emergency food assistance to claim the right to food and other relief material.

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249 See, professional conduct of a civil servant under Chapter 7 of the Act.

250 For example, Under Section 28(K) (4), Village Development Committees are under a legal obligation "to carry out or cause to be carried out necessary works in respect of controlling natural calamities". Also see, Adhikari, B.P.

The abovementioned legal provisions have adopted a welfare-based approach in terms of provision of relief material that also includes food. At the same time, the Act fails to focus on the holistic approach of disaster management as its provisions are confined to rescue and recovery aspects of disaster management. Based on the existing legal framework, some programmatic interventions can therefore be made regarding emergency response to provide relief material and evacuation by the security forces.

**Early warning:** Nepal has no mandatory legal provision to establish Early Warning Systems in disaster prone areas or development projects or for a strong disaster response mechanism. There should be an Early Warning System with a monitoring and advisory component to identify hazards and notify the vulnerable populations of a potential disaster situation.

**Emergency response:** There is no comprehensive law or policy to address the emergency response to support victims of natural disasters and those living in food insecure districts. Though it lacks the statutory backing, the Nepal Food Corporation, in general, has responsibility to respond to a food crisis through supplying foodstuffs to the food insecure areas. Its role in addressing food crises in emergency situations has yet to be elaborated. The administrative mechanism to provide relief material through District Administration Offices has not been effective. A stand-alone institutional mechanism of emergency response in terms of a pre-disaster preparedness plan and post-humanitarian assistance is indispensable.

**Coordinated management and mobilization of cooperation:** Though Article 6(e) of the Natural Calamity Relief Act designates a responsibility to the Central Disaster Relief Committee to include and coordinate social organizations in relief work, it does not clearly explain whether that includes international organizations or not. There is no provision or a mechanism at national level that paves the way for international support and provides a set of procedures for initiating, accepting and terminating international cooperation in relation to response to disaster. However, Articles 6(D) and 13(2) (B) include provisions for receiving material and cash donations from abroad. As the existing law on disaster management is incomplete, future legislative initiatives must address the need of integrated and coordinated disaster management that focuses on community participation. It is important for legislation in relation to disaster relief to provide for the speedy permission, exemptions from taxes, and the lifting of certain restrictions for essential goods, including food and equipment, necessary for disaster relief. Relevant laws relating to food and telecommunications may need to be amended accordingly. There is also a gap in the legal provisions to provide for fast-track procedures for emergency procurement of essential goods, including food items.

252 That addresses both the risks and consequences of disasters and prevention and preparedness measures; a wide range of measures including pre-disasters and long-term rehabilitation.
The responsibility of private entities towards making food arrangements to cope with emergency situations is not recognized under the law. Future legislation should create a legal basis for a powerful and independent national level disaster management authority to administrate disaster management activities in a coordinated fashion throughout the country. Unless there are emergency operation centres that are on standby with adequate food and other necessaries, there is no possibility for employing a rapid response effectively.

**Accountability and legal remedy:** Other shortcomings of the existing legal framework include the lack of a provision requiring the Government to formulate minimum standards and procedures for relief assistance. There is no requirement for establishing a grievance redress mechanism for those affected by disaster, for the lack of adequate provisions penalizing discriminatory acts, obstruction of any authority involved in disaster management, non-compliance of directives, false claims for relief, misappropriation of resources and false alarms or warnings as to a disaster. Such a situation, depending on severity and magnitude, could lead to panic.

**Inclusiveness:** The legislative framework on disaster management should also ensure that committees are adequately represented by stakeholders, including women. It is also important for future legislative reforms to require that due care is given to children, women, the elderly and people with disabilities during rescue, response and relief operations. Consideration should also be given to the disproportionate effect of natural disasters, such as floods and earthquakes, regarding gender inequalities.

**Mainstreaming food aspects in the disaster relief:** The law fails to define 'natural disaster' as including all sudden or progressive natural disasters. Similarly, it does not stipulate responsibilities of the authorities in relation to all phases of disaster management: normal phase, alert and warning phase, disaster phase and recovery phase. From a right to food perspective, it is desirable for the Act to obligate the authorities to maintain quantity, quality and cultural acceptability of stored food, ensure adequate security arrangements for stored food, arrange transport for the movement of food grains, keep advance stocks of adequate food in disaster-prone areas, arrange dispatch, supply and distribution of food supplies on an emergency basis, take precautionary steps against hoarding and profiteering, enquire about the loss and damage of food items, and disseminate adequate information about the availability of foodstuffs and rehabilitation of affected people. In addition to the above-mentioned responsibilities, the Act should also obligate the authorities to ensure availability of adequate supply of seeds, seedlings, fertilizers, distribution of agro-inputs and agro-loans and agricultural services for agricultural rehabilitation.

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253 No immediate threat but long-term actions are required in anticipation of impact of a future hazard at unknown point of time.
3.2.5 Protection of women and children

The *Interim* Constitution of Nepal guarantees non-discrimination on the basis of gender 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 percent of women working outside the household work as agricultural labour – the highest rate in South Asia – while political participation remains weak due to low levels of education and lack of access to economic resources. Food distribution does not target women or female-headed households and therefore presents particular challenges to pregnant and breastfeeding women, widows, and the children who are dependent on them for food. About six million people or 23 percent of Nepal’s population is undernourished. Half of all children under the age of five suffer from malnutrition.

Under the Country Code, a woman is entitled to divorce her husband, including in cases of her being banished from the house or deprived of food, clothes or other necessities. If divorced in such a situation, the wife is entitled to get a partition share of the husband’s property as a coparcener. At the same time, she is entitled to alimony on a monthly basis from her husband for her subsistence and maintenance till the partition is executed. If the wife does not intend to obtain her partition share but rather annual or monthly expenses from the husband, the court must order the payment by the husband of these on the basis of the property and income of the husband. The payment of such expenses is continued until such a woman is remarried. In the case of divorce, the Code entrusts the parents with their duty to take care of children. Similarly, the Country Code recognizes daughters as equal coparceners for parental property.

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255 *Ibidem*, p. 52.

256 Country Code, 1964, Chapter on Husband and Wife, Clause 1(2).


258 *Ibidem*, Clause 4A.

259 *Ibidem*, Clause 4B.

260 *Ibidem*, Clause 3(5).

However, the Country Code still contains a provision that excludes the married daughter from being entitled to parental property.\textsuperscript{262} This provision is seemingly inconsistent with the right to equality and non-discrimination guaranteed under the \textit{Interim} Constitution and the CEDAW. Under the same Chapter, the husband or the parents have legal duty to provide means of livelihood, including food and clothes, according to their social status and financial capacity and should also provide appropriate education as well as medical treatment as per necessity.\textsuperscript{263} If failing to do so, they shall be given their share of property.\textsuperscript{264} The Country Code’s Chapter on Women’s Share and Property offers further legal protection for women from patriarchal domination. The provisions under this Chapter enable women (including unmarried women, women having husbands and widows) to use and dispose of at their own discretion the movable or immovable property that they have earned.\textsuperscript{265} Similarly, Clause 2 empowers those separated from a joint family to use and dispose of all the movable or immovable property of their share as they wish. Given the longstanding gender discrimination in a patriarchal society like Nepal, these provisions make sense in order to promote economic empowerment of women. If property related rights are utilized by women as provided under the law, this contributes to enhancing their right to adequate food as well. Though unmarried daughters are also equally entitled to parental property, there is a tendency that the court has rarely been approached for their entitlements. This tendency is very much linked to social and cultural attitudes towards women. Even if they are not satisfied with their parents, daughters do not ask for property, in contrast to their brothers.\textsuperscript{266} Despite these legal protections, the practice does not correspond to the law. Because most women in Nepal are dominated under a patriarchal value system, they are subordinated to male members of the households, especially in terms of decision-making. Although women are overburdened by domestic chores and highly involved in the productive functions, the majority of women, especially in rural areas, eat whatever is left over after male members are satisfied and rarely have access to nutritious food. In such a situation, aligned with adopting empowering measures, in particular aimed at raising awareness and enhancing educational status, Nepal needs to enact laws that directly addresses such food related de facto discrimination rooted in the society.\textsuperscript{267}

\begin{itemize}
\item \textsuperscript{262} Clause 1A of the Country Code’s Chapter on Partition reads: Notwithstanding anything contained in Number 1, it shall not be necessary to provide a share in property to the married daughter.
\item \textsuperscript{263} \textit{Ibidem}, Clause 10.
\item \textsuperscript{264} \textit{Ibidem}.
\item \textsuperscript{265} \textit{Ibidem}, Chapter on Women’s Share and Property, Clauses 1, 2, 4 & 5.
\item \textsuperscript{266} Interview with Honourable Prabha Basnet, Judge, Dolakha, dated District Court, 19 March 2013.
\item \textsuperscript{267} Interview with Ms Sharmila Shrestha, Women Rights Activist and Chairperson, Justice for All-Kathmandu, 19 March 2013.
\end{itemize}
Similarly, the Domestic Violence (Offence and Punishment) Act, 2009 offers legal protection from different forms of domestic violence for everyone. However, in a *de facto* sense, women and children are primary beneficiaries of the Act. The Act is aimed to secure respect to the right of every person to live a secure and dignified life through preventing and controlling violence that occurs within the family. The Act defines the term “domestic violence” to include physical, mental, sexual and economic harm perpetrated by person to a person with whom he/she has a family relationship. For the purpose of this Act, “economic harm” has been defined to denote a deprivation from using jointly or privately owned property or deprivation of access to employment opportunities, economic resources or means. As a part of an *interim* remedy, the respective court may pass an “*interim* protection order” if the Court has reason to believe that the victim needs to be given immediate protection. Such interim protection orders may be issued, inter alia, to allow the victim to continue to live in the shared house, to provide him/her with food, clothes, and to not cause physical injury to him/her. The Act has envisioned the establishment of service centres in order to offer necessary protection for victims of domestic violence. The Government has so far established 15 such centres throughout the country, which are apparently not adequate to meet the need. In addition to offering the accommodation facility, these centres are also supposed to provide, as per necessity, legal aid, a psycho-consultation service, and economic aid to the victim. With the approval of the Government, other social organizations may also run such centres with or without financial support from the Government. The Act has also established the Service Fund in order to ensure smooth operation of the centres. Although the legal provisions under the Domestic Violence Act are progressive, the implementation remains very poor. The formal justice mechanism is rarely approached. Rather, the domestic violence related incidents, regardless of their severity, are mediated outside the courtroom. This is linked to a multiple factors, including the lack of awareness about the law and lack of effective legal aid and assistance to the victims for seeking remedy from the court.

The ratification of the Child Rights Convention was followed by the adoption of the Children’s Act, 1992 (2048 BS) offering legal protection to children. However, the Act confines the legal protection to children under the age of 16 years, which is opposed to the Child Rights

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268 The Domestic Violence (Offence and Punishment) Act, 2009, Preamble.
269 *Ibidem*, Section 2(a).
270 *Ibidem*, Section 2(b).
272 *Ibidem*.
273 *Ibidem*, Section 11.
274 *Ibidem*.
275 *Ibidem*, Section 12.
276 Interview with Honourable Tek Narayan Kunwar, Judge, Makawanpur District Court, dated 21 April 2013.
277 The Children’s Act, 1992, Section 2(a) clarifies that a minor not having completed the age of sixteen years.
Convention’s age threshold (18 Years). Section 4 (1) of the Act obliges the parents to make arrangements to bring up their child and to provide required facilities according to the financial status of their family. Similarly, the Government must render assistance in making arrangements for proper health care to the pregnant and the mothers of the newly born. No discrimination is allowed between a son and daughter in matters relating to their upbringing, education and health care. However, it is reported that girls are more vulnerable to discrimination. As revealed by the State of Children Report, 2012, discriminated girls constituted 78 percent among the total child victims of discrimination in 2011. Under Section 21, the Welfare Office or the CDO must arrange for upbringing and maintenance of a destitute child. The guardians are under a legal duty to protect the interests and property of a child. This Section also enumerates the duties, including bringing up child in a way that will enhance the physical and mental development of the child. If the legal guardian is unable to take care of the child, he/she can approach the Chief District Officer for Government assistance. In such a situation, the CDO either provides necessary assistance or makes an arrangement to keep the child in a Children’s Welfare Home established under the Act. The Welfare Homes are supposed to provide alternative care to those abandoned. Similarly, the Act also paves the way for establishment and operation of orphanages and centres for mentally retarded children. Orphans and disabled or mentally retarded children having no parents are kept in the orphanages and the centres.

The Government has to date created a number of infrastructures in order to implement the welfare related provisions. However, the full range of implementation is yet to be achieved. Resource constraints remain a major challenge for the implementation of these provisions. Prioritization of the issues is another problem. There are child rights officers in all 75 districts. The Government has so far established four Child Welfare Homes and there are significant numbers of such homes operated throughout the country by private/non government sectors. There exist specialized guidelines and standards to ensure quality of child welfare homes. The Central Child Welfare Board (CCWB) remains active to enforce these standards. There is a gap in the law in terms of reaching out to vulnerable children from a food security perspective. While considering the legal reform initiative, there is a need to think about how to integrate the child rights perspective into food security related laws.

Gender and social inclusiveness in the state structures and public life has been imperative under the Interim Constitution. However, the "notion of inclusive

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279 Interview with Tarak Dhital, Executive Director, Central Child Welfare Board, 16 July 2013.
280 Interim Constitution of Nepal. 2007. It includes provisions that pave the way for gender equality and social inclusion. In addition to the guarantee of a separate fundamental right of women, the Constitution sets forth the right to equality and the right to be proportionately represented in
proportional representation" incorporated in the Constitution has not yet enjoyed effective implementation in the context of ESCR. Despite the fact that women in Nepal have been disadvantaged and oppressed due to their limited access to education, health care, employment, and income generation, as well as political and legal rights, the issue of gender equality has remained only on the periphery of the political agenda. The legislative actions, including the 2007 amendment to the Civil Service Act taken by the Government under the Interim Constitution, are not adequate to secure the goal of gender inclusion. Temporary special measures taken for accelerating access of women in the areas of education, employment and the economic sector still remain unsatisfactory. Against this backdrop, stressing the need for additional temporary special measures to reach de facto equality, the CEDAW Committee recommends adoption of temporary special measures to accelerate the advancement of women in areas in which women are underrepresented or disadvantaged, including in political representation, Government administration and the judiciary, and access to health care, education, employment, housing and land ownership. At the same time, the Committee expresses deep concern about the extremely low representation of women, in particular Dalit and indigenous women, in high-level decision-making positions, public service, the judiciary and the diplomatic service, in the National Human Rights Commission and at the local level. Also, the Committee calls on the Government to accelerate the increase in the representation of women, including Dalit and indigenous women, in elected and appointed bodies in all areas of public life and raise awareness of the importance of the participation of women in decision-making for society as a whole. The Committee also expresses serious concern about the overall living conditions of women living in poverty, especially rural women and women heads of households, and their lack of access to land, adequate food, safe drinking water and fuel for cooking and heat.

Gaps and weaknesses

Equal access to nutritious food: While deprivation of women from food is prohibited, there is a gap in the law to address the special dietary needs of women in specific circumstances, such as during pregnancy and delivery. At the same time, it is important that the anti-discrimination law expressly deals with discrimination in distribution of food at household level.

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281 This reserves 45% of vacant posts for excluded groups, allocated as follows: women (33%), ethnic groups (27%), Madhesis (22%), Dalits (9%), differently able (5%), and backward regions (4%) to increase the effectiveness and responsiveness of the civil service.

282 Committee on the Elimination of Discrimination against Women (CEDAW Committee), Concluding Observations in response to combined fourth and fifth reports of Nepal (CEDAW/C/NPL/4-5), 29 July 2011, para. 16.

Protective provisions under the Children Act: Though the Children Act contains a number of protective provisions, including in relation to providing alternative care for orphan and destitute children, implementation of such provisions remains very weak. Consideration should be given to accelerating the implementation of protective provisions under the Children Act. The incompatibility in relation to “age of minority threshold” between the Children Act (16 years) and the CRC (18 years) should also be addressed.

Access to justice under the Domestic Violence Act: Though progressive in providing a normative framework, women and children have rarely benefited from the Domestic Violence Act. The Government should take seriously the lack of effective implementation of the protective and remedial provisions under the Act and give due consideration to adopting adequate measures, including a legal awareness campaign and effective legal assistance/aid programmes to enhance access to justice for victims of domestic violence. The ongoing process of drafting the Human Rights Action Plan can be used as an opportunity to plan for such measures.

Gender inclusion and representation: The constitutional imperative for gender inclusion and proportional representation in state structures lacks effective implementation. The Government must pay adequate attention to accelerating the implementation of the imperative for inclusion, including through extending the 33 percent representation of women to all decision-making institutions in political, social and economic fields.

Social security allowance: The age threshold (60 plus) for obtaining social security has been declared unjust and impractical by the Supreme Court of Nepal.\textsuperscript{284} It is therefore desirable to set out more objective grounds (income level) in order to create entitlements to social security allowance. Consideration should also be given in particular to the most vulnerable and gender issues, for Dalit women, women with disabilities, women living in extreme poverty and women from other marginalized groups who are most in need of social protection.

Enjoyment of parental property: Implementation of legal provisions in relation to parental property remains ineffective. The legal awareness measures must be taken at local level and effective legal aid opportunities must be extended to those discriminated against in terms of parental property. The Country Code provision addressing discrimination against married daughters must also be revoked because it is apparently inconsistent with the right to equality and non-discrimination guaranteed under the Constitution and the CEDAW.

\textsuperscript{284} Supreme Court, Kabita Pande for Pro Public v. Government of Nepal, 10 March 2010 (2066/11/26 BS).
3.2.6 Access to forest resources

In an agrarian society like Nepal, forestry remains an integral part of rural livelihoods. Forests represent an important source of non-wood forest products including food, fodder, and fuel wood that generate income for the rural poor. Forestry also serves as a source of medicine for primary health care and revenue for the Government.

The Forest Act, 1993 (2049 BS) and the National Park and Wildlife Conservation Act, 1973 (2029 BS) are key pieces of legislation in terms of governing the access to forest resources. As the National Park and Wildlife Conservation Act is specific to management of national parks, reserves and wildlife conservation areas, the Forest Act does not apply to rest of the forest areas. Other legal measures in this regard include the Forest Regulations 1995, the National Park and Wildlife Conservation Regulations, the Buffer Zones (Management) Regulations and the Environment Protection Act and its Regulation.

As its preamble spells out, the Forest Act aims to further “the development and conservation of forests, to ensure the proper utilization of forest products and to extend co-operation in the conservation and development of private forest by managing the national forest in the form of government managed forest, protected forest, community forest, leasehold forest and religious forest”. The ownership of forest land is conferred on the Government. No person shall register or cause to be registered land within the National Forests. Forest land cannot be claimed simply by virtue of registration, which shall be ipso facto cancelled. No person is entitled to any right over forest land except through lease, permit or any other way from the Government of Nepal. While focusing on managing different forms of national forests, the Forest Act also extends cooperation in the conservation of private forests. Similarly, the Act prohibits a number of activities, inter alia, including the removal, traffic or sale of forest products from the forest area and cutting down trees or plants or their branches. Section 70 contains a provision that empowers the Government to prohibit gathering of certain forest products with implications for indigenous communities.

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286 Ibidem, Section 67.
287 Ibidem, Section 16.
288 Sections 17 & 18.
289 Ibidem, Sections 38 & 39.
290 Ibidem, Section 49.
291 Ibidem, as defined under Section 2(c) of the Act, ‘forest products’ include timber, firewood, charcoal, catechu, rosin, wood-oil, bark, lac, pipla, pipli (Piper longum), or tree, leave, fruit, flower, mahwa (Bassia longifolia), chiraito (Swertia chirata), kutki (Picrorhiza kurroa) and all kinds of wild herbs, vegetation and different parts or organs thereof, or boulder, soil, stone, pebble, sand, or (4) bird, wildlife and trophy thereof.
On the other hand, the National Park and Wildlife Conservation Act, 1973\(^{292}\) provides the basis for the management of protected areas in Nepal.\(^{293}\) This Act makes provisions for national parks, reserves, conservation areas, conservation of animals and birds and other forest inhabitants. Protected areas are another type of forest land managed by the Government. There are strict provisions in the Act that impose legal restrictions in relation to hunting, extraction of resources and use of forest land. The Government may also restrict entry into national parks and reserves.\(^{294}\) The prohibited acts, \textit{inter alia}, include the hunting of animals and birds, the building of any house or hut, the occupation and cultivation of any part of land, the cutting, removing and burning of any tree, plant or bush, and damaging any forest product or land.\(^{295}\) Deriving the authority from the Act, a number of regulations, including the Conservation Area Management Regulation, 1996 and the Buffer Zone (Management) Regulation, 1995, also regulate the access of local people to forest land and forest products.

\textbf{Gaps and weaknesses}

\textit{Community forestry:} Section 25 of the Forest Act provides normative guidance in terms of community-managed forest. A part of national forest is handed over to a users' group to independently develop, conserve, use, manage, and independently determine prices of forest products. However, the Government is authorized to withdraw community forest or cancel its registration subject to non-compliance with the action plan\(^{296}\) or adverse effects on the environment. The District Forest Office’s decision can be challenged before the Regional Director. As the director’s decision enjoys finality, there is no room for independent judicial review. The Act also gives legislative guidance on how to spend the income generated from community forest. Under Section 30A, 25 percent of its income must be spent for development of the forest. However, the Act fails to provide guidance to prioritize the needs of local people living in extreme poverty, members of indigenous communities and marginalized groups.

Under Section 41, user groups are formed and registered with the District Forest Office, which gains the status of an autonomous and perpetual organization able to sell and

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\(^{292}\) This replaced the Wildlife Conservation Act, 2015 (1976).

\(^{293}\) The preamble of the National Park and Wildlife Conservation Act refers to the objective that this was enacted “to make arrangement for the management of national parks, conservation of wildlife and their habitat, regulate hunting and to conserve, promote, develop, and make appropriate arrangements for and the use of places which are of special importance from the point of view of natural beauty”.

\(^{294}\) \textit{Ibidem}, Section 4.

\(^{295}\) \textit{Ibidem}, Section 5.

\(^{296}\) The Forest Act defines an action plan relating to forest to denote a plan prepared for the development and conservation of the forest and utilizing, selling and distributing forest products by maintaining the environmental balance approved under this Act.
purchase property. However, the ownership of all types of forest except private forest rests with the Government.\textsuperscript{297} Under Section 68, the Government is empowered to give permission to use forest land of any kind for the purpose of a project of national priority satisfying the conditions that there is no other viable option than using the forest land and there will be no marked adverse effect on the environment. This fails to recognize other public interests, including the adverse effect on livelihood systems and enjoyment of the right to food.

**Rights of indigenous people:** There is no legal provision that recognizes community ownership of forest land and there is also an absence of the requirement to consult with the community while executing a development project that affects the interests of forest-dependent indigenous communities. In his 2009 report,\textsuperscript{298} the Special Rapporteur on Rights of Indigenous People elaborated on repercussions of conservation laws and policies on indigenous peoples in Nepal. He pinpointed the issue that there is no recognition of indigenous peoples’ rights to consultation or to access their traditional lands and resources governed by the National Parks and Wildlife Conservation Act. Referring to the case of the Chitwan National Park, the Special Rapporteur observed that, “the park was established in 1971 in areas traditionally used and inhabited by the Tharu, Majhi, Bote, Darai and other communities who were displaced to the park’s buffer zone. Even though these communities now enjoy limited access to fishing and other traditional occupations, as per some preferential arrangements made by the local authorities, many individuals displaced from the park area still remain landless and have not been provided alternative livelihoods or compensation”. As highlighted in his report, members of various communities were prevented from gathering food, medicinal herbs and firewood from the park area, severely impacting upon their livelihoods based on subsistence economies, rendering existing benefit-sharing mechanisms ineffective, inhibiting indigenous peoples from being sufficiently represented in the management, and resulting in there being inadequate or no mechanisms in place to compensate or consult indigenous communities.\textsuperscript{299} Through his recommendations, the Special Rapporteur called upon the state to develop a mechanism to provide redress to Adivasi Janajati communities and their members for their loss of land or access to natural resources incurred without their free, prior and informed consent. Also, the Government was recommended to amend the National Parks and Wildlife Conservation Act to include enhanced participation of Adivasi Janajati in the management of the parks and guarantee their access to natural resources on which they traditionally depended for their subsistence.\textsuperscript{300}

\textsuperscript{297} Ibidem, Section 67.
\textsuperscript{299} Ibidem, para. 32, 33, 34, 35, 36, 37 & 38.
\textsuperscript{300} Ibidem, para. 90 (d)(e).
Addressing poverty: By adoption of community and leasehold forestry schemes, the Forest Act 1993 has established the link between forest management and the livelihood of the people, but still the most marginalized households and the landless are yet to access this scheme. Though one of the reasons for the existence of forestry laws is to contribute to alleviating poverty, some of the existing legal provisions are not fully in line with that objective. For example, the Forest Act 1993 and Regulations 1995\textsuperscript{301} pave the way for leasing out forest land for commercial purpose\textsuperscript{302} rather than addressing poverty, including through leasing such forest to poor households and households belonging to marginalized and excluded groups. The scope of the leasehold forest scheme is limited to producing raw materials for forest-based industries, increasing production of forest products and selling or utilizing them through establishment of plantations, operating the tourism industry, and conducting agro-forestry practices in a way that they help conservation and development of forests and operating farms for production of insects, butterflies and wildlife. It is therefore important to amend the law so as to remodel leasehold forestry and make it pro-poor and pro-marginalized and pro-excluded groups, including through enhancing their participation in forest management. While considering reform of the Leasehold Forestry System, the focus should be on making it more pro-poor.\textsuperscript{303}

Protection from forced evictions: Under the Forest Act, forest officials are empowered to carry out removal of, \textit{inter alia}, houses and huts constructed on national forest land. According to Section 56(2) of the Act, “The District Forest Officer or a Forest Officer or Forest Assistant designated by him may remove the harvest or dismantle the house or hut and confiscate the harvest irrespective of the fact that the land within the National Forest was cultivated or a house or hut was built-up on such land”. The Act also details a specific offence relating to the construction of houses or huts and any other encroachment for the purpose of cultivation and settlement.\textsuperscript{304} The punishment for such an offence is a fine up to ten thousand rupees and/or imprisonment for up to one year according to Article 50(1) (a). The question arises as to whether the power in relation to the removing/dismantling of houses/huts is subject to any prior procedures. The Act does not provide, for instance, for any specific notice period to be given, or the opportunity to challenge the intended action of destruction of property. If, however, read as an independent power to remove houses/huts, this raises a series of concerns from a human rights perspective in relation to cases in which the action of the authorities in removing houses/huts has the effect

\textsuperscript{301} Provisions under Sections 31, 32, 33 and 34 under the Forest Act deal with the leasehold forestry.
\textsuperscript{302} Communities, institutions or commercial firms are illegible to enter into the leasehold forest scheme.
\textsuperscript{304} Forest Act, Section 49(a) provides: “No person shall do or cause to do and attempt to do the following functions in the National Forest except otherwise provided for in this Act or the Rules made there under. In case any such function is operated, it shall be regarded as an offence: (a) to deforest, plough, dig or cultivate in the land of Forest Area and to construct house or hut”.

of rendering persons homeless. It is noticeable that the provisions do not incorporate, for instance, procedures for verifying the encroachment, procedures for the giving of notice, procedures for consultation with the communities affected, procedures for access to a forum for appeal of the decision, or provisions for compensation for wrongful action.\(^{305}\)

**Women’s access to and control over forest resources:** The role of women is not adequately recognized in the Forest Act. The provisions relating to leasehold forestry fail to address participation of women adequately. Forest users groups are generally led by men from the socio-economically and/or politically influential members of the community.\(^{306}\) Though there is guidance under the Community Forestry Guidelines for 50 percent female representation in the forestry users groups, this norm has not yet been transformed into a binding provision. In order to secure adequate gender inclusion, such a provision deserves to be incorporated into the binding law.\(^{307}\) This can be achieved by amending the Forest Act or the Regulation to include such a provision. With regard to access, women, in particular from Dalit and indigenous communities, have limited access to forest resources. In most of the cases, they are used as low-paid labourers by middle persons and contractors and have no control over the decision-making. Consideration should therefore be given to adopting a set of special measures, including guaranteed representation, legal recognition of women’s traditional knowledge in terms of conservation and sustainable use of resources, clear stipulation of access rights for such women and other mechanisms so as to enable women to participate in decision-making meaningfully.\(^{308}\)

### 3.2.7 Access to water resources

The Water Resources Act, 2049 (1992) is a key piece of legislation governing access to and management of water resources in Nepal. Following the promulgation of the 1990 Constitution, this Act was basically adopted to make arrangements for the rational utilization, conservation, management and development of the water resources irrespective of their forms: surface, ground or in whatsoever form. This declares that the state is owner of all available resources within the territory of Nepal.\(^{309}\) At the same time, the Act aims to provide a legal basis for determining beneficial uses of water resources, and protecting water resources

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305 See, CESCR. 1997. *General comment No. 7: The right to adequate housing (Art. 11.1)*, para. 13, 14, 15 & 16.


307 Consultation with Mr Dilraj Khanal, National Policy Facilitator, Federation of Community Forestry Users- Nepal (FECOFUN), 4 December 2013.


309 The Water Resources Act, 2049 (1992), Section 3.
from environmental pollution and other hazardous effects.\textsuperscript{310} As defined by the Act, rational uses of water within available means and resources are deemed as “beneficial uses”.\textsuperscript{311} This also sets a general rule that “No person shall be entitled to utilize the water resources without obtaining a licence under this Act”.\textsuperscript{312} The licence is issued to an individual or corporate person subject to norms prescribed by the Act.\textsuperscript{313} However, the Act also provides for exempt categories of uses to which the licensing requirement does not apply. Among the exempt categories\textsuperscript{314} prescribed by the Act are “drinking” and other “domestic use” and “irrigation” on an individual or collective basis, which are priorities, followed by uses for running water mills or water grinders as cottage industries and for operating a boat as a means of local transport. The licensee under this Act is obligated to make beneficial use of water resources without causing damage to others.\textsuperscript{315} The Act enables those willing to make use of water resources for collective benefits to form a “water users association”\textsuperscript{316} that must be registered with the prescribed authority.\textsuperscript{317} The association of water users created under this Act enjoys its perpetual succession and gains an autonomous status.\textsuperscript{318} From an overall perspective, the Act also sets a priority order for water uses.\textsuperscript{319} The priority order is: (a) Drinking water and domestic uses; (b) Irrigation; (c) Agricultural uses such as animal husbandry and fisheries; (d) Hydroelectricity; (e) Cottage industry, industrial enterprises and mining uses, (f) Navigation; (g) Recreational uses and (h) Other uses. If a dispute is raised in relation to whether the priority order is followed in terms of utilization of water resources, the prescribed committee\textsuperscript{320} is authorized to settle the dispute on the basis of the priority order prescribed by

\textsuperscript{310} Ibidem, Preamble.
\textsuperscript{311} Ibidem, Section 2(b).
\textsuperscript{312} Ibidem, Section 4(1).
\textsuperscript{313} Ibidem, Section 4(2).
\textsuperscript{314} Section 4(2) reads: “Notwithstanding anything written in Sub-section (1), no license shall be required for the following uses of water resources. (a) For one’s own drinking and other domestic use on an individual or collective basis, (b) For the irrigation of one’s own land on an individual or collective basis, (c) For the purpose of running water-mill or water-grinder as cottage industry, (d) For the use of boat on personal basis for local transportation, (e) For the use, as prescribed, of the water resources confined to a land by the owner of such land. (3) A person or a corporate body making use of water resources shall make its beneficial use without causing damage to other”.
\textsuperscript{315} Ibidem, Section 4(3).
\textsuperscript{316} Ibidem, Section 5(1). Under the Water Resources Regulation 1993, District Water Resources Committees are authorized to deal with licensing matters.
\textsuperscript{317} Ibidem, Section 5 (2).
\textsuperscript{318} Ibidem, Section 6 reads: “ (2) Users Association shall have a separate seal of its own for the purpose of its all business. (3) Users Association may, as a person, have the right to acquire, enjoy, sell, dispose or arrange by any means of movable and immovable property. (4) Users Association may sue as a person or be sued against it”.
\textsuperscript{319} Ibidem, Section 7(1).
\textsuperscript{320} The Water Resources Regulation, 1993 creates the Water Resources Utilization Inquiry Committee to settle such disputes.
the Act and through conducting necessary inquiry in relation to adherence of the ‘beneficial uses’ requirement.\textsuperscript{321} Such a decision is mandatory for all concerned parties.\textsuperscript{322} Those who obtained a licence for use of water resources under Section 8 of the act are obligated to pay charges in consideration of the licence.\textsuperscript{323} Upon receipt of the licence, the licensee becomes entitled to sell or otherwise transfer the licence subject to approval from the prescribed authority.\textsuperscript{324}

Section 10 of the Act entrusts the Government with extensive power to utilize or develop water resources on its own regardless of other provisions under the Act. The Government has the power to acquire and develop water resources and associated land, buildings, equipment and structures relating thereto utilized by any person under the Act. This is subject to “purpose of extensive public use” and “compensation”. As explained by the Act, this means use that does not cause substantial adverse effect to the existing use and benefits a larger population than the existing population benefitting from it. The Government may hand any water resource project developed under Section 10 over to the respective users association. The Act protects the ownership of such association over the project.\textsuperscript{325} Similarly, the provision under Section 12 has also overriding effect on other provisions of the Act as it empowers the Government to enter into a contract with any national or foreign person (natural or legal) in terms of utilization of water resources and delivery of services generated through use of water resources. The person or corporate body who has the licence to utilize water resource is entitled to make water services available subject to service charges.\textsuperscript{326} There is no provision to provide services free of charge or on the basis of a subsidised charge. The service provider is authorized to stop the service if the service recipient fails to make payment of such charge.\textsuperscript{327} In the case that the licensee breaches any provision under the Act and the respective Rules, the prescribed authority may issue an order prescribing necessary improvements to be achieved within a specified period of time.\textsuperscript{328} If not improved, the licence can be cancelled subject to the right to defence.

\textsuperscript{321} The Water Resources Act, Section 7(2).
\textsuperscript{322} Ibidem, Section 7(3).
\textsuperscript{323} Ibidem, Section 8(5).
\textsuperscript{324} Ibidem, Section 8(6).
\textsuperscript{325} Ibidem, Section 11.
\textsuperscript{326} Ibidem, Section 13.
\textsuperscript{327} Ibidem, Section 14.
\textsuperscript{328} Ibidem, Section 21.
In order to preserve the quality of water, the Government is authorized to fix the necessary quality standards of water resources for various usages by a notification in the Nepal Gazette.\footnote{Ibidem, Section 18.} Similarly, the Government may also prescribe the pollution tolerance limit for water resources\footnote{Ibidem, Section 19.}, which must be followed by everyone.\footnote{Ibidem, Section 19 (1), (2).} There is also a stand-alone provision that requires the utilization of water resources does not have a substantial adverse effect on the environment by way of soil erosion, flood, landslide or other similar cause.\footnote{Ibidem, Section 20.}

Under Section 24 of the Act, the Government is empowered to frame the necessary rules in order to carry out the objectives of this Act. By virtue of this provision there are a number of Rules and Regulations in force that, \textit{inter alia}, include the Water Resources Regulation 1993 (2050 BS) and Irrigation Rules, 2000. The Water Resources Regulation, 1993 creates a number of committees, including the District Water Resources Committee, to exercise licensing powers under the Act, the Water Resources Utilization Inquiry Committee to look after disputes in relation to water utilization, the Service Charge Fixation Committee to fix service charges for use of water resources and the Compensation Committee to deal with compensation related issues. The Irrigation Rules provide for formation of separate users associations for the purpose of running irrigation systems developed or maintained by the Government or farmers groups. It also requires the mandatory representation of women, Dalit, and other marginalized communities in the users association. The Irrigation Regulation, 2000 establishes irrigation users’ committees. It has a provision that prohibits access to irrigation services to those who will not pay the service charge,\footnote{The Irrigation Rules, 2056 BS (2000 AD), Clause 29(1) and Clause 5(1)(h).} which has a discriminatory impact on poor farmers.

There are also other scattered pieces of legislation that deal with access to and utilization of water resources for various purposes. There also exists the Aquatic Animal Protection Act, 1960 (2017 BS) aimed at protecting and promoting aquatic life. This prohibits use of explosive substances or poisons to kill any aquatic animal in any water. Section 3A also prohibits closing or demolishing the doors of a fish ladder, dyke and any other kind of structure placed in the water for the protection of any aquatic animals. Under Section 4, the Government is empowered to prevent the intentional catching and killing aquatic animals without obtaining a licence from the Government or the local authority. However, there is no restriction in relation to the aquatic animals in water located in the private land of any person.
Under the Country Code's Chapter on Land Cultivation, there are a number of provisions recognizing access to the irrigation system and land cultivation. The Country Code, in particular, recognizes a set of customary rules for water use. According to such rules, prior right to irrigation is conferred on the person who has constructed the irrigation canal by his/her own effort. The lower riparian can use water once the upper riparian plots are irrigated but the lower riparian land can be irrigated first if the upper riparian does not need the water immediately. The construction of new canals is allowed only if it does not reduce the quality of water to those plots of land which are being irrigated through the old canals. This recognizes and protects the traditional rights of the farmers to water resources and not the collective rights of the farming communities on the local resources.

Similarly, under the Local Self-Government Act, Village Development Committees, Municipalities and District Development Committees are obligated to develop the agricultural sector, including through enhancing irrigation facilities, protecting forest and environment, and controlling soil erosion and flooding. The Drinking Water Corporation Act, 1989 was adopted due to the expediency of maintaining public welfare and health by distributing pure drinking water on a regular basis and to make proper arrangements for drainage systems. Section 5 of the Act imposes rights and duties on the Corporation, inter alia, to formulate plans concerning drinking water and drainage systems, to implement these plans and to provide drinking water and drainage facilities by charging fees. Section 6 of the Water Supply Corporation Act and the Water Supply Management Board Act 2006 (2063 BS) have established the provision of a service charge that is collected by a service provider in the drinking water supply sector.

Gaps and weaknesses

Access to safe drinking water: The availability of drinking water service through the Drinking Water Corporation is subject to the discretion of the Government as the Corporation provides its service in the areas designated by the Government. The Corporation is under an obligation to provide drinking water in consideration of charges. Even the Act does not enable the Corporation to launch a programme of its own targeting the needy population who are unable to pay for safe drinking water. The Act deserves to be amended to ensure access to safe drinking water for

334 See, Clauses 1, 2 & 3.
335 See, Sections 28(e), 96(c) and 189(1)(j).
336 See, Section 6.
337 See, Section 24.
338 Nepal Water Supply Corporation Act, 2046,1989, Section 3(1).
339 Ibidem, Section 5.1.7.
its population consistent with the state’s obligations under ICESCR.\textsuperscript{340} The affordable access to drinking water by local communities, indigenous people, and the most disadvantaged and marginalized groups of society must be ensured.

**Protection of customary use rights:** Despite there being a legal recognition of customary rights of water use under the Country Code, the Water Resource Act, as special legislation dealing with water resources, gets primacy over the Country Code’s Chapter on Land Cultivation.\textsuperscript{341} It is therefore important to amend the Water Resources Act to incorporate customary rights of water use explicitly as guaranteed under the Country Code.

**Rights of Indigenous peoples:** The water resources laws are flawed as they fail to recognize traditional rights of indigenous communities in relation to water resources vital for their livelihoods. Fishing in rivers and lakes, as well as access to water resources, are subject to a similar system of concessions, leaving communities, which in many instances had access to these resources for their subsistence economies, in a vulnerable position. As fishing in the river without obtaining a licence is illegal under the Water Resources Act and the Aquatic Animal (Protection) Act, the livelihood of landless fishing communities of Nepal (e.g. Bote, Majhi and Darai) have been severely affected.\textsuperscript{342} Consideration should be given to accommodating the interests and rights of such communities through amending the existing legal provisions consistent with international human rights obligations of Nepal.

**Beneficial use of water resources:** Though the Water Resources Act incorporates an order of beneficial use of water sources and the principle of ‘beneficial use’ as a statutory yardstick, there is no appropriate mechanism to monitor whether the water resources are used for the larger public interest, and whether the existing licensing requirements have negative effects on deprived and marginalized communities. As there is a provision permitting the licensee to sell the licence, there is a risk of promoting licence brokering rather than advancing the beneficial use of water resources. The regulatory framework should therefore be amended in order to discourage licence brokering.

\textsuperscript{340} Articles 11 and 12. Through its General Comment 15 (Para. 27), the CESCR clarifies that States parties are obligated to adopt the necessary measures in order to ensure affordable drinking water. According to the CESCR, such measures include, \textit{inter alia}: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost water; and (c) income supplements. The Committee further clarifies that any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups and equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.

\textsuperscript{341} Clause 4 of the Country Code’s Chapter on Preliminary Matters reads: “The matters set forth in separate laws made in specific subjects shall be governed by such laws and those matters not set forth in separate laws shall be governed by this Muluki Ain (Country Code)”.

**Duties of local government:** As the roles of the local bodies are only limited to maintenance and protection of water-related infrastructures, prevention of water resources from pollution and protection of the environment, the Local Self-Government Act should be amended to confer the explicit duties of local government to provide affordable drinking water and irrigation facilities to local people.

**Women’s access to and control over water resources:** Women’s access to water resources and their participation in water resource management remain challenging issues in Nepal. Though there is a reference under the Irrigation Regulation of 2000 and Irrigation Policy 2003 to inclusion of 33 percent women in executive committees of water user associations, these are not mandatory as both documents make it subject to “availability of women”. In practice, women’s inclusion in the groups is considered ornamental and actual decision-making is exercised by male members. It is therefore imperative to restructure the current management scheme, incorporating gender perspectives and issues for enabling the participation of women in decision-making. Similarly, to enable women’s participation it is crucial that recognition is given at all levels to women as resource users and managers, and women’s resource and management needs are recognized.

Not only does there appear to be a gap in terms of representation, but the participatory aspects also remain problematic in the sense that women’s participation is considered to be of cosmetic value rather than being a productive factor. Similarly, a number of factors, including their double day work, reproductive functions, lower educational status, poverty and cultural biasedness also hinder their meaningful participation. Among women, the situation of Dalits, women living in poverty and women from Chaupadi areas have poor access to drinking water and sanitation facilities. Given the Chaupadi practice, women are often deprived of access to public water taps and sanitation facilities. Also, illiteracy among rural women is referred to as a reason for them not attending meetings; they are said to be afraid that they would not be able to understand what was being said and would have little to contribute. Similarly, women’s lack of negotiating skills and mobility is also considered a key factor inhibiting meaningful participation of women. On the benefits side, the prestige of participation in public forums, and especially of leadership positions in the organizations, may be valued more highly by men than by women.  

343 Irrigation Regulation, 2000, Rule 3(1) & Irrigation Policy 2003, Clause 1.6.16.
344 Chaupadi is a traditional practice prevalent in some parts of mid-western and far-western regions, which treats girls/women as untouchable/impure and they are kept in isolated places, especially while they are menstruating.
3.2.8 Access to land and security of land tenure

In an agricultural country such as Nepal, proper land management is a vital prerequisite for improving productivity, including through ensuring equitable distribution of land and providing tenure security. However, the ownership of land and the agenda of land reform have been protracted given the great disparity in landholdings.

A number of provisions under the Interim Constitution, 2063 (2007) also acknowledge such a reality. The Constitution requires the Government to pursue a policy of implementing scientific land reform through the abolition of the feudal system of landholding with a view to curbing the widespread inequalities in access to land. Article 34 (4) specifies that the fundamental economic objective of the state is to prevent the available resources and means from being concentrated within a limited section of society, by making arrangements for equitable distribution of economic gains based in social justice. Similarly, Article 35 (6) requires creating conditions for economic progress for the majority of the people who are dependent on agriculture by encouraging poor farmers and increasing productivity to develop the agricultural sector by launching a land reform programme.

Traditionally, land was considered the property of the state (Raikar). Only the state had the right to allocate land through sale, mortgage or bequest. Though there are vast bodies of legislation that regulate access to land in Nepal, the Land Act 2021 (1964) was the first piece of legislation through which the efforts at land reform were amplified. The Act aims to secure a set of objectives, including the enhancement of the living standard of poor farmers dependent on land and securing rapid economic development and wellbeing of the general population through encouraging the attainment of optimum agricultural growth. Providing a comprehensive framework for regulating the landholding system in Nepal, the Land Act put forward a number of progressive measures towards securing the objectives specified under the preamble. One of the important measures provided by the Act is the ceiling on landholdings under Section 7. At the same time, the Act fixed the rent to be paid as a contract (Kut) by tenants at 50 percent of the principal crop, and protection of tenant farmers against eviction. However, the Act failed to achieve any significant results in terms of addressing the issue of landlessness, disproportionate land ownership and abolishment of feudal holding.

The ceiling of landholding prescribed by the original Act was narrowed by the Fifth Amendment of the Act: the land ceiling became 3.75 ha in all hill and mountain areas, 1.5 ha in the Kathmandu Valley and 7.43 ha in the Terai. For tenants, a smaller landholding is allowed compared with that for the landowner. Even Section 11 of the Act

348 Land Act, 1964, Preamble.
349 Ibidem, Section 7(1).
penalizes the tenant with a Rs 500 fine and removal of the status of tenant of such land for cultivating the land that exceeds the legal ceiling. There is no valid reason for setting the smaller size of landholding for tenant farmers. The statutory purpose of the land ceiling was to acquire the land in excess from the landlords and redistribute it to the landless and cultivators, with a priority being given to freed bonded labour, the downtrodden (Dalit), indigenous peoples, and the local landless people.\textsuperscript{350} Similarly, it was also supposed to contribute to increasing the agricultural productivity by providing access to those who actually cultivate the land.

The Act not only imposes an explicit prohibition\textsuperscript{351} on obtaining land in one’s own or another’s name exceeding the legal ceiling, it also obligates respective authority not to pass any deed of transaction against the ceiling provision. If violated, the landowner is fined and the land is confiscated.\textsuperscript{352} However, Section 12 provides an exemption from maximum limits of land and stipulates various conditions where the maximum limit does not apply. Such an exemption applies to cooperative institutions, industrial enterprises, trusts and other social and health organizations. Also the ceiling provision does not apply in the case that the land registration process was initiated before Section 7 came into force. These exemptions allowed holdings of big plots of land in a different name, misusing the legal provision of the land ceiling. The purpose behind the imposition of the ceiling was virtually defeated by the landowners and other elite groups who succeeded in bypassing the ceiling provision and bringing their holdings to just below the ceiling through the sale or the fake transfer of lands to close friends and relatives.\textsuperscript{353}

The Act also provides for the process of acquiring excess land from landowners. Section 13 of the Act obligates the landowner to provide details of the land owned by him/her within a 35-day time limit. Acting upon the court order in response to the Madhav Basnet Case,\textsuperscript{354} the Government issued a 35-day notice to Nepali citizens to submit details of their landholdings in accordance with the Land Act that prohibits landholdings from exceeding the legal ceiling.\textsuperscript{355} However, this provision still remains unimplemented.

Apart from the landlessness and imbalance in land distribution, security of land tenancy also remains an important issue. The Land Act 2021 defines a tenant as a person (a

\textsuperscript{350} The Land Act 2021, Chapters 4 & 6.
\textsuperscript{351} Ibidem, Section 10.
\textsuperscript{352} Ibidem, Section 11.
\textsuperscript{353} Regmi, MC (1977) Land Ownership in Nepal.
\textsuperscript{354} See, Infra, note 597.
\textsuperscript{355} Under the Land Act (Fifth Amendment 1964, a person can own 20 ropanis of land in Kathmandu Valley, 10 bighas in the Tarai districts and 70 ropanis in the Hill districts. Likewise, a person can own five ropanis of land in Kathmandu Valley and Hill districts and one bigha in the Tarai as homesteads. Before the amendment to the Act, an individual could own a maximum of 50 ropanis in Kathmandu and 20 bighas in the Tarai.
peasant) who holds the land that belongs to another landowner to till similarly on any
terms and cultivates the land by him/herself or using his/her family’s labour. The Land
Act acknowledges the tenancy system and recognizes the legal right to use the land
and to devolve it to a family member that the landowner trusts. In exchange for
these rights, they must comply with a certain number of obligations among which the
obligation not to leave the land in a more deteriorated state than it was at the time of
cultivation and the obligation not to sell or purchase a tenancy right. By virtue of
the Act, a tenancy is secured for those people who as a farmer/cultivator have been
cultivating land that belongs to any landowner until the date of the commencement
of this Act. Since the Fifth Amendment of the Land Act, there is no other ground for
establishing the tenancy right.

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, poor farmers were given a
period of six months to register proof of tenancy, after which unregistered tenants were
unable to claim their right. However, without a certified copy of a written bond between
the landowner and the cultivator, no tenancy right could be established. In addition,
the amendment failed to provide a solution to landlessness because it was not applied
uniformly.

There is also a significant amount of additional legislation dealing with land management,
including the Land Revenue Act 1978 that defines public and Government land and
prohibits the registration and cultivation without prior approval by the prescribed
committee. The first Act relating to a land acquisition is the Immovable Property Acquisition
Act 2013 (1956) that authorizes the Government to requisition immovable property (i.e. land and permanent structures attached to land) for public purposes. The Act places
restrictions on the Government’s power to requisition land: the residence used by the owner

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356 Ibidem, Section 25 (1) of Land Act 2021. The system of tenancy was one of the basis of political
movement in 2007. The rights of tenants were started recognizing after 2013. Cf. Badal Commission’s
report.

357 Ibidem, Section 26.

358 Ibidem, Section 26(5).

359 Ibidem, Section 26 A.

360 Ibidem, Section 25.

361 Under the original provision, a farmer who has cultivated one major crop on a landowner’s land after
the enactment of the Land Act would be entitled to tenancy.

362 The Land Act, Article 25.

363 Ibidem, Section 2.

364 Ibidem, Section 26.

365 Ibidem, Section 3(1).
or his family, schools, religious places, hospitals, public libraries, orphanages and inns cannot be requisitioned.\textsuperscript{366} The second Act is the Land Acquisition Act 2034 (1977) that gives authority to the Government to acquire any land anywhere for any public purpose, subject to compensation.\textsuperscript{367} As defined by the Act, ‘Public purpose’ means in the interest of or for the benefit or use of the general public, or functions to be undertaken by the Government of Nepal.\textsuperscript{368}

Numerous chapters of the Country Code 2020 (1962) also refer to land management. A number of provisions under the Code overlap with those contained in other specific land-related Acts. Some such provisions include the provisions under the chapter on Land Eviction that defines three different types of land – Raikar, Raiguthi and Kipat\textsuperscript{369} and outlines the procedure for eviction of a tenant,\textsuperscript{370} eviction of a landowner\textsuperscript{371} and and eviction of Jimidars/Talukdars.\textsuperscript{372}

The Local Administration Act 2028 prohibited the construction of a house on Government or public land without first establishing such a right. If any person attempts to construct a house or constructs a house, the District Administration Office (DAO) orders such a person to stop such construction and remove building materials.\textsuperscript{373} The DAO should maintain an inventory of public properties in their jurisdiction and send a copy of such document to the Land Revenue Office and the District Development Committee.\textsuperscript{374} No person should use or grant permission to use the public land without prior approval by the Government of Nepal.\textsuperscript{375} If any person has registered public land in his/her name, such registration will be revoked. There is no limitation period applied for the cancelation of such registration.\textsuperscript{376} It is important not only to bring these provisions together to avoid duplication and clarify the role of different agencies but also to pave the way for beneficial use of public, Government and communal land.

The other pieces of legislation related to land administration are the Land Acquisition Act, 1977 (2034 BS), the Land Revenue Act 1977 (2034 BS), the Land Measurement Act 1962 (2019 BS) and the Trust Corporation Act 1977 (2034 BS). All this legislation lacks the progressive

\textsuperscript{366} Ibidem, Section 3.
\textsuperscript{367} Ibidem, Section 3.
\textsuperscript{368} Ibidem, Section 2(b).
\textsuperscript{369} No. 1 of the Chapter on Land Eviction, Muluki Ain 2020.
\textsuperscript{370} Ibidem, No. 4 & 5.
\textsuperscript{371} Ibidem, Chapter 9, No. 4.
\textsuperscript{372} Ibidem, No. 9, 10, 11.
\textsuperscript{373} Local Administration Act 2028, Section 6a.
\textsuperscript{374} Ibidem, Section 10A.
\textsuperscript{375} Ibidem.
\textsuperscript{376} Ibidem, 10A.3.
perspective of equitable distribution of land to farming communities. These acts are made merely to administer the existing landholding system rather than take any positive initiative towards ensuring control over the source of food, particularly food sovereignty.

It is noticeable that the Land Act also introduced the concepts of cooperative farming, land zoning and plotting, agriculture-saving credit and farmers’ cooperative institutions, although these provisions mostly remain non-implemented. Lack of genuine and coordinated efforts of responsible agencies, coupled with weak political will, have resulted in non-implementation. However, the original Land Act provides a solid basis for the drafting of a new Land Act that addresses the pressing issue of poverty alleviation and ensures food security, including through enhancing access to land by poor farmers, the landless and marginalized people.

In order to address inequalities between men and women in landownership, the state has introduced several special measures to enhance women’s access to land. A tax rebate provision is one of the measures that has been in existence since 2006. Similarly, the provision that encourages joint landownership of husband and wife is another important measure. Both measures were introduced in response to the Civil Society Campaign for women's access to land. If land is registered as being owned by a woman, the Fiscal Ordinance, 2013 provides for the reduction of the land registration fee at the rate of 25 percent and 30 percent for urban and rural areas respectively. The Ordinance also prescribes a nominal fee (Rs 100) for creating joint landownership for a husband and wife. In 2006 there was a ten percent tax exemption for land transferred to women. The same policy increased the exemption to 20 percent in 2007 and 25 percent in 2009.

Though up to now no comprehensive data analysis has been done, it has been reported that the policy of a fee waiver has generally contributed to advancing landownership of women. It is reported that fee waivers are successfully encouraging women to register land in their own names. This has increased the landownership in the names of women and has given a great sense of security and empowerment to women. Nevertheless, in practice women do not fully enjoy the actual entitlement: their decisions regarding selling, using, and transferring the property still depend on husbands in reality.

377 Ibidem, Section 51I.
378 Ibidem, Section 51E.
379 Ibidem, Section 40.
380 Ibidem, Section 60.
381 See, Jagat Basnet, Sayama Lalpurja: 100 Rs (US$ 1.20) for joint ownership of land in Nepal, CSRC. Available at: www.landcoalition.org/sites/default/files/Case_Study_Nepal_CSRC_Joint_Land_Ownership_Campaign.pdf
Gaps and weaknesses

Implementation of land ceiling provisions: Non-enforcement of land holding and ceiling legislation represent a serious gap in terms of implementation of the Act. The ceiling provision had still not been implemented by the time the Fifth Amendment was introduced in 2002 and not even after the order of the Supreme Court in the Madhav Basnet Case. Despite this the Government proposed an amendment to the Land Act to take out the time-bound provision provided to end dual ownership by equally distributing land among landowners and tenants. Similarly, the Government also proposed an amendment to the provision requiring the Government to collect the inventories of the landholders in order to implement the land ceiling law. The proposal was not to collect all the records of landholders but only those of landholders with land exceeding the ceiling.

Indigenous peoples’ collective land tenure systems: As a result of a number of legal mechanisms, including the 1964 Land Act, which nationalized land and terminated traditional collective land tenure systems such as the kipat, indigenous communities in Nepal have been historically deprived of the lands and territories they have traditionally occupied or used, often without compensation. While Article 35 (4) of the Interim Constitution protects the land tenure of local communities, no specific legal mechanism is in place to afford special protection to indigenous lands, including associated cultural and spiritual relationships. The high-level Land Reform Commission formed by the Government also lacked the mandate to address specificities related to lands currently or previously inhabited by indigenous peoples. Though the collective character of indigenous land and resource rights – or territorial rights – are clearly reflected in Article 14 of the ILO 169 Convention and the provisions of the UNDRIP (Articles 25 – 30), no national legislation provides options for collective land rights and community members have perforce been obliged to seek individual titles to land. As mandated by Article 14 (1) of the ILO 169 Convention, any future legislative initiative must recognize both the individual and collective land rights of the indigenous peoples.

Disparity in the size of the land holdings: Under the Act, there is a significant disparity in the size of the landholding of tenants and landowners. Even for agricultural purposes, a family of tenants can keep a maximum one fifth of a landowner’s holdings (i.e. a tenant can keep 4 out of 25 Bighas, 10 out of 50 Ropanis and 16 out of 80 Ropanis). The reasons for this determination of land size are not always based on rational assessments. At the same time, the ceiling set on landholding does not take into account

criteria such as the size of the family, the type of soil or the availability of irrigation facilities. While determining the ceiling, it is important to distinguish between irrigated and non-irrigated, fertile and non-fertile and rural and urban land. The recent land ceiling is unequal in terms of land value.

**Accountability for violation of land holding provisions:** Because there was no criminal sanction for failure to provide a declaration of surplus land, this obligation has been neglected by landowners, causing delays in the implementation of the ceiling provisions. Though the concerned officers are under a legal obligation to prepare inventories of land ownership, they have not been compiled in the absence of a provision to penalize non-compliance. It is therefore important that the Act provides for a penal provision to make officers accountable for intentional lapses in terms identifying, acquiring and redistributing land.

**Protection of tenancy rights:** Though the Act was enacted to bring about improvement in the standards of living of the actual farmers dependent on the land, the Act has an adverse impact on those tenants who were not registered in the Government’s records. Under the Act, there is no recognition of unregistered tenants and there is not any effective redress mechanism. As a consequence, a significant number of tenants were denied tenancy rights.

After the Fifth Amendment, no new tenancy rights could be created, irrespective of the terms and conditions of cultivation. It created a safe haven for the landowners to exploit farmers. This particular legal scheme impoverished tenants and virtually reduced them to agricultural slavery. Consideration should be given either to introducing a new system of tenancy or a comprehensive legal regime to protect the rights and interests of agricultural labourers adequately.

The Land Act promoted exploitative tenancy relationships as it authorizes the landowner to charge rent or collect division thereof from the tenant for up to 50 percent of the annual crop yield from the land. The 50 percent crop sharing provision, which is based solely on owning land, seems unfair. Given comparative experiences, including those from India, it suggests that crop sharing should be reduced to a maximum of one third of the annual crop.

Provision of rent is connected with eviction of a tenant. The Act gives permission to a landowner to make a petition to expel a tenant on the grounds that he or she has not paid the rent. The prescribed authority in such a situation may issue an order to expel such a tenant.

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387 Sections 36 & 38.
388 The High Level Land Reform Commission Report 1995 reveals the fact that 30 percent of farmers in the Kathmandu Valley and 30-50 percent of farmers in the Terai were excluded from registration (pp. 29–30).
389 The Land Act, Section 33.
390 The Land Act, Section 29(1).
There are two other grounds on which the tenant can be expelled: 1) if a tenant has knowingly committed any act or failed to take reasonable care and consequently the value of the crop or the land has decreased, 2) if the tenant has neglected cultivation for a year except for reasons beyond the tenant’s control. The first instance gives a significant advantage to the landowner since it is he or she who at the same time issues the receipt and must prove its absence.

The Fourth Amendment to the Lands Act was adopted to put an end to dual ownership and to allocate the land proportionately between landowners and tenants. The Act authorizes the prescribed authority to make the decision to provide the tenancy land either to the landowner or to the tenant and end the system of dual ownership within two years of the commencement of the section. However, this provision still has yet to be implemented.

Redistribution of land: The Redistribution of Land Scheme of the Act requires the land to be distributed to landless people with priority going to freed bonded labour, the downtrodden (Dalit), and the indigenous nationalities from among the local landless people. However, the Act assumes that that the landless will be able to pay the cost of the land prescribed by the price fixation committee. The Act neither allows for distribution of cost-free land nor prescribes any special loans to make such a purchase, but has provided leverage to pay the sum to the Government within ten years at a nominal interest rate. If the landless have to purchase the land it also goes against the objective of the Act, 1964. Unless supported by the Government, it is not likely that the landless can make such a purchase. There should be a clear provision in the Act to ensure that the land is distributed to the landless free of charge as in the distribution of Government land to freed bonded labour or other landless people from time to time.

Land use programme: The Fifth Amendment not only introduces the concept of a land use programme but also a land use council in order to materialize the concept of the land use programme. The Council has extensive power, including in relation to imposing a zoning system. The Government has yet to employ concrete efforts in implementing the land use programme. Recent adoption of the National Land Use Policy by the Government is commendable. It is important that the Government takes appropriate steps as directed by the policy without delay. However, the Land Use Policy 2012 falls short in terms of

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391 The Land Act, Section 29(2).
392 There were 80719 complaints lodged in Land Reform Offices by landowners to remove tenants only based on the accusation of the rent related obligation provided by the Act. See, Report of the High Level Land Reform Commission 1995, p. 36.
393 The Land Act, Section 26 D1.
394 The Land Act, Section 23D3.
395 The Land Act, Section 22.
mainstreaming gender inclusion in the land resource management and fails to adopt the
objective of enhancing women’s access to land and recognizing inequalities between
men and women in landownership.

Compulsory deposit of food grains: In order to avoid food insecurity situations, the Land
Act 1964 provides for a compulsory deposit of food grains by every landlord and tenant. 396
Though this is a significant provision in terms of promoting food security, it unfortunately
remains unimplemented. Similarly, the Act is not clear regarding the use of deposited
food.

Women’s access to and control over land resources: Though the provision of “land registration
fee reduction” is reported to have had a positive impact on enhancing women’s
ownership of land, there has not yet been any comprehensive study that unpacks overall
impact of these measures. Despite an increment in the gender ratio of landownership,
whether women have practically exercised land ownership still remains unclear. 397
Likewise, this policy is criticized for not reaching indigenous women in Nepal due to a lack
necessary outreach to them, and lack of knowledge and awareness among indigenous
women themselves of such initiatives. 398

Together with sensitization on the policy among marginalized communities, the Government
should act on the recommendations of the High Level Scientific Land Reform Commission,
including for 50 percent rebate in the registration of land in a woman’s name and
a requirement to ensure joint land ownership of husband and wife in the case that the
state distributes land. 399

For many years special measures in this regard have remained confined to fee reductions
and encouragement of joint landownership, but it is crucial to explore and introduce
other creative measures. Such measures could include a loan scheme based on a minimal
interest rate to enable women to purchase land, subsidies on agricultural inputs if women
landowners use their land for farming and leasing cultivable government/public land for
collective income generating activities by groups of rural women.

396 The Land Act, Section 40.
397 Consulted with Dr Purna Nepali, Executive Director Consortium for Land Research and Policy Dialogue
(COLARP), dated 5 Dec 2013, and Kalpana Karki, Regional Programme Officer, Community Self
Reliance Center (CSRC), dated 2 Dec 2013.
398 National Indigenous Women’s Federation (NIWF), Lawyers’ Association for Human Rights of Nepalese
The Rights of Indigenous Women in Nepal, Shadow Report for the combined 4th and 5th Periodic Reports
3.2.9 Right to information and freedom of association

Information is crucial for the right to food as it enables individuals to know about food and nutrition, markets and the allocation of resources. It also strengthens people’s participation and allows free consumer choice. Protecting and promoting the right to seek, receive and impart information thus facilitates the enjoyment of the right to food.\(^{400}\) Similarly, freedom of association and the right to take part in public affairs are also important, in particular for the most marginalized and excluded, to make their voices heard and their views reflected in public policies relevant to food so that their right to food is protected.\(^{401}\)

The *Interim* Constitution grants Nepalese citizens the right to freedom of expression and opinion, subject to laws which may impose “reasonable restrictions on any act which may undermine the sovereignty and integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religion or communities; any act of defamation, contempt of court or incitement to an offence; or any act which may be contrary to decent public behaviour or morality”.\(^{402}\) The Constitution also explicitly grants Nepalese citizens the right to “demand or obtain information on any matter of his/her own or of public importance,” provided that no person may be compelled to provide information on “any matter about which secrecy is to be maintained by law”.

In order to give effect to the constitutional guarantee of the right to information, the Legislature-Parliament has enacted the Right to Information Act, enabling Nepalese citizens to exercise the right to demand and receive information from public bodies\(^{404}\) and it also confers reciprocal duties on public bodies to provide any “publicly important” information to citizens.\(^{405}\) The Act exempts several categories of information from being subject to public disclosure, including: a) information which seriously jeopardizes the sovereignty, integrity, national security, public peace, stability or international relations of Nepal; b) information which directly affects the investigation, inquiry and prosecution of crimes; c) information which has a serious impact on the protection of economic, trade or monetary interests, intellectual property, or banking or trade privacy; d) information which jeopardizes the harmonious relationship existing between various castes or communities; and e) information that interferes with individual privacy and

\(^{400}\) OHCHR and FAO *Fact Sheet on Right to Adequate Food*, p. 6.

\(^{401}\) Ibidem.

\(^{402}\) *Interim* Constitution, Article 12(3) (a). Under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) to which Nepal is a State Party, the right to freedom of expression is guaranteed to all persons (not only citizens) and encompasses the right to seek and receive information which may be subject to certain restrictions as provided by law and are necessary for the respect of the rights or reputations of others, the protection of national security or public order, or public health or morals.

\(^{403}\) *Interim* Constitution of Nepal. 2007. Article 27.

\(^{404}\) The Right to Information Act, 2007, Section 3.

\(^{405}\) Ibidem, Sections 4 and 5.
the security of the body, life, property or health of a person. However, the provision entrusting the public authorities with power to charge a fee for receiving information of public importance is not pro-poor.

The Act has established the National Information Commission for the protection, promotion and exercise of the right to information. The functions, duties and powers of the Commission include: ordering the public agencies to maintain a list of documents and records in an orderly manner; ordering public agencies to make information accessible to the public; prescribing timeframes and ordering public agencies to provide information requested by applicants within that timeframe; making suggestions and recommendations to the Government and various other bodies related to information and communications and the protection and maintenance of the right to information; and issuing other appropriate orders regarding the protection, promotion and exercise of the right to information.

The Information Commission is located in Kathmandu without support at local levels. Though the law empowers the Commission to delegate power to the CDO, the power has not yet been delegated. Even if delegated, the CDO, as a district-level chief executive officer with numerous other responsibilities, is not a proper authority to deal with the information related disputes. Other problems related to the Commission include: non-implementation of the Commission's directives and the lack of a mechanism within the Government to enforce the Commission directives. Similarly, the Commission’s power to make a suo moto inquiry in relation to violation of the right to information has also not been utilized as the practice indicates that the investigation is often based on the formal complaint lodged with the Commission. People are not aware of their rights and their level of awareness about the usefulness of information also remains very low, in particular, among marginalized and vulnerable groups. Unless public awareness is built up, effective implementation of the Act will not be achieved. One of the ways to raise public awareness is by making it compulsory to provide school-level education on the right to information.

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406 Ibidem, Section 3(3).
407 Ibidem, Section 8.
408 Ibidem, Section 11.
409 Ibidem, Section 19.
410 Telephone Interview with Tanka Aryal, Executive Director, Citizen’s Campaign for Right to Information, 15 July 2013.
411 Ibidem.
It is noteworthy that the Act imposes an obligation on public agencies to disclose information on a routine basis.\textsuperscript{413} Such information includes services to be rendered by the body, branch and responsible officer of the service-providing agency, fee and time limit required for service, decision-making process, authority to hear complaints against the agency’s decision, name of information officer, list of acts, rules, by-laws or guidelines governing the agency and updated description of income, expenditures and financial transactions.\textsuperscript{414} However, there is no effective implementation of the Act due to lack of accountability for denial of disclosure of such information. The provision for requiring the Government to appoint or designate an information officer\textsuperscript{415} has also not enjoyed full implementation. The Government has to date designated around 1200 employees to work as information officers for the purpose of the Act.\textsuperscript{416}

The Right to Information Act has been followed by the enactment of the Good Governance (Management and Operation) Act, 2008 (2064 BS). This came into existence with the objective of maintaining good governance in the country, including through promoting transparency, predictability and accountability in the governance system. As incorporated into its preamble, the Act is aimed at securing good governance by making public administration of the country pro-people, accountable, transparent, inclusive and participatory and avail its outcome to the general public.\textsuperscript{417} The Act codifies a set of principles that must be observed by the concerned authority in carrying out its functions.\textsuperscript{418} Such principles include equity and inclusiveness, rule of law, transparency, objectivity, accountability, fiscal discipline, people-oriented administration, access of people to administrative mechanisms and decisions, popular participation and optimum utilization of local resources.\textsuperscript{419} The Government is under the statutory imperative to abide by the policy of poverty alleviation, social justice, sustainable and efficient management of natural and public resources, empowerment of women and promotion of gender justice, environmental protection and uplifting of ethnic groups, Dalits, and other economically and socially marginalized groups.\textsuperscript{420}

\textsuperscript{413} The Right to Information Act, 2007, Section 5.
\textsuperscript{414} Ibidem.
\textsuperscript{415} Ibidem, Section 6 obligates the public agency to arrange for an Information Officer for the purpose of disseminating information held in its office.
\textsuperscript{416} Telephone Interview with Tanka Aryal, Executive Director, Citizen’s Campaign for Right to Information, dated 15 July 2013.
\textsuperscript{417} The Good Governance (Management and Operation) Act, 2008, Preamble.
\textsuperscript{418} Ibidem, Section 6.
\textsuperscript{419} Ibidem.
\textsuperscript{420} Ibidem, Section 7.
Furthermore, the Act requires the Government to maintain transparency in making decisions\(^ {421}\) and the decisions must also be reasoned.\(^ {422}\) In order to maintain good governance, authorities under law are obligated to conduct public hearings in order to maintain the activities of the office “fair, transparent, and objective” and addressing the lawful concerns of general people and stakeholders.\(^ {423}\) The Government authorities must seek direct participation and ownership of the people in operating any project or programme. The citizen’s charter must also be maintained by the Government office detailing the statement of services offered by the office and its nature, procedure to be followed by the service user (customer) to obtain the service, estimated time for delivering the service, description of the officer responsible for providing the service and his/her chamber, particulars of the fees to be charged or other amounts to be paid, if any, to receive the service, and other appropriate matters.\(^ {424}\) If any provision of the Charter is violated, the authority responsible for that violation is held accountable with departmental action. Compensation is also awarded to the person who sustained any damage due to the violation. The Act also provides statutory guidance on making consultation with civil society or stakeholders while implementing matters of public concern.\(^ {425}\) Many of these provisions are still waiting to be implemented. If effectively implemented, these provisions will have a positive impact on public service delivery.

It is also noticeable that other laws have yet to be harmonized with the legal regime on the right to information, transparency and governance. A number of restrictive provisions exist in several scattered laws. For instance, under the Civil Service Act, civil servants are prohibited from imparting or providing any “secret or legally prohibited documents” which they obtained, produced or became aware of in the course of their duties to any unauthorized civil servant, non-governmental person or the media.\(^ {426}\) The Civil Service Act does not define “secret” or “legally prohibited” documents. Similarly, under the Country Code, heads of Government departments and offices have discretion to decide whether copies of official documents are provided to any person who seeks such documents.\(^ {427}\) Unless permitted by the head of the department or office, Government employees may not be compelled to provide copies of “secret” and “unpublicized” documents concerning official governmental matters that are held by the office.\(^ {428}\) The Country Code does not define or specify which documents are considered “secret” or “unpublicized”.

\(^{421}\) Ibidem, Section 16.
\(^{422}\) Ibidem, Section 17.
\(^{423}\) Ibidem, Section 30.
\(^{424}\) Ibidem, Section 25.
\(^{425}\) Ibidem.
\(^{426}\) The Civil Service Act, Section 46.
\(^{427}\) The National Code, Chapter on Examining Documents, Section 17(6).
\(^{428}\) Ibidem, Section 17(7).
There also exists separate legislation termed "The Secrecy of Documents Act", adopted in 1982.\textsuperscript{429}

In addition to the right to information, freedom of association is also key for effective enjoyment of the right to adequate food as this empowers and enables citizens to join hands for the cause for which they strive. There are several types of association working in Nepal that include non-governmental organizations (NGOs), faith organizations, trade unions, social and cultural groups, identity-based associations, professional associations, networks, federations and trusts. One of the important roles that civil society organizations can play is providing a social safety net for those sectors not adequately addressed by the Government.\textsuperscript{430} There are several legal instruments giving effect to enjoyment of freedom of association in Nepal. The constitutional guarantee of freedom for Nepalese citizens to form unions and association, as a fundamental right, plays a key role in this regard.\textsuperscript{431} Similarly, the Civil Rights Act, 1955 (2012 BS), is a pioneering piece of legislation that guarantees the rights of Nepalese to run organizations and associations.\textsuperscript{432}

The legal instruments offering the legal basis for practical enjoyment of the freedom of association include the Association Registration Act, the National Directorate Act, the Social Welfare Act, the Trade Union Act, the Good Governance Act and the Local Self-Governance Act. The Association Registration Act is the key item of legislation that makes provisions on establishment and registration of associations. Most of the civil society associations in Nepal are registered under this Act. No person shall establish or cause to be established any association without having it registered pursuant to the Association Registration Act. It not only makes the legal registration mandatory but also penalizes the running of any unregistered association.\textsuperscript{433} It is the right of the Government to decide whether or not to register the association under this Act. The Act does not require the authority to disclose reasons for denial of the registration. Neither has it provided for an independent review of the refusal to register the association. The only option is to seek judicial review under the extraordinary jurisdiction of the Supreme Court.\textsuperscript{434}

\textsuperscript{429} The Secrecy of Documents Act was published in the Nepal Gazette on 21 November 1982. However, Section 1(2) of the Secrecy of Documents Act requires the publication of a notification specifying the date from which it will enter into force. Such notification has not yet been published.


\textsuperscript{431} Interim Constitution of Nepal, 2007, Article 27.

\textsuperscript{432} The Civil Rights Act, 1955, Section 6(3).

\textsuperscript{433} According to Section 12 of the Act, “If an Association is established without having it registered pursuant to Section 3 or if an Association is operated without having been registered pursuant to Section 7, the Local Authority may impose a fine of up to Two Thousand Rupees on each member of the Management Committee of such an Association”.

\textsuperscript{434} For example: in Tilotam Paudel v. Ministry of Home Affairs et al., (NKP. 423, SC. 2001), the Supreme Court invalidated the Ministry of Home Affairs’ denial to register Jagriti Child Club on the grounds that
Similarly, there exists the National Directive Act that paves the way for registration of professional and class organizations. For example, the associations registered under this Act include the Nepal Bar Association, Nepal Press Council, and NGO Federation of Nepal. Like the Association Registration Act, this Act also imposes a prohibition on running professional organizations without securing the registration.\(^{435}\) Also, the Act empowers the Government to direct the professional associations established under the Act on the grounds of "national interest".\(^{436}\) Such direction must be abided by the association as the Act bars judicial review of the direction given by the Government under this Act.\(^{437}\)

Similarly, the Social Welfare Act, 1992 (2049 BS) is another key legal instrument that aims to develop coordination among social welfare oriented institutions and organizations.\(^{438}\) The Act has established the Social Welfare Council to facilitate effective coordination, cooperation, mobilization and promotion of the social organizations and institutions, in order to run social activities in more organized way.\(^{439}\) Although the Act does not contain a provision requiring the mandatory affiliation with the Council,\(^{440}\) the association willing to receive funds from the Government or donor agencies has to get approval from the Council.\(^{441}\) This provision has a disproportionate effect on the associations; meaning that the grassroots associations outside Kathmandu (especially remote and food insecure districts) often consider it burdensome and refrain from applying for the grant support.\(^{442}\) Consideration should therefore be given to decentralizing the service of the Council at local level or power must be delegated to District Development Committees.

### Gaps and weaknesses

**Effectiveness of the Information Commission:** The Information Commission, an important accountability mechanism, is not within the reach of most of the population as it is confined to Kathmandu and is not operative at local levels. Similarly, the Commission has not become effective due to non-compliance with its decisions and its reluctance to undertake *suo moto*
inquiry in relation to violation of the right to information. In such a situation, future reform initiatives should decentralize the Commission at local level and offer accountability for denial of disclosure of the information and non-compliance of the Commission’s decision under the Act. Similarly, putting in place mandatory systems for public bodies to report back to the Commission on actions they have taken in response to its decisions can also be instrumental in ensuring effective compliance.

**Public education:** People are not aware of their rights and their level of awareness about the usefulness of information also remains very low. In particular, the lack of awareness persists among marginalized and vulnerable groups. Unless public awareness is built up, effective implementation of the Act will not be achieved. Consideration should be given to adopting a number of measures to raise public awareness, including through making it compulsory to provide school-level education on the right to information and mobilization of local and national media. The role for local government and civil society organizations should also be promoted to raise public awareness on the right to information.

**Proactive dissemination of information:** The provision for requiring the Government to appoint or designate information officers has not been fully respected. Many Government offices and public bodies governed by the Act lack stand-alone or designated information officers with the responsibility to update and disseminate information on a regular basis. The Government should make sure that all public agencies have their own officer responsible under the Act and the obligation for disclosure of information is complied with.

**Harmonization:** There are a number of legal provisions restricting access to information, which are yet to be harmonized with the specific legal regime on the right to information, transparency and governance. For instance, under the Civil Service Act, civil servants are prohibited from imparting or providing any “secret or legally prohibited documents” which they obtained, produced or became aware of in the course of their duties to any unauthorized civil servant, non-governmental person or media. The Government should accelerate the process of harmonizing other laws with the Right to Information Act and the Good Governance Act.

**Transparency and good governance:** A number of important provisions under the Good Governance Act aimed at promoting transparency and good governance are still waiting to be implemented. Together with creating awareness at the grassroots level, these provisions should be duly implemented.

**Restrictive legacy:** At present, no person shall establish or cause to be established any Association without having it registered pursuant to the Association Registration Act.

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443 The Civil Service Act, Section 46.
Together with making the legal registration mandatory, the Act also penalizes the running of any unregistered association.\textsuperscript{444} This is apparently incompatible with the freedom of association guaranteed under the Constitution and the international human rights treaties, including the ICCPR. Such provisions have negative implications for exercising the freedom of association by the people living in poverty and other marginalized groups who come together to be associated for a common cause without creating a legal entity. Consideration should be given to allowing the running of unregistered associations subject to certain terms and conditions. The law also carries a lot of controlled legacy from the previous undemocratic regime. The Government can decide whether or not to register the association without a duty to disclose reasons for denial of the registration. Future legislative reform should consider simplifying the registration processes to make them more accessible, insert a provision that requires the Government to disclose reasons for denial of the registration and create a mechanism to exercise independent checks against governmental excesses in terms of freedom of association.

\textit{Sustainability of grassroots associations:} The Social Welfare Council Act does contain a provision requiring the association willing to receive funds from the Government or donor agencies to get the approval of the Social Welfare Council.\textsuperscript{445} This provision has a disproportionate effect on the grassroots associations outside Kathmandu (especially remote and food insecure districts) as they often consider it burdensome and refrain from applying for the grant support.\textsuperscript{446} Consideration should therefore be given to decentralizing the service of the Council at local level or power must be delegated to District Development Committees.

\subsection*{3.2.10 Food safety and consumer protection}

To meet food security and nutrition objectives, food should also be safe and not cause harm to consumers. Nepal has a number of laws creating a legal environment for dealing with food safety and consumer protection. The Food Act, 1966 and the Food Regulation, 1970 are specific laws addressing food safety aspects. Similarly, a significant number of other laws, including the Consumer Protection Act, 1997 (2054 BS) directly deal with the safety of food and consumer protection.

\footnotesize
\begin{itemize}
  \item According to Section 12 of the Act, “If an Association is established without having it registered pursuant to Section 3 or if an Association is operated without having been registered pursuant to Section 7, the Local Authority may impose a fine of up to Two Thousand Rupees on each member of the Management Committee of such an Association”.
  \item \textit{Ibidem}, Section 16.
  \item Telephone Interview with Hari Prasad Adhikari, Chairperson, District Coordination Committee of Good Governance Clubs, Surkhet, dated 21 July 2013.
\end{itemize}
The Food Act, 1966 (2023 BS) defines foodstuffs\footnote{Food Act, 1966, Section 2(a): “foodstuffs” means the produced, processed, semi-processed or raw foods or drinks which human beings generally consume or drink and this also includes the spices, food additives, colours and aromas to be used in foodstuffs or drinks.} and prohibits producing, selling and distributing unhygienic and substandard food.\footnote{Ibidem, Section 3.} The Nepal Standard Mark (Certification) Act, 1980 has also separate provisions that pave the way for determination of Nepalese standards. It establishes a Standards Council with powers to determine standards, recognizing standards determined by national or international organizations, recognition of Government or non-governmental labs etc.\footnote{Nepal Standard Mark (Certification) Act, 1980, Section 3.} Also, misleading the consumer into buying substandard or adulterated food is prohibited. If adulterated and substandard foodstuffs are found in the market, the concerned authority is empowered to seize and withhold them. Production, sale, distribution, export and import of substandard foodstuffs are punishable under the Act. The Chief District Office is empowered to adjudicate disputes under the Act. The Act also empowers the Government to impose a licensing requirement for producing, selling and distributing specified foodstuffs, establish a Food Standard Determination Committee, determine the food standards and carry out lab-tests of foodstuffs in the prescribed laboratory.

The Consumer Protection Act, an umbrella Act aimed at protecting consumer rights, contains a comprehensive set of guaranteed consumer rights, including the right to be protected from harmful consumer goods and services; the right to information and education; freedom of choice; the right to a hearing; the right to be compensated, and the right to consumer education.\footnote{Ibidem, Section 6.} The Act has also created the Consumer Protection Council, \emph{inter alia} to advise the Government on matters relating to the protection of such rights and interests protected under the Act.\footnote{Ibidem, Section 3.} Both the Food Act and the Consumer Act authorize the Government to determine the standards for consumer goods and services as appropriate\footnote{Ibidem, Section 11.} and conduct necessary inquiries and inspections in order to identify whether the legal requirements are complied with.\footnote{Ibidem, Section 13.}

There also exists the Animal Slaughterhouse and Meat Inspection Act, 1998 (2055 BS) that aims to safeguard the health and welfare of the people in general and to control adulteration of meat and meat products and maintain reasonable meat standards by protecting its wholesomeness, quality and adequacy. Similarly, the Livestock Health and Service Act, 1998 (2055 BS) establishes provisions in relation to animal quarantine.\footnote{The Livestock Health and Service Act, 1998, Chapter 2 deals with the quarantine-related issues.}
breed improvement, establishment of industries for animal products and requirements for the export/import and commercialization of animal products, matters regarding the execution of the Act (infringements and penalties, prosecution, adjudicating authority, appeals etc.), the appointment of veterinary inspectors, delegation of authority, and prohibition against cruelty to animals etc. The Feed Act, 2023 (1976) and The Feed Regulation, 2041 (1984) established provisions for the standard setting of feed and feed products and the supervision of compliance of these products with these standards.

Other important laws in this regard include the National Veterinary Council Act, 2057 (2000) and National Dairy Development Act, 2049 (1992). The first establishes the requirements to perform veterinary medicine in Nepal, includes only veterinary doctors and not veterinary para-professionals in the sense of the OIE Code. The Second Act regulates the setting up and coordinating of a National Dairy Development Board (NDDB), which has policy making duties relating to the dairy industry at the national level, as well as planning powers to coordinate the private and public sectors.

In view of the fact that Nepal subscribed to the International Plant Protection Convention in May 2006, the Plant Protection Act, 2064 (2007) has been enacted in order to prevent the introduction, establishment and spread of plant pests and promote trade of plants and plant products. Offering a separate legal regime on seed matters, the Seed Act, 2045 (1988) and Seed Rules 2054 (1997) aim at ensuring the supply of high quality seeds to farmers in order to increase the yields of agricultural crops. There also exists the Pesticides Act, 2048 (1991) and Pesticides Rules, 1994 that created an inter-departmental committee and a Pesticides Registration Agency in charge of the registry and the preparation of guidelines for proper pesticide use.

**Gaps and weaknesses**

From an overall perspective, the legal framework dealing with food safety and consumer protection appears progressive. However, the implementation of many of the stated legislations remains ineffective for a number of reasons, including the overlapping

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455 Ibidem, Section 16.
456 Ibidem, Sections 17, 18 & 19.
457 Ibidem, Chapter 5 (Sections 20,21,22,23 & 24).
458 Ibidem, Chapter 6 (Sections 25, 26 & 27 respectively).
460 The Pesticides Act of 1991 was already reviewed and analysed by FAO in 2004. On that occasion the consultants provided a draft new Act. In this mission information was that a new draft was being prepared but due to restrictions in time and language the draft version was not available to the consultants.
provisions, lack of effective inspection and compliance monitoring, lack of functioning remedial mechanisms and lack of public awareness about the legal provisions. In order to ensure effective food safety and consumer protection, consideration should be given to the following improvements:

**Inspection service:** Though numerous legislations including the Food Act have provisioned for inspection services, none of the services is effective due to overlapped jurisdictions and lack of fully-fledged responsibility to carry out inspection. It would be more appropriate to have an integrated and stand-alone inspection service to look after food safety and consumer protection.\(^{461}\)

**Monitoring:** Often the monitoring under the Consumer Protection Act is carried out on an ad hoc basis (e.g. during the festival session) without proper coordination among concerned authorities. There is a need for regular and routine monitoring based on the quality standards by the committees that are adequately represented by the consumer representatives.\(^{462}\) Similarly, access of marginalized and vulnerable communities to safe and nutritious foodstuffs should also be taken into consideration in carrying out the monitoring.

**Quality standards:** On the one hand, there is no provision for a food safety standard that comprehensively covers foodstuffs in accordance with the Food Act or the Nepal Standard Mark Act or the Consumer Protection Act. On the other hand, setting standards in relation to a particular food item is left as a discretionary power to the Government. It is therefore important to address the existing gap of mandatory standardization of food products, including through inserting a specific provision that requires adoption of quality standards for all foodstuffs in consultation with stakeholders and its effective implementation thereof.

**Inadequate legal regime on animal health:** The definitions of ‘animal’ included in the Slaughterhouse Act\(^ {463}\) and Animal Health Act\(^ {464}\) do not correspond with the OIE definitions included in the Code of Terrestrial Animals.\(^ {465}\) Provisions related to veterinary health,
Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal

disease prevention and control are scarce and limited to quarantine. Import and export provisions are inadequate in discouraging the import of unhealthy animals. As the functions of veterinary inspectors are limited to verifying the compliance of veterinary drugs and biological products, the law should clearly spell out the powers of inspectors to get into facilities, take samples, order the immobilization of animals or their sacrifice, etc. There is also a pressing need that the animal health legal framework should provide a legal basis for the overall system of animal health provisions.

**Stand-alone redressing mechanism:** It is confusing that there are a number of different mechanisms of similar nature specified under various laws. Due to the lengthy judicial process and complex legal procedures, the remedial provisions are ineffective in practice. Consideration should be given to provision of a consolidated stand-alone mechanism such as a consumer tribunal/court to try cases and award appropriate compensation throughout the country. To address this problem, fast track courts in the form of consumer courts/tribunals should be established.\(^{466}\)

**Awareness building:** Legal awareness among consumers in relation to food safety is very low and most consumers are not in a position to take their grievances to the remedial mechanism. Awareness building campaigns combined with legal aid and assistance facilities should be encouraged, including through the establishment of a consumer information and awareness building centre in each district responsible for awareness and education among the various stakeholders, including women, children and the marginalized.\(^{467}\)

**Incentives for production of safe food:** There are legal provisions to penalize those violating the safety norms. However, there is no provision to pave the way for an incentive to produce safe, nutritious and hygienic foods.

**Consumer Council:** The Consumer Council can not become effective unless it is transformed into a more independent body of full time officials.\(^{468}\) As the state authorities are involved in trade practices and there are various consumer complaints regarding the issue of ineffective public service delivery, the advisory or redressing mechanism that is fully controlled by the state can not become effective when dealing with issues related to public service. It is therefore necessary to transform the Council into an independent consumer protection commission.\(^{469}\)

466 Interview with Mr Jyoti Baniya, Consumer Law Expert and Activist, dated 27 May 2013.
467 Ibidem.
468 At present, it is a body of ex-officio members that hardly allocates time for the responsibilities of the Council.
Integrated food safety law: There is no comprehensive legislation to deal with food safety aspects that codifies and consolidates all legal norms scattered under a plethora of laws. The new legislation should consider creating an institutional mechanism such as a Food Council to advise the authorities on formulation and implementation of necessary policies on a regular basis. Similarly, the scope of the DFTQC should also be revisited to make it a competent authority for all food products after harvest (of plant products) and collection (for dairy products with the exception that meat be regulated by the Slaughterhouse and Meat Inspection Act). Powers of the DLS over livestock products should be limited to the promotion of products and upgrading of their quality standards. The law should also mandate for establishing and running reliable and credible laboratories equitably distributed throughout the country.

Weak enforcement: One of the major problems in Nepal’s legislation regarding biosecurity relates to weak enforcement. Improving the legal framework should, therefore, start with promoting enforcement through capacity building of the respective institutions. The analysis of the systems of prosecution and trials would also be a good step to enhance enforcement.  

Consumer rights as fundamental rights: In view of the ongoing constitution-making process, consideration should also be given to translating consumer rights protected under the Consumer Protection Act into the fundamental rights under the new constitution. This would create a strong fundamental legal basis for making consumer rights claims.

**3.2.11 Nutritional aspects**

There are numerous legislations impacting upon nutritional security. The Breast-Milk Substitutes (Control of Sale and Distribution) Act, 1992 (2049 BS) is an important item of legislation in this regard. The Act is especially directed at protection of the nutritional rights of newly born babies through promotion of breastfeeding and safety of breast-milk substitutes. Similarly, the Act has established a Breastfeeding Protection and Promotion Committee to supervise whether this Act has been complied with according to the statutory requirements, including those in relation to the labelling and certification of the products at the central food laboratory. No educational material is permitted to undermine the importance of breastfeeding. Health workers are also obligated by the Act to comply with certain ethical standards. The Act also imposes a ban on advertisement, creating a belief among consumers that breastmilk substitutes are equivalent to breastfeeding. Producers and distributors are not permitted to give any incentive or donations for promoting the marketing  

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471 The Breast Milk Substitutes (Control of Sale and Distribution) Act, 1992, Preamble.

472 Ibidem, Section 4.
of a commercial product.\textsuperscript{473} The label must give the necessary information, including "breastfeeding is the best nutrient for infants", and a warning not to use the substitute without medical prescription.\textsuperscript{474} The Act has emphasized the promotion of breastfeeding and using breastmilk substitutes according to proper safety measures and having full and accurate information.\textsuperscript{475} The Act also provides for appointing or designating inspectors to carry out necessary inspections in relation to compliance with the legal requirements. As many provisions of the Act, including in relation to the inspection system, suffered from lack of implementation, the Supreme Court had to intervene and hold the Government accountable for not implementing some of the major provisions of the Act.\textsuperscript{476} Even after the judicial intervention, the implementation of the Act remains challenging and no concrete steps have been taken towards its effective implementation.\textsuperscript{477}

Similarly, the Iodized Salt (production and distribution) Act, 1998 (2055 BS) is another important piece of legislation dealing with nutritional issues. This is focused on minimizing the impact on human health from scarcity of iodized salt.\textsuperscript{478} The Act established the Iodine Deficiency Disorder Prevention Committee to deal with diseases linked to lack of iodine.\textsuperscript{479} The Committee has the responsibility to approve, label and package iodized salt, increase awareness on iodized salt, and supervise and monitor the compliance of the Act etc.\textsuperscript{480} The Act also provides for cancelation of a licence for the production, transportation, import and sale/distribution of iodized salt in the case that the transaction is made in violation of the Act.\textsuperscript{481} There are also provisions for appointing or designating inspectors responsible for carrying out necessary inspections in relation to compliance with the legal requirements.

Despite the Act having been in force since 1999, the necessary standards and regulations have not yet been adopted, meaning that the legislation stills remains virtually ineffective. The Government inaction with regard to implementation of this Act was challenged before the Supreme Court through filing a public interest litigation.\textsuperscript{482} On 4 January 2011,

\begin{itemize}
  \item \textsuperscript{473} Ibidem, Sections 7, 8 & 9.
  \item \textsuperscript{474} Ibidem, Section 10.
  \item \textsuperscript{475} Ibidem.
  \item \textsuperscript{476} Raju Prasad Chapagai and Others representing Pro-Public v HMG, Ministry of Health et al., WPN 2621 of the year 2059 BS, SC decision dated, 5 November. 2004.
  \item \textsuperscript{478} Iodized Salt (Production, Sale and Distribution) Act, 1998, Preamble.
  \item \textsuperscript{479} Ibidem, Section 12.
  \item \textsuperscript{480} Ibidem, Section 14.
  \item \textsuperscript{481} Ibidem, Section 21.
  \item \textsuperscript{482} Supreme Court, Sahadev Gautam v. Government of Nepal, Office of the Prime Minister and Council of Minister, 8 July 2010 (2067/3/24 BS).
\end{itemize}
the Supreme Court handed down a decision that directed the Government to formulate regulations that would bring the Salt Iodization Act into effect “at the earliest possible date”. Until the regulations required by the Act are adopted and brought in force, the legislation continues to remain ineffective. Though the process of drafting the regulations, as directed by the Supreme Court, was initiated by the Ministry of Health and Population, it appears to have stalled due to a jurisdictional dispute between the Ministry of Health and Population and the Ministry of Commerce and Supply. A report by the Office of the Prime Minister in relation to Implementation of Public Interest Litigation (PIL) decisions reveals that the Ministry of Commerce and Supply wrote a letter to stall the regulation formulation process initiated by the Ministry of Health and Population claiming that the ‘iodization of salt’ issues fall under the jurisdiction of the Ministry of Commerce and Supply. The coordination and jurisdictional issue between two ministries currently remains unresolved.

**Gaps and weakness**

*Implementation of the law:* There is seemingly a serious implementation gap in relation to both items of legislation: the Breast-Milk Substitute Act and the Iodised Salt Act. Even after the judicial interventions for taking steps towards the implementation of the laws, there have not been concrete steps taken to enforce the legal provisions. It is therefore important to pay serious attention to implementation of the legislation without further delay.

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4 Judicial remedy against food rights violations

4.1 Judicial powers to enforce the right to adequate food

4.1.1 Extraordinary writ jurisdiction of the Supreme Court

Nepal has a constitutionally created judicial system independent from executive and legislative branches of the Government.\textsuperscript{484} By virtue of the \textit{Interim} Constitution,\textsuperscript{485} judicial power in Nepal is exercised by judicial institutions in accordance with the constitution, law and recognized principles of justice. Among the judicial institutions, the Supreme Court, which is deemed to be a guardian of the Constitution, is the pinnacle of judicial hierarchy.\textsuperscript{486}

Together with constitutional protection of a wide range of rights impacting on the right to adequate food,\textsuperscript{487} the \textit{Interim} Constitution paves the way for judicial remedy in the case of their violation. Given that the \textit{Interim} Constitution guarantees the right to constitutional remedy as a separate fundamental right,\textsuperscript{488} the Supreme Court jurisdiction can be directly invoked to remedy violations of constitutionally guaranteed rights.

\textsuperscript{484} \textit{Interim} Constitution of Nepal. 2007. Article 100(2) reads, “The Judiciary of Nepal shall remain committed to this Constitution by pursuing the concepts, norms and values of the independent judiciary and realizing the spirit of democracy and the people’s movement”. Emphasis added.

\textsuperscript{485} \textit{Ibidem}, Article 100(1) reads, “Powers relating to justice in Nepal shall be exercised by courts and other judicial bodies in accordance with the provisions of this Constitution, other laws and the recognized principles of justice”.

\textsuperscript{486} \textit{Ibidem}, Article 102(3) reads, “The Supreme Court shall be a court of record. it may initiate proceedings and impose punishment in accordance with law for contempt of itself and of its subordinate courts or judicial bodies”. Similarly, clause (4) reads, “The Supreme Court shall have the final authority to interpret this Constitution and the laws in force, other than on any matter falling under the jurisdiction of the Constituent Assembly Court”.

\textsuperscript{487} See, detailed discussion under 3.1. below.

\textsuperscript{488} \textit{Interim} Constitution of Nepal. 2007. Article 32.
In order to safeguard rights and freedoms guaranteed under the Constitution, the Supreme Court is empowered and obligated not only to exercise an independent check against executive excesses but also against the legislative actions infringing on the exercise of fundamental rights and freedoms.

Under Article 107(1) of the Interim Constitution, the Supreme Court is empowered "to declare any law void, either ab initio or from the date of its decision if it appears that the law in question is inconsistent with the Constitution".\footnote{489} By virtue of the exercise of this power over time, the Supreme Court has played a vital role in upholding the constitutional rights of every citizen through employing an independent check on the legislative and executive actions. The exercise of this power has not only been used to test the constitutionality of the legislative actions but has also been increasingly used to test the amendments to the constitution. Together with the conventional power to redress infringement of individual rights through exercising writ jurisdiction, the Supreme Court has also original jurisdiction over "any constitutional and legal question involved in any dispute of public interest and concern".\footnote{490} In order to settle any such dispute of public interest and concern, the Supreme Court has extraordinary power to issue any appropriate order and writs, including the writs of habeas corpus, mandamus, certiorari and any other appropriate orders.\footnote{491} As this provision ensures the right to sue in the public interest, a public interest petition can be lodged with the Supreme Court by public-spirited organizations and individuals representing the disadvantaged, marginalized and vulnerable groups, including women, children and people living in extreme poverty.\footnote{492} However the public interest issue is not entertained unless that issue involves constitutional or legal questions of public importance. A wide range of issues has so far been recognized as being a matter of public interest and concern.\footnote{493}

\footnote{489}Ibidem, Article 107, Clause 1 reads, “Any Nepali citizen may file a petition in the Supreme Court to have any law or any part thereof declared void on the ground of inconsistency with this Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by this Constitution or on any other ground, and extra-ordinary power shall rest with the Supreme Court to declare that law void either ab initio or from the date of its decision if it appears that the law in question is inconsistent with the Constitution”.

\footnote{490}Ibidem, Article 107, Clause 2 reads, “The Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective, or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such rights or settle the dispute. For these purposes, the Supreme Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto”.

\footnote{491}Ibidem.

\footnote{492}In several cases, the Supreme Court has frequently accepted the Locus Standee of non-governmental organizations (e.g. Pro Public, FWLD) to file PIL petitions.

\footnote{493}In Radheshyam Adhikari v. Cabinet Secretariat [NKP 810 (2048)], the Supreme Court lists numerous issues (including protection of natural resources and socio-economic wellbeing of people) of public importance.
In addition, the Supreme Court of Nepal has an important role in developing the common law under its final authority to interpret the Constitution and law.\textsuperscript{494} The \textit{Interim} Constitution states that, "any interpretation given to a law or any legal principle laid down by the Supreme Court in the course of the hearing of a lawsuit shall be binding on the Government of Nepal and all offices and courts".\textsuperscript{495} By virtue of these provisions, the legal principles or judicial interpretation adopted by the Supreme Court become part of law. The Attorney General of Nepal is under a constitutional obligation "To monitor, or cause to be monitored, whether any interpretation given to a law or any legal principle laid down by the Supreme Court in the course of trying lawsuits has been implemented".\textsuperscript{496} The stated constitutional provisions have placed the Supreme Court in a better position to play a vital role in shaping and developing a domestic legal regime, including in relation to food rights through interpretation of law in harmony with relevant international human rights standards and principles.

\subsection*{4.1.2 Writ jurisdiction of the lower courts}

Though the \textit{Interim} Constitution provides for three levels of ordinary courts, it only defines the Supreme Court’s jurisdiction. The jurisdiction of the district court and the appellate court is therefore a matter to be dealt with through the legislative enactment. The Judicial Administration Act 1991[2048 B.S.] remains as a key source for their jurisdiction. Following the Judiciary’s strategy to enhance accessibility of justice through decentralization of writ jurisdiction,\textsuperscript{497} the Administration of Justice Act 1990 and the Country Rights Act were recently amended to extend their writ jurisdiction. Extension of the writ jurisdiction was considered as one of the strategic measures to ensure access of justice by the people. By virtue of the amended provisions, the Court of Appeal have powers "to issue orders of \textit{habeas corpus}, \textit{mandamus}, \textit{certiorari}, \textit{prohibition}, \textit{quo warrantor} or injunction, as required, for the enforcement of legal rights of any person infringed by any agency or official under its territorial jurisdiction".\textsuperscript{498}

\begin{table}
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494 & Interim Constitution of Nepal. 2007. Article 102, Clause 4: Except on the matters which fall under the jurisdiction of the Constituent Assembly Court, the Supreme Court shall have the final power to interpret this Constitution and other prevailing laws. \\
495 & Interim Constitution of Nepal. 2007. Article 116, Clause 2: Any interpretation given to a law or any legal principle laid down by the Supreme Court in the course of the hearing of a suit shall be binding on the Government of Nepal and all offices and courts. \\
496 & Ibidem, Article 135(3) (b). \\
497 & See, Strategic Plan of Nepalese Judiciary (2061-2066 BS), Supreme Court of Nepal. A number of study reports in relation to judicial reform also recommended expanding the lower courts’ writ jurisdiction. \\
498 & See, Section 8(2) of the Administration of Justice Act 1991, which reads, “The Court of Appeal shall have powers to issue orders of \textit{habeas corpus}, \textit{mandamus}, \textit{certiorari}, \textit{prohibition}, \textit{quo warranto} or injunction, as required, for the enforcement of legal rights of any person infringed by anybody or authority under its territorial jurisdiction”.
\end{tabular}
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Similarly, for the first time, the District Court is also empowered with its writ jurisdiction to issue writs of *habeas corpus* and injunction as required for the enforcement of the legal rights of any person violated by any agency or official under its territorial jurisdiction. It is also noteworthy that there also exists Section 10 of the Country Code’s Chapter on Court Management that permits the filing of a complaint in the public interest with receipt of the permission from the respective district court. This is often used to protect access to public land, water and other public utilities. Though this is not a robust provision empowering the lower courts to entertain the public interest litigation, there is clearly potential to promote strategic use of the judicial process for the protection and promotion of ESCRs at local level.

Also, under the Civil Rights Act, 1955 (2012 BS), an individual who faces an imminent threat to enjoyment of the rights guaranteed under the Act is entitled to invoke the jurisdiction of the Court of Appeal or the District Court. After conducting an inquiry into the petition, the Court may issue an order of injunction to prevent occurrence of such a violation. In terms of the right to adequate food, such a power to issue injunctions can become instrumental in order to prevent state and non-state actions that have adverse effects on enjoying the right to adequate food. Both courts are also empowered to administrate a compensatory remedy as well. If any of the rights guaranteed under the Act are violated, the aggrieved person may file a complaint with the District Court or Appellate Court and the respective Court may order the respondent to pay compensation to the victim. The amount is to be determined by the Court with “due consideration to the circumstances”.

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499 See, Section 7(2) of the Administration of Justice Act, 1991.

500 The Section 10 reads, “In relation to the cases which are state cases as per the laws in force, such cases shall be tried by maintaining the Government of Nepal as the plaintiff. In relation to the other cases, the Government of Nepal, or any public generally, with the leave of the office, may, being the plaintiff, institute a case involving the interest or concern of the Government of Nepal or public interest or concern, in view of the subject-matter or nature of such cases. An application for such leave has to be accompanied by the plaint. If an application for leave is so made, along with the plaint, decision on the application shall be made on the same day. If leave is not granted, an application may be made to the appeal hearing office’”.

501 The provisions under Section 17 of the Civil Rights Act are the following: (1) In case, there is a reasonable doubt of infringing any of the rights, guaranteed by this Act, the person concerned may file a petition before the Court of Appeal and the District Court; (2) Upon conducting an inquiry in the application field pursuant to Subsection (1), the court may issue an order of injunction to prohibit the act; (3) If a person infringes any of the right of any other person guaranteed by this Act, the person who so infringes, shall pay the compensation to the aggrieved party as decided by the court.

502 The Civil Rights Act grants citizens of Nepal with various civil rights, including the right to equality before the law, the freedom of speech, the freedom of association, the freedom of religion and the right to security of private residences (Section 3, 6 & 10). It also prohibits discrimination based on religion, caste, community, sex or other grounds, the employment of persons against his consent and the employment of children below the age of fourteen years in a factory, mine or any “risky” job (Sections 4, 13, 14). The Civil Liberties Act also grants rights against the imposition of taxation and the confiscation of any property without the authority of law.

503 Civil Rights Act, Section 17 (3).
In cases where the Government confiscates or destroys any movable or immovable property in violation of the rights guaranteed under the Act, the aggrieved person may file a lawsuit against the Government or any of its employees at the Appellate Court, demanding the restoration of the right and restitution or restoration of his property (Section 18). Such lawsuits under the Act must be filed within eight months from the date on which the right concerned was violated.

Earlier, the Appellate Court had been given power to issue only three types of writ: *habeas corpus, mandamus* and *injunction*. Given the absence of the power to invalidate administrative decisions, the writ jurisdiction was reported to have been ineffective for protection and promotion of human rights at the local level. Though there is not a robust provision empowering the lower courts to entertain the public interest litigation, Section 10 of the Country Code’s Chapter on Court Management permits the right to sue in the public interest with the permission from the respective court.

Given the stated legal framework, there is clearly scope for utilizing writ jurisdiction of the lower courts to protect and promote economic, social and cultural rights, including the right to adequate food. This can be achieved through using writ jurisdiction in order to compel local authorities to implement effectively the legal provisions that aim to promote socio-economic justice, to promote accountability, transparency and good governance through judicial review of executive and administrative actions infringing upon right to adequate food of local people, to hold the responsible authorities at local level accountable for not fulfilling legal duties to address long-standing discrimination based on gender, caste, disability and other grounds, and to protect and promote the interests of the marginalized and vulnerable groups.

However, it is also noteworthy that the writ jurisdiction of the lower courts has certain limitations and constraints that leave narrow scope for the judicial protection of ESCR, including the right to adequate food. Such limitations and constraints owe to the fact that the source of the jurisdiction is statutory law, the exercise of the writ jurisdiction is limited to enforcing the rights protected under prevailing law. There is narrow understanding of the territorial jurisdiction and hesitation to order the authorities is hosed out of the territorial jurisdiction of the respective court. There is also no open-ended writ jurisdiction, no allowance to review the legislative actions and lack of robust legal provisions empowering the lower courts to entertain public interest litigation. These flaws deserve to be remedied either through a) amendment of the Act or b) providing constitutional guidance or c) adopting a creative judicial interpretation.

504 Civil Rights Act, Section 18.
505 Civil Rights Act, Sections 19 and 20.
506 See, Dr Mohan Bhattarai A. 2012 Writ Power and Appellate Court: Achievements and Challenges, Naya Chautari, Special Issue.
4.2 Review of selected Supreme Court judgments impacting upon food rights

Over the past 20 years, the Supreme Court has been able to scrutinize a significant number of issues impacting upon the right to adequate food through employing its public interest litigation jurisdiction. Select decisions of the Supreme Court have been reviewed from the perspective of the right to adequate food guaranteed under international human rights standards.

4.2.1 Protecting people in food insecure districts from mass starvation

The issue of mass starvation has become a chronic phenomenon in a number of food insecure districts of the mid-western region. By way of PIL, this has been brought to the Supreme Court at least twice. For the first time, in *Madhav Kumar ‘Basnet*, the Supreme Court was called upon for an appropriate order under Article 88(2) of the 1990 Constitution to obligate the Government to supply foodstuffs for meeting the basic needs of the people. The petitioner contended that a situation of mass starvation was being faced by the people in remote districts of Nepal, including Jumla, Mugu, Kalikot, Dolpa, Bajhang, Bajura and Darchula. This had compelled several families to migrate from those districts. The petitioner also referred to the situation that in some cases a number of women living in extreme poverty had even poisoned their offspring and committed suicide.

This was the first such explicit case where the Supreme Court accepted the justiciability of the food rights violation, ordering the respondents to submit their written replies. In their written submissions filed with the Court, the Ministry of Finance and the Ministry of Health accepted that they had an obligation to meet the basic requirement of the people for their survival and livelihood. While acknowledging that there was mass starvation in the said remote districts, the Ministry of Supply claimed that rice had been supplied and subsidies for transportation to the affected families had been given; and therefore there was no need of judicial intervention.

In its final verdict, the Supreme Court observed that protection of life and property of the people was the responsibility of the Government. However, the Court declined to take an inquisitorial approach to map out the gravity of the problem and issue an appropriate remedy. The Court took note of various submissions which stated that the Government was doing its part to supply foodstuff and prevent starvation and the calamity and simply declined to issue the order of *mandamus* sought by the petitioner. The judicial acceptance of the Government’s submissions not reflecting the reality signifies the fact that the Court was guided by an adversarial approach in dealing with the case.

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508 *Madhav Kumar Basnet v. Prime Minister, Girija Prasad Koirala and Others*, writ no. 3341 of the year 2055, 2055/6/27 (BS).
In 2008, large-scale mass-starvation was again reported in several hill districts of mid-western Nepal where many people also died from diarrhoea and cholera. As reported, the epidemic affected poor people more and those who were also suffering from food scarcity. However, the Government was reported to have done very little to protect the people from starvation or calamity. Against such a backdrop, the Supreme Court was again invoked in *Prakash Mani Sharma and Others* through a public interest petition. The petitioners contended that food, shelter, clothing, education, health and employment were basic needs of every individual to live a life with dignity. Among various rights, the right to adequate food is an inherent human right now supported by Article 18(3) of the *Interim* Constitution, which guaranteed every citizen the right to food sovereignty, Article 12, which guaranteed the right to live with human dignity, and Article 13, which guaranteed the right against discrimination. The petition was also based on various reports in support of their contention and claimed that 12 hill districts in the mid-west and far-west of Nepal were facing mass-starvation. They claimed that scarcity of food, mismanagement in the distribution of food by the Nepal Food Corporation and distribution of rotten food had led to various calamities resulting from or abated by malnutrition in those districts. They therefore called upon the Court for the issuance of an appropriate order compelling the respondents to ensure access to food by the citizens, and proper arrangement regarding transport and safe custody and distribution of foodstuff in the food deficit areas. The petitioners also urged that special protective measures be put in place for the protection of the elderly, children, pregnant and lactating mothers, and that an inquiry commission be constituted to investigate the wrongdoings of the Nepal Food Corporation, employing necessary legal action against the culprits in the Corporation.

Following the initial hearing of the case, the Division Bench of the Supreme Court had earlier issued an *interim* order to immediately transport and supply foodstuff to those districts, also taking note of the fast approaching great Dashain festival of Nepal. Giving effect to the right to food sovereignty guaranteed under Article 18(3) and the right to live with human dignity under Article 12(1) of the *Interim* Constitution, the Supreme Court observed that every citizen has a fundamental right to live with dignity. No one can live without food, and unless the food scarcity is addressed immediately, irreparable loss is imminent, and the later the remedy the more it will be like availing the doctor after the death of the patient. Retaining the interpretation adopted in the *interim* order, the Supreme Court finally issued a directive order under Article 107(2) of

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509 Supreme Court, *Prakash Mani Sharma and Others v. GoN, Prime Minister and Council of Ministers and Others* (Writ no. 065-w0-149) writ filed on 15 September 2008, the case is sub-judice at the time this report was prepared.

510 The districts include: Kalikot, Humla, Mugla, Dolpa, Bajura, Achham, Dailekh, Darchula, Baitadi, Dadeldhura, Rukum and Jajarkot.

the Interim Constitution to ensure supply of adequate food in the food deficit areas and thereby prevent a situation of starvation. The Court further held that any death caused by the scarcity of adequate food would be a matter of accountability for the state as the right to live with dignity and the rights to food sovereignty are guaranteed fundamental rights under the Interim Constitution.

However, the Supreme Court overlooked a number of other genuine demands made by the petitioners. For instance, the Court did not respond the demand that the Government must adopt protective measures in relation to differently situated groups of people, including pregnant and lactating mothers, children and elderly people. Also, the Supreme Court declined to constitute or cause to be constituted an inquiry committee to probe the food rights violations, compensate the victims and hold those responsible accountable. The verdict does not indicate why the Court did not consider going for an innovative approach in terms of crafting the judicial remedies against such violations.

### 4.2.2 Compensating farmers for destruction of their crops by wild animals protected in national parks/reserves

Awarding compensation to the victims is an evolving strategy adopted by the Court in terms of human rights violations. The issue of compensation for victims of food rights violation was raised in *Bajuddin Miya and Others,* where the court also gave a good exposition of the right to food. In this case, the extraordinary jurisdiction of the Supreme Court was invoked by filing a writ petition. In their petition, a significant number of farmers who resided in the surroundings of the Koshi Tappu Wildlife Reserve contended that they suffered serious destruction of their crops by wild animals every year. They called upon the Court for an appropriate order to the concerned authorities for the payment of compensation. The respondents of the Ministry of Forest and Soil Conservation and the Department of Wildlife in their separate submissions maintained that the National Parks and Wildlife Act 2029, the Wildlife Reserve Rule 2034 and the Buffer Zone Management Rules, 2052 did not provide for the payment of compensation in such a situation, and so they were unable to pay it.

The Supreme Court acknowledged that the destruction of crops of the people residing in adjoining areas of the Park and Reserves caused serious loss of earnings and infringed the right to be free from hunger, the right to food and the right to survival guaranteed by the Interim Constitution. Adopting its own interpretation of the right to food sovereignty incorporated in Article 18(2) of the Interim Constitution, the Supreme Court

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512 *Bajuddin Minhya and Others v GoN, Prime Minister and the Council of Ministers,* (destruction of crops by wild animals from Koshi Tappu Wildlife Reserve) Writ no. WO-0338 of the year 2008 AD (2064 BS) decision, dated 18 March 2009.

513 Ibidem.
declared that the right to food sovereignty meant the right of every citizen to food security and the right to be free from hunger. The Court outlined that by virtue of the right to food sovereignty the state has responsibilities to ensure: a) Attainment of self reliance of citizens by producing foodstuff; b) Food security by making a provision for the supply and storage of the food, c) Securing food sovereignty of citizens through assistance by the state in producing, marketing and protecting food and d) A situation or an appropriate environment for all citizens to easily access food.

Elaborating on the food sovereignty clause, the Court observed that the right to be free from hunger and the right to food are very important citizen rights. By virtue of this, it was the constitutional responsibility of the state to ensure food availability and address food shortages. For this purpose, the state had to make arrangements for the storage of sufficient food and where necessary even import food. The Court very elaborately referred to the human rights instruments, including Article 11(2) of the ICESCR and various other documents and, on the basis of collective reading of the Constitution and human rights instruments, held that the right to food guaranteed by Article 18(3) of the Interim Constitution was an enforceable right. The welfare state could not limit its activities and behave like an ancient state by remaining oblivious to its responsibility of ensuring the food sovereignty, health, nutrition, security and employment of the people. The Court also stated that the state could not use absence of law and policy as a pretext to escape from responsibility to protect and promote the fundamental right to food sovereignty.

Based on the stated interpretation, the Court, as an interim measure to be applicable unless a specific legal arrangement is made, ordered the Government to constitute a permanent committee responsible for processing the claim for compensation. It also issued a set of judicial guidelines to be applicable until the time that legislation was drafted for filling the gap in the legal framework in terms of awarding compensation to the affected farmers. The procedures set under the five point guidelines included: formation of a permanent committee by the respective national park or reserve that consists of representatives from the relevant agencies as well as a representative from the farmers; receipt of the complaint from the aggrieved farmer; conduction of inquiry into the complaint and determination of a reasonable amount of compensation; and awarding the compensation to the aggrieved farmer. The order also empowered the committee to adopt its own rules of procedures for processing compensation and clarified that the guidelines remain applicable till the legislative enactment is made to this effect. It is noticeable that the judicial decision appears instrumental to pave the way for compensating the victims of post-decision violations. Though the Supreme Court’s decision is important from a future perspective, the decision did not enable the petitioners of this case to claim compensation for past losses.
4.2.3 Promoting access to safe drinking water

For the first time the right to pure and clean drinking water was raised in *Prakash Mani Sharma*. Articulating the issue of the state’s responsibility to respect the people’s inherent right to pure and clean drinking water, the petitioner complained that the Nepal Water Supply Corporation was supplying polluted water full of parasites and pathogens. The petitioner’s contention was based on a study report conducted by the Communicable Disease Department of the Ministry of Health that revealed the presence of 9000 germs in 100 ml of water. According to the petitioners, the activities of the said Corporation were violating Article 11(1) of the 1962 (2019 BS) Constitution and S 3, 5, 6 of the Water Supply Corporation Act, 2046 (1989 BS). The Supreme Court was therefore called upon for an order of *mandamus* to obligate the respondents to supply potable water. The petitioners also urged departmental action against the employees who were negligent of their responsibilities, and payment of compensation to the victims who were affected by the polluted water.

Issuing its final verdict after 10 years of the filing of the case, the Court elaborated on the significance of drinking water for maintaining the public health. The Court did not explicitly declare that drinking water is a matter of right, but noted that providing pure drinking water is a responsibility of the welfare state. Hence the Drinking Water Corporation cannot enjoy immunity from its immense obligation towards public health. The Court observed that pursuant to Article 25 of the Constitution (1990) it was the responsibility of the Government to protect the life, property and freedom of its people. Guided by the traditional approach of refraining from evaluating evidence under the writ jurisdiction, the Court declined to say whether the water supplied by the corporation met the WHO standard. As observed by the Court, settling questions of fact disputed by litigants through evaluating evidence is a normal process under the ordinary jurisdiction of the Court; it is therefore not possible under the ‘writ’ or ‘extraordinary’ jurisdiction. The Court, therefore, denied ordering the authorities to ensure the supply of pure drinking water as demanded by the petitioners. Instead, the Court drew the attention of the Ministry of Housing and Physical Development to hold the Drinking Water Corporation accountable in complying with the Corporation’s legal obligations under the Drinking Water Corporation Act.

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515 WPN 2237 of 1990, decided on 27 May 1999. It was reported that one of the reasons why people were suffering health problems in Kathmandu Valley was unsafe and inadequate drinking water. People were compelled to consume contaminated drinking water supplied by the Government-owned Water Supply Corporation. Invoking the right to pure drinking water as a human right, lawyers associated with Pro Public brought the issue before the Supreme Court in July 1989 demanding *mandamus* against Corporation and the Ministry of Housing and Physical Planning.

516 The Court observed, “With regard to pure water and its significance, the modern science establishes the fact ‘water is life and life is water.’ Pure water is indispensable for lives of all living creatures of nature; it is an established, eternal truth and sensitive subject as well.”
Arsenic pollution remains a serious threat to the right of persons to pure and clean water in some districts of Nepal. This issue was raised in *Prakashmani Sharma and Others*\(^{517}\) based on a number of reports produced by WHO,\(^{518}\) EPHNO,\(^{519}\) and the National Arsenic Direction Committee, which revealed skin diseases in people caused by arsenic pollution of water.\(^{520}\) The petitioners called upon the Court for ordering the Government to adopt therapeutic and preventive measures, including awareness-raising programmes in the arsenic affected districts. The demands put forward by the petitioners included: inclusion of arsenic related knowledge in the educational curriculum, compensation to the victims affected by arsenic, enhancing access to the health service, providing alternative provision of pure drinking water, and adoption of arsenic mitigation methods. In response to the writ petition, the written reply submitted by the Ministry of Local Development stated that it had launched awareness programmes at the district level and it had conducted arsenic tests in 52,847 tube wells of the Terai districts in collaboration with UNICEF. Similarly, the Department of Water Supply and Sewerage replied that it had conducted blanket tests in 11 districts of Nepal and adopted arsenic reduction and elimination methods in the most affected areas.

Stressing the importance of access to safe drinking water, the Court observed that water is an essential commodity for maintaining and sustaining life. It is the duty of the state to supply safe and pure drinking water to its citizens. Explicitly acknowledging the link between safe drinking water and the right to life, the Court further stated that safe and pure water is a matter that concerns health and so is linked to the right to life of persons; every citizen is entitled to safe, pure, unpolluted water.

Highlighting the gravity of the problems caused by arsenic pollution in the groundwater, the Court observed that “Drinking such water causes skin diseases, affects lung, liver and kidney and finally the person may also be caught by cancer”. In its verdict, the Court pointed out the inadequacy of ongoing interventions to protect people from arsenic problems, stating that an effective programme was needed at the national and local levels, including the necessary work plan concerning the health effect of arsenic, which seemed to be absent. The Court, therefore, issued an order of *mandamus* in the name of the Ministry of Housing and Physical Planning and the Ministry of Information and Communication calling upon them to pay serious attention to citizens’ rights to life and public health, including through launching an effective programme for the supply of arsenic-free water in the affected areas and running an awareness programme at national and local levels.

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517 Supreme Court *Prakash Mani Sharma and Others v. Prime Minister and Council of Ministers and Others*, Writ no. 3262 of the year 2062, decision dated 2064/6/15 (BS).

518 According to the standard fixed by the WHO, if water containing more than 10 ppb. is consumed for a long time, 6 in 10,000 people will get cancer.

519 An NGO, the Environment and Public Health Organization.

520 This was reported in State of Arsenic in Nepal 2003.
Subsequently, the Supreme Court also entertained a separate PIL[^521] in relation to the problems of access to safe drinking water in Pokhara Sub-Metropolis. Following its own precedents, the Supreme Court issued a directive order to the responsible agencies, including the Ministry of Housing and Physical Planning for expediting the implementation of plans and programmes initiated towards ensuring access to safe drinking water.

### 4.2.4 Enforcing nutritional rights of infant and health of lactating mothers at employment

The Supreme Court’s activism is also noticeable in relation to promoting nutritional rights of infants and health of pregnant and lactating mothers at work. The Supreme Court, through its public interest litigation jurisdiction, has addressed a number of issues, including promotion of breastfeeding, maternity leave and child care facilities at the workplace.

For example, the Court expressed serious concern about the nutritional rights of the children in *Raju Chapagai et al.*[^522] The petitioners drew the attention of the Court on the longstanding non-compliance of the Mother’s Milk Substitutes (Control of Sale and Distribution) Act[^523] Even ten years after promulgation of the Act, the Government failed to comply with the statutory obligations in relation to supervision and monitoring of production, sale and distribution of mother’s milk substitutes. The Government had not even appointed the inspector that is required by the Act. In this case, the Government was ordered to implement the Act appropriately, including through appointment of inspectors responsible under the Act for compliance monitoring.

The Supreme Court also noted the importance of breastfeeding, stating that children are indisputably entitled to exclusive breastfeeding for six months because nothing is as nutritious as breastmilk. It is also observed that the state and the respective companies are under a legal and moral obligation to comply with the national and international standards that are aimed at promoting health of children and mothers. It is also necessary to emphasize that the Supreme Court, linking the right to breastfeeding with the right to a dignified life, held that the Government has prime responsibility to keep children healthy by preventing them from being victims of malnutrition.

Giving effect to directive principles incorporated in the 1990 Constitution requiring the state to take care of maternal and child health,[^524] the Supreme Court held that the

[^521]: Supreme Court, *Bhojraj Ayer and others v. Ministry of Housing and Physical Planning and Others*, WPN 3066 of the year 2063, 2066/2/27 (BS).

[^522]: Supreme Court, *Raju Prasad Chapagai and Others representing Pro-Public v. HMG, Ministry of Health et al.*, WPN 2621 of the year 2059 (BS), 5 November 2004.

[^523]: The Act came into operation on 27 February 1995.

[^524]: A number of relevant directive principles enshrined under Article 26 of the 1990 Constitution include: The State shall pursue a policy of making the female population participate, to a greater extent, in the
Government should enforce legal and constitutional provisions aimed at promoting child health. Also it was observed in the case that the Judiciary should not refrain from intervening in such a sensitive issue merely because of levelling these provisions as a matter of public policy. Thus, the Court through its decision, made an important contribution to the protection of the right of children to healthy food and a secure life and fulfilment of the state’s obligation to safeguard the rights and interests of its citizen under the Constitution and the CRC.

Similarly, in *Prakash Mani Sharma et al.* 525 a number of unfair and discriminatory maternity leave provisions were brought to the attention of the Supreme Court invoking the 1990 Constitution, the CRC and the CEDAW 526 The Supreme Court was called upon to order the Government to adopt a uniform national standard on maternity leave, taking into account international standards and best practices. 527 As demanded, the Supreme Court directed the Government to formulate the national standards on maternity leave to be applicable for all working women and make essential arrangements for maternity protection in compliance with Nepal’s national and international commitments. 528 The Supreme Court held that it is a matter of state obligation to make proper arrangements concerning nutrition of infant and health care of a working woman during her pregnancy and post-delivery period. In terms of the importance of maternity leave for maternal and child health, the Court observed:

"Maternity benefits including maternity leave are provided in order to enable working women to have a complete rest before and after pregnancy and facilitate them to provide proper care for their newly born baby. Weak health status of those who are pregnant and mother of newly born baby may result in miscarriage and premature birth and it may also cause a risk to foetus or newly born baby. Taking into account the role of women to care and breastfeed baby as well as the baby’s right to be breastfed, working women can’t be denied the rest period or maternity leave in such situations”.

525 *Prakash Mani Sharma et al v. HMG, Ministry of Women, Children and Social Welfare et al., NKP 726 (SC., 2003).*

526 Nepal lacks a comprehensive legal framework dealing with maternity protection. There is inadequacy as well as a lack of uniformity in terms of providing maternity leave for working women (e.g. 60 days for public service employees, 52 days for employees regulated under the Labour Act, and 45 days for employees regulated under the Tea Estates Regulations).

527 ILO Convention on Maternity Protection, 2000 (to which Nepal is not a party) sets 98 days as a minimum standard.

In response to another PIL case initiated by Pro Public, *Prakash Mani Sharma et al.*, the Supreme Court drew the attention of the Government towards implementation of a legal provision under the Labour Act, requiring all enterprises that employ at least 50 women to provide child care and breastfeeding facilities at the workplace. Though the provision was made in order to make sure that women do not face difficulties in pursuing their employment and health of children is not jeopardized, many enterprises did not comply with the legal requirement. The case was, therefore, brought to the Supreme Court with a view to getting the law implemented effectively.

### 4.2.5 Protecting water resources from pollution

In view of the non-compliance with the water resources and environmental laws, a number of public interest litigations were initiated at the Supreme Court of Nepal. In *Bhojraj Ayer*, the petitioner drew the attention of the Supreme Court to the quality for different uses of water and the pollution tolerance limit. The petitioner referred to Section 18(1) of the Water Resource Act, which states that the Government may fix the use standards for various uses of water. Similarly, section 19(1) of the same Act empowered the Government to fix a pollution tolerance limit for water by publishing a notice in the Nepal Gazette. The petitioners demanded the issuance of an appropriate order for fixing the quality standards for water for different uses pursuant to S 18(1) and the pollution tolerance limit pursuant to Section 19 of the Act.

In this case the Supreme Court seriously noted the fact that the Government had not fulfilled its legal duties under the Act and issued an order of *mandamus* to the Ministry of Water Resources and the Ministry of Environment and Population for fixing the standards for water usage and the pollution tolerance limit of water.

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531 Supreme Court, *Bhojraj Aire v. Ministry of Water Resources and Others*, Writ no. 3305 of the year 2056 (BS), (2058/6/11).
532 Section 18 reads: (1) Government of Nepal may, by a notification published in the Nepal Gazette, fix the necessary quality standard of water resources for various uses. (2) While making use of water resources, the quality standard as prescribed pursuant to Sub-section (1) shall be maintained.
533 Section 19 reads: (1) Government of Nepal may, by a notification published in the Nepal Gazette, prescribe the pollution tolerance limit for water resources. (2) No one shall pollute water resource by way of using or putting any litter, industrial wastes, poison, chemical or toxicant to the effect that the pollution tolerance limit of the water resource as prescribed pursuant to Sub-section (1) is exceeded. (3) The prescribed officer may, as required, examine or cause to examine to determine as to whether or not the water resource has been polluted or the quality standard as prescribed pursuant to Sub-section (1) of Section 18 has been maintained.
Another petition, *Bhojraj Aire*\(^{534}\) raised the issue that the provisions under the Environment Protection Act 2053 and the Rules 2054 had not been implemented. Section 7(1) of the Act and Rule 14 of the Rules provided that the Ministry of Environment, by issuing a notice in the Nepal Gazette, was called upon to fix the standards for the discharge of noise, heat and radioactive and other waste. In the absence of the pollution standards, the legal provisions against pollution are not brought into operation. The inaction of the Ministry thus violated the right to life, which included the right to live in a healthy environment guaranteed by Article 12 (1) of the Constitution.

In this case, the Supreme Court labelled the protection of the environment and control of pollution as matters of inherent human rights of the people and stressed the corresponding duty of the state to make necessary arrangements for the same. Taking the gravity of the issue into consideration, the Court issued an order of *mandamus* in the name of respondents to fix pollution standards within the coming fiscal year in consultation and cooperation with concerned stakeholders, including industrial institutions, local bodies, governmental and non-governmental institutions, taking note of Section 7 of the Environmental Protection Act and Rule 15 of the Environmental Protection Rules 2054.

### 4.2.6 Enhancing access of women to properties (land) by eliminating gender discrimination laws

In a number of PILs, the Supreme Court of Nepal handed down progressive decisions for reforming the legal provisions in relation to property and inheritance issues. For example, in *Dr Chanda Bazaracharya v. HMG et al.*\(^{535}\) and *Mira Dhungana et al. v. HMG et al.*\(^{536}\) several discriminatory provisions of Country Code 1963 in relation to ancestral property were challenged under Article 88(1) of the Constitution. After adoption of the 1990 Constitution, these were the first such cases that raised the question of gender discrimination pertaining to property rights. The Court went through a weeklong hearing and finally concluded that the denial of equal entitlement of parental property to daughters violated the right to equality under Article 11 of the Constitution. The Court declined to overturn the provisions; rather, it ordered the Government to bring in a bill in parliament within a year in order to reform discriminatory legal provisions. Specifying the terms of reference, the Court dictated that the Government bring them into law without prejudicing the existing social structure. The Court was criticized for its tendency towards patriarchy. Despite this drawback, the 11th amendment to the Country Code came into force in response to this judicial intervention, which not only changed property laws but also resulted in the liberalization of a number of other laws, including those on abortion;

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\(^{534}\) Supreme Court, *Bhojraj Aire v. Ministry of Population and Environment*, writ no. 4193 of the year 2056 (BS), (058/10/26).


on the maximization of punishment against some sexual offences; equalization of most of the marital rights and freedoms; elimination of caste-based discriminations and finally, the criminalization of numerous form of VAW.\textsuperscript{537}

Sapana Pradhan Malla for Pro-public v. HMG/Ministry of Law, Justice and Parliamentary Affairs challenged Section 26(1) of the Land Act 1964 that provided for transfer of the tenancy right after the death of a tenant to the wife or sons of the deceased, whoever is trusted by the landlord. The petitioners contended that this provision denied the tenancy rights of daughters, contrary to the right to equality guaranteed under the Constitution. In this case, the Supreme Court declined to invalidate the provision but issued a directive order to the Government to amend the law as appropriate through introducing a bill in parliament. The Supreme Court's refusal was based on the interpretation that the transfer of the tenancy rights to a daughter may have adverse impact on the interest of the landowner since daughters move to their husband’s households following marriage. In 2006, this legal flaw was rectified by amending Section 26.\textsuperscript{538}

In Lily Thapa and Others v. HMG Cabinet Secretariat and Others,\textsuperscript{539} the Supreme Court overturned Section 2 of the Country Code’s Chapter on Women’s Exclusive Property that subjected women to discretion of guardian in terms of their right to dispose of their own immovable property. As per the legal provision, an unmarried daughter was compelled to have the consent of her parent and a married woman, including a widow, was required to have the consent of her son. As a result of the decision, women have been empowered to dispose of their immovable property by themselves.

Section 12 A of the Country Code’s Chapter on Inheritance was challenged in Mira Dhungana for FWLD v. HMG Cabinet Secretariat and Others,\textsuperscript{540} as being inconsistent with the equality clause of the Constitution and Article 1 of the CEDAW.

\textsuperscript{537} It is of great importance that women became entitled to enjoy complete freedom of choice whether or not to abort a foetus within the first trimester (12 weeks). Additionally, abortion has become permissible with the consent of women up to 18 weeks in the case that the pregnancy is due to rape or incest. It also legitimizes abortion at any time during the pregnancy with the recommendation of an authorized medical practitioner if the life of the woman is at risk or if the foetus is deformed. Unfortunately, the 11th Amendment is not free from criticism as it also legitimizes sex-based discrimination in some respects that have been challenged by bringing PIL to the Court in subsequent days. Some of the cases are discussed respectively in this paper.

\textsuperscript{538} Amended by the Amending Some Nepal Acts to Maintain Gender Equality Act, 2063 (2006). The amended Section 26(1) reads: “Subject to the provisions contained in the other Sections of this Chapter, the tenancy right of a tenant in respect of a land which the tenant has tilled shall, after the tenant’s death, devolve on any one whom the landowner trusts from amongst the husband, wife, son, daughter, mother, father, adopted son, adopted daughter, daughter-in-law, grandson, granddaughter, granddaughter-in-law, elder or younger brother or elder or younger sister living in the same family of the tenant.”

\textsuperscript{539} WPN 31 of the year of 2004, Decided on 15 December, 2005.

According to Section 12 A, an unmarried daughter who had earlier received some property in inheritance remains no longer entitled to enjoy the inherited property as the remainder of that property shall have to be returned to her heirs belonging to her parental lineage, whereas a son did not have to return such a property. In response to the case, the Court interpreted that the legal provision requiring the return of any property received in inheritance on account of the recipient’s marriage was contrary to the constitutionally guaranteed fundamental right to equality. And the Court finally declared Section 12A ultra virus of the Constitution, recognizing the equal right to marriage without having adverse effect upon enjoyment of inherited property.

Even after the 11th amendment of the Country Code, equal right to parental property was not a reality for Nepali women as Section 1 and Section 16 of the Country Code’s Chapter on Partition was discriminatory and based on marriage, which precluded women from enjoying the right to parental property after marriage and compelled daughters to return their share of parental property upon marriage. In response to the case of Prakash Mani Sharma and Others for Pro Public v. HMG Cabinet Secretariat and Others,541 the Supreme Court directed the Government to amend such discriminatory legal provisions concerning the right to enjoy parental property that are inconsistent with the right to equality under the Article 11 of the Constitution and the CEDAW, to which Nepal is a party. In response to the Court order, the provision was subsequently deleted through introducing an amendment.

Though the harmonization of national laws with the international human rights instruments, including CDAW, has been achieved a large extent through a judicial approach, the practical enjoyment of women’s property rights is still not a reality. It is noticeable that unmarried daughters are also equally entitled to parental property by virtue of the revised property related laws. However, the Court has rarely been approached for their entitlements. This is very much linked to social and cultural attitudes towards women. If property related rights are utilized by women as provided by law, this contributes to enhancing their capacity to enjoy other ESRC, including the right to adequate food.542

4.2.7 Enhancing coverage and effectiveness of social security assistance

A public interest litigation543 was brought up by a team of disability rights activists making a number of demands, including provision of a special social security allowance for people with disabilities, establishment of a residential home for those living in extreme situations, effective implementation of affirmative provisions under the existing laws and adoption of a legal reform initiative to harmonize the national legal regime with the CRPD to which Nepal is a party.

541 WPN 34 of the year of 2004, Decided on 15 December, 2005.
542 Interview with Ms Prabha Basnet, Judge, District Court, Dolakha, 19 March 2013.
543 Supreme Court, Sudarhan Subedi and Others v. Government of Nepal, Office of the Prime Minister and Council of Ministers (NKP, 2069, No. 5, p. 830).
In this case, the Court recognized that people with disabilities deserve to be specially treated by the state and the state must take seriously how to ensure the right to dignified life of those in extreme situations. The Court found that the petitioners’ demands for a social security allowance and the establishment of a residential house for such people to be just, fair and reasonable and emphasized the need to establish a residential home for needy disabled people and provide a social security allowance for those not in a position to feed themselves. In this case, the Court took into account relevant constitutional provisions, legislative provisions and the international treaty provisions. The Court, in particular, referred to constitutional guarantees of the right to live with dignity, the right to equality and the right to social security, a number of directive principles (Article 35(9), 35(17)), Article 28 of the CRPD and Article 10(1) of the Disability Act), Clause 8 of the Disability Regulation and Sections 28(1) and 96(1) of the Local Self-Governance Act that direct the Government to adopt protective measures in the interest of disabled people. The Court also referred to its previous decisions, giving effect to the rights of people with disabilities.

While endorsing the petitioners’ contention that there was a need for legal reform initiatives in light of CRPD, the Court also stressed the need to ensure effective implementation of the aforesaid legal provisions that obligate the Government to take positive steps. Finally, the Court came to the conclusion that there was a need to order the Government to carry out two types of action: actions required to be carried out immediately and actions that to be carried out on the basis of progressive realization. The Court accordingly issued an order of mandamus requiring the Government to provide sustenance allowances in the range of Rs 500 to Rs 3,000 per month to the identified disabled persons, including elderly who are unemployed or do not have any resources to cover sustenance expenses, and a special monthly allowance in the range of Rs 3,000 to Rs 5,000 to disabled persons with full infirmity and mental unsoundness who are destitute and helpless, to be effective within three months from the date of receiving the order. Likewise, the order obligates the Government to designate at least one social welfare official in every district, to be effective within six months from the date the mandamus was issued and to inform the Supreme Court on the implementation of this order within the seventh month.

Similarly, the directive orders issued by the Court require the Government to conduct a census of people with physical, mental and intellectual disabilities and to classify them; to establish and operate at least one residential home for the disabled every year in the districts; and to effectively implement the provisions related to the accommodation, education, health, training and other facilities as provided under the prevailing Act and Regulation.

The Apex Court also directed the Government to assign a monitoring officer at the Ministry of Women, Children and Social Welfare and Secretariat of the Council of Ministers for monitoring the activities of the non-governmental agencies, to formulate programmes
and make special arrangements as per the special protection clause and directive principles of the *Interim* Constitution and gradually implement them, and to harmonize the existing Acts and regulations with the CRPD in consultation with experts and stakeholders.

Similarly, in another PIL case, the Supreme Court reviewed the reasonableness of the age threshold for single women (widow) to get a subsistence allowance at the age of 60. The Supreme Court found the threshold unjust as it excluded needy single women below the age of 60. Challenging the threshold provision, the petitioners filed a writ petition at the Apex Court, arguing that imposition of the age threshold forbade many deserving widows access to the social security allowance, and created an age-based discrimination contrary to the right to equality guaranteed under Article 13 of the *Interim* Constitution. Responding to the case, the Supreme Court directed the Government to provide subsistence allowances considering the difficult situations faced by single women, the resources of the state and other factors, including employment status, property ownership and income level.

### 4.2.8 Preserving fertile farmland by adopting a national land use policy

Increasing fragmentation and destruction of fertile agricultural land due to commercial interests has been a serious issue in Nepal. Such an issue was examined by the Supreme Court of Nepal in the case of *Chandesory Karmacharya and Others v. Ashok K.C. and Others*. This case was not initiated as a public interest litigation but was brought to the Court by an individual affected by land plotting business of the respondent. The Court took the issue seriously and ruled in the public interest under its extraordinary jurisdiction.

Recognizing the notion of intergenerational equity, the Court stated that natural resources, including land, must be used sustainably without compromising the needs of future generations. The Court went on to say that the existence and development of the country, society and individuals would be jeopardized unless natural resources were used wisely and properly. Also, the Court emphasized the importance of proper utilization of natural resources, including through categorization of land and thereby preserving the fertile land for agricultural purposes. The Court clearly pronounced that it is not judicious to allow the fragmentation of fertile land unplanned plotting and construction of development projects in such fertile land that adversely affect the public interest in the name of individual freedom of profession.

Most importantly, the Court further stated that if fertile farmland is excessively used for industrial or commercial purposes, the right to food sovereignty guaranteed in the Constitution is not safeguarded. The Court also called upon the state to pay serious attention to proper utilization

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of fertile farmland through preventing and controlling excessive commercial encroachments in order to meet the food requirements of the increased population. According to the Court, the right to life can not be realized without adequate food. It is therefore a matter of prime responsibility of the state to ensure food security, including through protecting farmland.

Based on the aforesaid interpretation, the Court came to the conclusion that there was a need for prompt adoption of a special national policy on land use, in consultation with stakeholders, to set out standards for use of land in urban and rural areas. The Court therefore issued a directive order requiring the Government, *inter alia*, to form a committee under the coordination of the Ministry of Housing and Physical Planning to design a national land use policy setting out necessary standards for use of land throughout the country. Similarly the court order required the Government to make a legal arrangement to ensure that the categorized lands, including the land for agricultural purpose, is only used for the specified purposes. Following the court order, the Government recently adopted the National Policy on Land Use 2012. The policy is yet to be implemented by enacting the necessary laws.

**4.2.9 Ordering the Government to enact laws required to implement constitutional guarantees**

*Amrita Thapa and Others*[^547] raised the issue of the state’s inaction in terms of adopting legislative measures to implement various constitutional guarantees, including the right to food sovereignty under Article 18 of the *Interim* Constitution. The petitioners called upon the Court to direct the Government to enact laws envisioned by the Constitution in relation to education, health, environment, employment, social security and food. The petitioners claimed that though they were vested with such fundamental rights, the Government had not yet shown any interest in enacting the law even after the passage of seven months from promulgation of the Constitution.

In this case the respondents maintained that enactment of the law fell exclusively under the jurisdiction of the legislature, and as claimed by the petitioners the Government was committed to enact laws and therefore, the petition should be quashed. Citing the constitutional provisions on the right to environment, education, health, employment and social security, the Court observed that as these rights are enshrined in the Constitution, it was the responsibility of the Government to enact laws for making these rights effective. The Court rejected the pretext that the Government did not manage to initiate legislative enactment due to the ongoing constitution-making process and clarified that the Government could not escape its responsibility for making necessary laws. The Court further stated that the state could not deprive its citizens of their constitutionally guaranteed rights. Noting the fact that many ESC rights guaranteed as fundamental rights require legislative measures for their enjoyment and the state seemed to be not

[^547]: Supreme Court, *Amrita Thapa Magar and Others v. Office of Prime Minister and Council of Ministers and Others*, Writ no. 0139 of the year 2064 BS, 2065/1/4.
Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal

giving due attention to this, the Court finally issued a directive order requiring the Government of Nepal to enact necessary laws for ensuring the right to free education, health, employment, food and social security.

Similarly, in *Prem Bahadur Khadka*, the Supreme Court was called upon to investigate the Government’s failure to take legislative measures to give effect to the right to employment guaranteed under Article 18 of the *Interim* Constitution. Most importantly, the Supreme Court rejected the idea of creating hierarchy among human rights and setting aside a particular right referring to resource constraints. If the state is permitted to escape from fulfilling its obligation on the basis of resource constraints, the rights guaranteed by the Constitution can never be protected. It is clarified that whether or not the resources have been used for the protection of human rights it does not go beyond the scope of judicial review. The Court also stressed the necessity of fulfilling state obligations to protect people from unemployment.

Expanding on the nature of fundamental rights, the Court ruled that if any right is guaranteed as a fundamental right, the intent is to make it immediately enforceable so as to ensure judicial remedy in the case of its violation. By virtue of their immediate enforceability, rights are not subject to the discretion of any institutions, including parliament. These rights can not be set aside and not implemented by simply referring to resource constraints.

The Court also recognized the right to employment guaranteed by Article 18 of the *Interim* Constitution as part of the right to live with human dignity (Article 12) and linked it with the right to equality (Article 13), the right against untouchability and racial discrimination (Article 14), the right to environment and health (Article 16), the right to education and culture (Article 17), the right to employment and social security (Article 18), the right of women (Article 20), the right to social justice (Article 21) and the right of the child (Article 22). It also observed that only by guaranteeing employment would it be possible to meet the basic requirements of people, such as health, education, food, housing and clothing.

The Government was finally ordered by the Court to introduce a bill within one year from the decision made. It was required by the decision that the bill, *inter alia*, required the Government: to adopt a national strategy on employment; to put an end to employment related discrimination in public and private sectors; to create a mechanism that provided policy direction employment; to ensure such a mechanism is represented by Government, the private sector, labour and an employment expert, a trade union representative and women; to create an institution to receive and handle complaints regarding employment; to allocate a budget that corresponded to the national strategy on employment; and to enhance access to employment oriented education, including technical and vocational education.

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548 Supreme Court, *Prem Bahadur Khadka and Others v Prime Minister and Council of Ministers*, (right to employment) (Writ no. 066-WO-07193, 2065/9/23/4), NKP 2066(BS), No. 8, p. 1294.
4.2.10 Rehabilitating freed bonded labourers and advancing labour rights

In a number of instances the Supreme Court intervened in relation to Kamaiya (bonded) labour and other labour rights issues. On 12 May 2006, in the case of *Pashupati Chaudhary and Others v. Ministry for Land Reform and Soil Conservation and Others*, the petitioner sought to hold Government authorities accountable for not rehabilitating freed bonded labourers as required by the Kamaiya Labour Prohibition Act. Responding to the petition, the Supreme Court ordered the Government to provide appropriate employment opportunities and carry out rehabilitation of freed Kamaiya labourers.

In *Uttar Tamata vs. Government of Nepal, Office of the Prime Minister and Council of Ministers*, the Supreme Court was approached for an order of *mandamus* to ensure that the freed Kamaiyas Rehabilitation Programme not be limited to Terai districts, but extended to seven hilly districts as the petitioner contended that the Kamaiya Act also recognizes Haliyas (bonded tillers) as one of the forms of the Kamaiya system. The Supreme Court held that the state is under an obligation to protect and empower all freed Kamaiyas through adopting special legal arrangements, an economic programme and policies. The Supreme Court also stressed the need for constituting a committee for the rehabilitation and development of Haliyas in hilly districts in light of the directive principles of the state. As stated by the Court, declaring them freed as per the constitution and law does not enable the bonded labourers to enjoy their rights and freedoms, and there is a need for the state’s protection for a reasonable period of time given that they were subjected to exploitation and deprived of their rights. Taking into account the special protection clause under the right to equality guaranteed by the Constitution, the Supreme Court directed the Government to form rehabilitation committees envisioned under the Kamaiya Labour Prohibition Act in all respective districts and work towards uplifting freed bonded labourers as mandated by the Constitution.


550 The Haliya system involves the hiring of tillers or ploughmen on a contract basis, and exists in the hill districts of western Nepal. There are many differences between the Kamaiya System and the Haliya System. In the residential Kamaiya System, Kamaiyas receive meals as desired by the master and are given very little free time, their families are also bound to work in the same house, they are allowed to enter the houses of landlords, and they are not bound by contracts but continue from generation to generation. In the non-residential Haliya system, Haliyas receive two meals a day, are free to move during the off season, their family members are free to work elsewhere, and they are not permitted to enter into the house of their landlord. While Kamaiyas are mostly from the indigenous Tharu community, Haliyas are mostly from the Dalit community.

In the case of *Som Prasad Paneru v. Office of the Prime Minister et al.* 552 the Supreme Court was called upon to order the Government to take necessary steps to eliminate Kamalari 553 practice. Responding to this case, the Court made an interesting ruling requiring the Ministry of Education and Sports to introduce provisions of key human rights treaties, including the CRC, ICCPR and ICESCR into the school curriculum so that the right of the child could be protected and the relevant legal provisions could be implemented effectively. The Supreme Court also directed the Government to enact a comprehensive law dealing with domestic workers, not only for the abolition of Kamalari, but also for prevention of exploitation of children on any other grounds, and for the protection of the right of the child under the CRC. It was also to make necessary arrangements for attaining a number of constitutional obligations regarding children upon framing plans and policies for the protection of the interests and social security of children emancipated from Kamalari and other forms of exploitation.

In the case of *Kalesu Dagaura and Others v. Ministry of Physical Planning and Construction and Others,* 554 the extraordinary jurisdiction of the Supreme Court was invoked by filing a writ petition representing 79 households of freed Kamaiyas demanding free distribution of land and transfer of ownership of the distributed land to the respective families. The petitioners contended that they were temporarily settled and denied ownership of that land that they had been residing on following their liberation while others were offered land free of cost and subsequently the ownership of the land was also transferred. They also called upon the Court to invalidate the ministerial decision preventing them from obtaining the land free of cost as opposed to the previous decision of the Council of Ministers.

It is noticeable that the Supreme Court handed down a controversial decision that declined to take a rights-based approach and rejected the petitioners’ demand for judicial review of the ministerial decision. Rather, the Court held that the facilities offered to them by the Government following their liberation were not a matter of constitutional or legal right or entitlement, relying on the logic that entitlement is not created by virtue of the executive decision. At the same time, the Court also declared that the directive principles provided by the Constitution are not enforceable by the Court; such principles are subject to progressive implementation by the state as permitted by availability of resources; it is therefore not appropriate to compel the Court to enforce such rights under

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552 Supreme Court, *Som Prasad Peneru et al. v. HMG, Office of the Prime Minister and Council of Ministers et al.*, WPN 3295 of the year 2061 BS, 10 September 2006.

553 Kamalari is one of the forms of bonded labour system exists in far-western and mid-western parts of Nepal. In this system, girls from the Tharu community are employed as domestic workers by landlords. Such bonded girls in domestic servitude are called Kamalaris.

554 NKP 2068, No. 2, p. 284.
the directive principles. The interpretation does not correspond to the already settled position of the Court regarding the judicial enforceability of the directive principles. The Court also decided that the petitioners should have sought an administrative remedy against the decision of the ministry if it not consistent with the cabinet decision. This position of the Supreme Court is not consistent with the settled judicial practice that the administrative decisions are reviewable under the extraordinary jurisdiction if such a decision infringes upon fundamental rights.

4.2.11 Promoting the right to information and transparency in terms of the utilization of natural resources

Judicial responses to the constitutional guarantee of the right to demand and receive information of public importance in relation to natural resources seem notable. For the first time in the judicial history of Nepal the question of right to information in terms of natural resources was raised in the Mahakali Treaty Case under the 1990 Constitution. The Government’s omission to get the Mahakali (River) Treaty ratified by parliament was challenged. The Court held that the bilateral treaty signed between Nepal and India, aimed at distributing water resources of the Mahakali River was a matter of public importance and concern. The Court also went on to say that there must be transparency in the activities of a Government that is accountable to the people. It is therefore the duty, as well as the ethical responsibility, of the Government to release information from time to time on its decisions of a public nature. In this case, the Court also held the Government accountable to parliament in terms of exercising treaty-making power. Recognizing the locus standi of citizens in relation to utilization and distribution of natural resources, the Court went on to say that natural resources are the national heritage of the country, and also the common property of all citizens. The citizens have a meaningful relationship with such resources from the point of view of economic development and environmental protection.

Invoking the right to information guaranteed under Article 16, the Arun 3rd Hydro Power case was brought before the Court challenging the Government’s refusal to provide information about a hydro-power project on the Arun River.

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555 Supreme Court, Narahari Nath et al. v. Prime Minister Girija Prasad Koirala and Others (1996 NKP 33), the Court clarified that despite the constitutional declaration that the Directive Principles and State policies are not enforceable by courts, the Supreme Court can scrutinize any decision of the Government disrespecting the Directive Principles and the policies.

556 Supreme Court, Bal Krishna Neupane v. Prime Minister Giriya Prasad Koirala and Others, 2049/08/30 BS (15 December 1992).

557 The Treaty was signed between Nepal and India in order to distribute the water resources and construct an ‘Afflux Bond’.

In the response, the Supreme Court recognized the right to demand information of environmental importance\textsuperscript{559} and ordered the Government to do so to that effect. The Supreme Court also established judicial guidelines for bridging the gap until a law on access to information was adopted\textsuperscript{560} In the same case, the Supreme Court ordered the Government to bring the Secrecy of Documents Act into force in order to avoid ambiguities and confusion regarding secret documents. Highlighting the underlying public importance of natural resources, the Court stated, "Hydro power to be generated from utilizing natural resources is a national property. Every citizen has meaningful stake with relevant aspects of generating such national property. It becomes very natural for any citizen to receive information concerning such matter or to be concerned about exploration, investigation or rationality of the project". Thirteen years later, the Right to Information Act 2007 was adopted and brought into force. Following its earlier decisions, the Supreme Court in its subsequent case of Balkrishna Neupane v. Ministry of Water Resources and Others,\textsuperscript{561} ordered the Government to release the 1996 Action Plan signed between the Government of Nepal and the Indian Government in relation to use of the water resources of Nepal.

### 4.2.12 Preventing excessive extraction of natural resources

\textit{Praksahmani Sharma and Others}\textsuperscript{562} drew the attention of the Court to serious depletion of groundwater in the Kathmandu valley, which is likely to have catastrophic effect. Such a situation has been created due to uncontrolled abstraction by industries, hotels and nursing homes. Referring to various legal provisions which were not being abided by the respondents, and the principles developed in the field of international environmental law such as the precautionary principle, public trust and inter-generational equity,

\begin{itemize}
  \item Article 16: Every citizen shall have the right to demand and receive information on any matter of public importance; provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by law.
  \item Judicial guidelines set by the Court include: 1) The petitioner may demand a list of available documents on the subjects on which s/he seeks information; 2) If the list is supplied by the concerned authority within seven days of such a demand the petitioner may request an opportunity to examine the documents with which s/he is concerned; 3) In response to such a request, the respondent shall notify the petitioner of the time, date and place to examine the documents within three days; 4) After examination of the documents, the petitioner may note or copy the necessary information, and if copies are needed, s/he shall request the authorized official for attested copies as required; 5) If there is no rule applicable for the purpose of making copies available to the petitioner, attested copies of the document shall be made available, charging actual costs involved as the service fee; 6) If there are situations due to which the respondent does not want to give the list of the concerned documents in part or in full, s/he shall inform the petitioner within three days of the reasons; 7) If the petitioner is not satisfied with such notification of rejection, s/he may file a complaint with the Supreme Court within 7 days of such a notification; 8) The judicial procedures to be applied to address the complaint shall be as set out in the Supreme Court Regulation.
\end{itemize}


\textsuperscript{560} Writ no 3447 of the Year 2060, 16 Dec, 2009 (1/9/2066 BS).
the petitioners urged issuance of an appropriate order in compliance with Section 4(1) of the Water Resource Act that requires permission to use water, ensuring use of water without causing significant damage to the environment pursuant to Section 20 of the Water Resource Act, ensuring the use as per the recharge capacity of the water within Kathmandu valley and establishment of a competent and effective institution for the management of groundwater throughout the country. In response, the Court issued the order of *mandamus* to the respondents, giving effect to all the demands of the petitioners. Further, the Court issued a directive order to the respondents to submit to the Court within three months its actions regarding the use of groundwater within Kathmandu valley as promised by the Ministry of Irrigation and the Ground Water Development Committee in its report submitted to the Court. Similarly, the *Chure Range Protection Case*\(^{563}\) was brought to the Supreme Court for issuance of an order to the Government for taking adequate measures to prevent excessive extraction of stones and sand from Chure Range and export them to India. It was reported that the encroachment in Chure Range was responsible for increasing desertification of fertile land in Terai districts. The court observed that exploitation of any natural resources, including extraction of stones and sand from a river, which adversely affected ecology, should not be allowed. Such resources should only be exploited in ensuring the public interest. The Court issued an order to constitute a monitoring committee in each district where the problem existed to control exploitation of natural resources and also set standards for extracting stones and sands from rivers.

4.2.13 Ordering environmentally friendly disposal of Persistent Organic Pollutants (POPs)

Haphazard storage of POPs was challenged in *Raju Prasad Chapagai and Others v. Government of Nepal, Ministry of Agriculture and Others*.\(^{564}\) In this case, the petitioners demanded the environmentally safe disposition or relocation of the POPs. Further, the Court was called upon for ordering the Government to compensate the local people who had suffered damage as well as to sterilize the surroundings where the pesticides had been stockpiled for over 35 years. The petitioners contended that the pesticides were brought to Nepal as a part of foreign aid with the purpose of promoting agricultural production.

The Court reiterated that environmental pollution results in infringement of the right to life guaranteed as a fundamental right under the Constitution. The Court further noted by virtue of being a state party to the Basel Convention\(^ {565}\) and the Stockholm Convention,\(^ {566}\)

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564 NKP 2066, No. 10, p. 1620.
566 Ratified on 13 October, 2006.
it was the duty of the Government of Nepal to take necessary measures for the safe disposal of the persistent organic pollutants deposited in different parts of the country that had already exceeded their expiration date. The Supreme Court also called upon the Government to develop a mechanism to give full effect to the Stockholm Convention on persistent organic pollutants. The Court also noted that it was not only expected but mandatory for the Government to launch programmes and activities consistent with the right to life and the right to live in a clean and healthy environment, which has already been recognized as a fundamental human right in the domestic laws of Nepal and in a number of international treaties. The Court also stressed the need to act to protect the local community and the environment from harmful effects of toxic chemical pollutants.

Noting seriously that the international power centres, including multinational corporations, produce hazardous toxic chemicals and export their products to poor and developing countries without respecting international standards, the Court also called upon the international community to bear responsibility for the effects of POPs as the producers, transporters and exporters of the toxic chemical pollutants, especially regarding exporting to poor and developing countries in the name of aid to increase agricultural production.

The Court issued an order of mandamus in the name of the Government of Nepal requiring prompt preparation of an inventory of POPs, classification and safe packaging them and insurance of environment-friendly disposal of the pesticides within a year. The Court order also requires the Government to compensate for "the damages to the suffered local people". In addition, the Supreme Court asked the Government to take necessary diplomatic and political steps to fulfil the obligations under the Stockholm Convention on Persistent Organic Pollutants and other relevant international treaties. The Court order triggered the Government efforts to seek international cooperation to clear the stockpiles. The Government subsequently signed an agreement with the German International Cooperation (GIZ) to take back the stockpiles, which amounted to over 75 tonnes, and those stockpiles have now been returned as agreed. However, the affected people are yet to be compensated.

4.2.14 Ordering the restitution of land and associated properties seized by the Maoist insurgents during the armed conflict

The decade-long armed conflict not only resulted in violation of civil and political rights but also the ESCR violations included the destruction of private property.\(^{567}\) Despite the fact that the return of properties was carried out by parties in the conflict through adopting the CPA\(^ {568}\) and the right to property guaranteed under the Interim Constitution, there were no concrete steps undertaken by the responsible parties.

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\(^{567}\) In its Article 5, the Comprehensive Peace Agreement (CPA) 2006 acknowledges this fact.

\(^{568}\) Article 5.1.8 of the CPA provides, "Both sides express their consent to create an inventory of governmental, public and private buildings, land and other properties occupied, locked up or not allowed to use in course of the armed conflict and to return them immediately".
Against this backdrop, a group of displaced people were compelled to invoke judicial remedy by way of a strategic litigation\(^{569}\) for obligating the Government to take immediate steps to ensure the return of their properties and the payment of appropriate compensation for damages incurred due to the deprivation to use such properties.

In response to this case, the Supreme Court linked the right to life to various other rights and observed that in order to obtain respect for the right life of a person it is important to protect the right to property, and the right to profession and occupation, which are the basis of livelihood. In the absence of this right, neither the right to food is protected, nor can daily necessities for maintaining life can be fulfilled.

Upholding the state's mandatory obligation to protect individual property, the Court issued an order of *mandamus* to constitute a five-member committee for return of properties with representation of the victim community, law enforcement agencies, and political personalities at district level where the petitioners reside and in districts where there is a similar problem of seizure of property. The Court also ordered the Government to ensure that the property be returned through the committee to the actual owners within three months of the receipt of this order, the loss, depreciation and loss of income from the property thus seized to be assessed and the compensation awarded as demanded. The Government was also ordered to set up a fund for providing compensation and relief to those who were victims due to damage caused by seizure of property.

### 4.2.15 Ordering implementation of legal provisions on the land ceiling

The Land Act provides for a land ceiling system that aims to acquire land exceeding the legal limit from landlords and redistribute it to the freed bonded labour, the downtrodden (Dalit) and indigenous people from among the local landless. However, such provisions of the Act were not implemented for numerous reasons, including the lack of political will. Against this backdrop, a public interest litigation, *Madhav Basnet v. Government of Nepal,*\(^{570}\) was initiated at the Supreme Court of Nepal, pleading for issuance of an order of *mandamus* to hold the authorities accountable for not implementing the provisions under the Land Act, 1964 that provide for acquisition\(^{571}\) requiring the Government to prepare an inventory of the ownership of land throughout the country, acquire the land exceeding the legal limit and distribute those the lands to the landless within 180 days of receipt of the order.

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\(^{569}\) Supreme Court, *Liladhar Bhandari and Others v. GoN, Office of Prime Minister and Council of Minister*, Writ No. 0863 of the year 2064, 7 December 2008.

\(^{570}\) Filed in the Supreme Court on 2066/5/2 BS.

\(^{571}\) Section 13(1) of the Land Act reads, "The prescribed authority may, by issuing a notice as prescribed, order all the landowners to submit, or cause to be submitted, an inventory as prescribed within thirty five days after the date of issuance of the notice".
Responsible authorities, including the Chief Secretary, were summoned to the Court and held accountable for not taking the initiative to enforce the Court’s order. Responding to a contempt of court case filed by advocate Madhav Kumar Basnet, the SC ordered them to appear with written clarification as to why they did not implement the court order. Given that the order was not complied with, the Supreme Court initiated a contempt proceeding upon the filing of a contempt petition by the petitioner. Acting upon the court order, the Government issued a 35-day notice to Nepali citizens to submit details of their land holdings in accordance with the Land Act, which prohibits land holdings exceeding the legal ceiling.\footnote{572}

However, the effort of the Ministry of Land Reform and Management (MoLRM) to collect such details from across the country was reported to have become ineffective due to non-cooperation of the ministries, local bodies and landowners. Meanwhile, the Government has also proposed an amendment to the provision that requires it to collect the inventory of the landholders in order to implement land ceiling laws. The Government proposal is not to collect all landholders’ records but only those of landholders with land in excess of the ceiling imposed by the Government.

### 4.3 Concluding observations

Together with the constitutional protection of a wide range of rights impacting upon the right to adequate food, it appears that the \textit{Interim} Constitution paves the way for extensive judicial remedy in the case of their violation. The Constitution and other laws have placed the judiciary of Nepal in a better position to play a vital role in shaping and developing the domestic legal regime on food rights through interpretation of the law in harmony with relevant international human rights standards and principles. It is also notable that the writ jurisdiction of the lower courts can be used in order to compel local authorities to implement effectively the legal provisions that aim to promote ESCRs, including the right to adequate food.

The review of the select Supreme Court decisions reveals that it has been able to address a significant number of issues impacting on the right to adequate food through its public interest litigation jurisdiction. The role that the judiciary played in terms of advancing the jurisprudence on the right to adequate food is commendable. The judicial intervention under the Public Interest Jurisdiction has been instrumental in making many legal provisions work and in accelerating legislative reforms in line with international human rights obligations.

\footnote{572 Under the Land Act (Fifth Amendment) 2001, a person can own 20 ropanis of land in Kathmandu Valley, 10 bighas in the Tarai districts and 70 ropanis in the Hill districts. Likewise, a person can own five ropanis of land in Kathmandu Valley and Hill districts and one bigha in the Tarai as homesteads. Before the amendment to the Act, an individual could own a maximum of 50 ropanis in Kathmandu and 20 bighas in the Tarai.}
It appears from the analysis that the public interest litigation tool has been successfully employed in many instances, including for promoting access to safe drinking water, enforcing nutritional rights on infant and health of lactating mothers at places of employment, protecting water resources from pollution, enhancing access of women to properties (land) through elimination of gender discriminatory laws and preserving fertile farmland through adopting a national land use policy. Jurisprudentially speaking, the Supreme Court of Nepal may be credited with a number of positive contributions, including the frequent reference to the ICESCR and other treaty provisions, issuance of judicial guidelines to fill gaps in the law, enhancing gender equality in terms of property rights, promoting social security for people living with disabilities, enhancing the justiciability of the constitutional right to food sovereignty, and other ESC guarantees, and recognizing the interconnectedness of the right to live with dignity, the right to equality and other ESC rights, including the right to food sovereignty.

However, there also appears to be a lack of uniformity in terms of understanding the directive principles. There is also an instance where the Supreme Court denied judicial review of an administrative decision. Consideration should be given to avoiding inconsistencies. At the same time, there is no evidence of a victim-centred approach in prescribing judicial remedies. Moreover, many of the Supreme Court verdicts await implementation. Serious attention should be given to ensuring their effective implementation, including through adopting appropriate legislative measures and implementing the ongoing provisions under the existing legal framework. At the same time it is imperative that strategic use of writ jurisdiction in the lower courts is enhanced: that is, in the appellate and district courts. If used effectively, this can be instrumental in making the responsible authorities at local level accountable for not fulfilling legal duties regarding promotion of the right to adequate food for special categories of people, including women, children, indigenous people, people living in extreme poverty, people with disabilities, Dalits and other vulnerable groups.
5 Non-judicial remedy against food rights violations

5.1 Remedies through national human rights institutions (NHRIs)

Establishment and functioning of the NHRIs is a recent phenomenon in Nepal. There are virtually three NHRIs – the National Human Rights Commission (NHRC), the National Women Commission (NWC), the National Dalit Commission (NDC) and the National Muslim Commission (NMC) – mandated to monitor human rights violations and issue appropriate non-judicial remedies to address the violations under their respective jurisdictions. Though the NHRC evolved from the National Human Rights Commission Act 1997, it was only established on 26 May 2000 following the judicial order of 13 July 1999. The NHRC derives its current mandate and powers from the Interim Constitution of Nepal 2007 and the National Human Rights Commission Act, 2012, which replaced the 1997 Act.

Unlike the NHRC, the NWC was initially established through an executive decision of the Government in 2002 and subsequently converted into a statutory body through the National Women Commission Act of 2007, which is the sole source of its mandate and powers. In 2002, the Government of Nepal established the NDC to protect and promote Dalit rights through passing an executive order. It is yet to be upgraded to a statutory body. Similarly, the NMC was created through an executive order dated 5 April 2012. Like the NDC, the NMC has the same legal status. Their mandates and powers, in the context of the right to adequate food, are discussed below.

5.1.1 National Human Rights Commission

The NHRC of Nepal is a leading national human rights institution with a comprehensive constitutional mandate for protection and promotion of human rights, including the right to adequate food. Part 15 of the Interim Constitution is dedicated to elaborating the

573 Supreme Court, Bhojraj Aier v Prime Minister Girja Prasad Koirala and Others, NKP 2056 (BS), Number 6, p.471.
constitutional framework of the NHRC. Under Article 132 of the *Interim* Constitution, the NHRC is under a constitutional duty to ensure respect for and protection and promotion of human rights and their effective implementation. In order to fulfil its duties, the NHRC is empowered to carry out inquiries into, and investigations of, violations of human rights of any person or a group of persons or abetment thereof. The Commission’s power to conduct such an inquiry or investigation is not dependent on the petition or complaint lodged with the Commission by the victim or by any person on his or her behalf. The Commission can also be activated on any information received by the Commission from any source or on its own initiative. If any violation of human rights is found through the investigation, the Commission can recommend a number of accountability measures, including departmental action or a lawsuit in the respective court. As an exception, the Commission has stand-alone power to issue a direct order to the Government for awarding compensation to the victim.

If the recommendations or orders are disregarded the Commission has the power to publish, in accordance with law, the name of the officials or bodies who have failed to comply with or implement the recommendations or directives issued by the National Human Rights Commission in relation to the violations of human rights, and to record them as violators of human rights. If disregarded the recommendations or order, the Commission has power to publish, in accordance with law, the name of the officials or bodies who have failed to comply with or implement the recommendations or directives issued by the National Human Rights Commission in relation to the violations of human rights and record them as violators of human rights. In order to ensure effective human rights investigations, the Commission may exercise ample investigative powers, including in relation to summoning and enforcing the attendance of any person before the Commission.

As the *Interim* Constitution paves the way for further elaboration of the powers and duties through making a law, the recently enacted NHRC Act has broadly defined human rights and significantly augmented the list of NHRC powers in relation to protection and promotion of human rights. Key statutorily augmented powers include monitoring of implementation of the prevailing laws regarding human rights, undertaking study and research into various aspects of protection, promotion, enhancement and implementation

578 *Ibidem*, Article 132(3).
579 NHRC Act, Section 2(f) reads: “‘Human Rights’ means rights related to life, liberty, equality and dignity of a person provided by the Constitution and other prevailing laws and this term also includes the rights contained in the international treaties regarding human rights to which Nepal is a party.”
of human rights, reviewing the existing state of human rights and making public reports to that effect, carrying out or causing to be carried out other activities that are deemed necessary and appropriate for the protection and promotion of human rights. Section 4(2) of the Act also guarantees the independence and autonomy of the Commission in fulfilling the Commission’s duties in relation to respecting, protecting and promoting human rights. Elaborating on the Commission’s constitutional power to issue compensatory remedies, the Act empowers the Commission to issue an order for availing *interim* relief to the victims.\(^{580}\)

Giving effect to the statutory provision on compensation,\(^ {581}\) the National Human Rights Commission (Complaint, Proceedings and Determination of Compensation) Regulation (“NHRC Regulation”) 2012 has been adopted.\(^ {582}\) The Regulation, details the procedures and terms of reference for determination of compensation.

Under Rule 27, if a human right is violated by discriminating against anybody on the prohibited grounds, the NHRC may order compensation, taking into account a number of factors, including circumstances and nature of discrimination. If discriminated against while being recruited for employment, potential income from such employment is compensated, and if discriminated against socially or culturally, the possible impact on society due to such discrimination is compensated. Similarly, Rule 28 empowers the Commission to determine an appropriate compensation for violation of any economic, social and cultural rights, taking into account the factors including the nature of the violation and the number of victims. However, the legal framework on compensation does not incorporate the concept of reparations, which not only include monetary compensation but also other forms of remedies – restitution, rehabilitation, satisfaction and non-repetition of violation.

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580 *Ibidem*, Section 9 reads; “(1) In case the Commission deems that if the victim is not provided relief or is not rescued immediately, it may cause further damage to him/her, the Commission may issue an order in the name of the agency concerned to immediately make *interim* relief available to the victim or to rescue such victim. (2) The concerned agency shall have to provide relief to the victim immediately after the Commission issues an order. (3) If such relief is made available in cash, the concern person or agency shall recover such amount from human rights violators as prescribed. (4) The Commission may request any institution, organization or persons for cooperation to make available *interim* relief to the victims or to rescue the victims. (5) Other arrangements with regard to *interim* relief and rescue shall be as prescribed”.

581 *Ibidem*, Section 16 reads; “(1) If it seems necessary to provide compensation to the victim from the inquiry and investigation launched pursuant to Section 12, the Commission shall have to make a decision citing the same while making a decision pursuant to Section 15. (2) The type, quantum or amount of compensation shall be determined in the decision taken pursuant to Sub-section (1). (3) The Commission may, while determining the amount pursuant to Sub-section (2), prescribe a maximum of Three Hundred Thousand Rupees depending on the condition of the victim. (4) Notwithstanding anything contained elsewhere in this Section, the Commission shall not take any decision regarding compensation if the victim has already received compensation or if the proceedings for compensation have already been moved forward pursuant to other prevailing laws regarding human rights violation. (5) The criteria to be adopted while taking decision to provide compensation pursuant to this Section and other provisions regarding Compensation shall be as prescribed”.

582 The 2001 Regulation was replaced by the 2012 Regulation.
As right to food is also part of the human rights protected under the Constitution and the international human rights treaties to which Nepal is a party, the Commission can take up cases of a wide-range of violations, including those in relation to the right to food, and make necessary orders or recommendations to remedy the violations. However, there are few cases where the NHRC exercised its power in regard to food rights.\textsuperscript{583} Recent initiatives, including the adoption of the Indicators for Monitoring Economic, Social and Cultural Rights,\textsuperscript{584} and revision of the Compensation Procedures to include violations of ESCR, were areas for awarding compensation.\textsuperscript{585} The issuance of the Monitoring Guidelines on Protection and Promotion of Consumer Rights\textsuperscript{586} indicate that economic, social and cultural rights are a relatively recent priority. The Supreme Court has also noted that the Commission's activities are basically limited to civil and political rights issues.\textsuperscript{587}

The Commission's inquiry into a diarrhoea outbreak that claimed 400 lives in western Nepal is a rare instance where it monitored the situation and issued recommendations. Following media reports and civil society concerns, the Commission monitored and investigated the situation by deploying its team of human rights investigators. The investigation established the link between the diarrhoea outbreak and the distribution of polluted water and decayed food in the affected districts. At the same time, the investigation revealed lapses on the part of the Government. Through its investigation report "Monitoring/Investigation Report on the Death of General Public due to Diarrhoea/Cholera and Distribution of Food items in the Mid & Far Western Districts including Jajarkot, 2009", the Commission recommended that the Government take actions against those responsible and to maintain mandatory records (e.g. certificate of quality and expiry date of the food) regarding the food to be distributed in the food deficit areas. Similarly, the Commission also recommended raising awareness through local media; providing relief and compensation to the victims; implementing an action plan to eliminate food dependency, including through exploring the sustainable alternatives; formulating a minimum national standard and making the Government institutions responsible for effective distribution of quality foods; strengthening coordination among concerned authorities to provide speedy service, including through effective monitoring and making the Committee on Food Standards Determination under Clause 16 of the Food Regulation 1972 effective.\textsuperscript{588}

\textsuperscript{583} Interview with Surya Bahadur Deuja, Deputy Director and Shree Ram Neupane, Human Rights Officer (ESCR of NHRC, 15 March 2013).
\textsuperscript{585} Complaint Handling and Compensation Determination Regulation 2012.
\textsuperscript{586} In 2011, NHRC issued the Guidelines with a view to ensure effective monitoring of consumer rights violations.
\textsuperscript{587} Supreme Court, \textit{Prem Bahadur Khadka and Others v Prime Minister and Council of Ministers}, (right to employment) (Writ no. 066-WO-07193, decision dated 2065/9/23/4), NKP 2066(BS), No. 8, p. 1294.
Other activities of the NHRC in relation to the right to food are limited to occasional interaction programmes, awareness raising and public advocacy. It is desirable for the NHRC to take up the emblematic cases of the food rights violations under its investigative mandate and make the responsible authorities accountable for such violations.

5.1.2 National Women Commission

The National Women Commission Act of 2007 is the sole source of its mandate and power. The reason behind the advent of NWC is the need for protection and promotion of the rights and interests of women and thereby effectively include them in the mainstream of overall development and ensure gender justice. Under the Act, the NWC is mandated to monitor and investigate cases of deprivation of enjoyment of rights and violence against women, provide legal aid to women, monitor the reporting obligations of the Government under the CEDAW and coordinate with the Government and other agencies for mainstreaming the gender perspective in national development policies and programmes.589

Although the Act does not directly refer to a specific mandate and programme dedicated to the right to food, the Commission can play an important role in monitoring the violations of economic social and cultural rights, in particular the right to adequate food from a gender perspective. The Commission can also undertake emblematic interventions in relation to a significant number of issues such as limited access to and control over resources, lower salaries, insecure and unstable labour conditions, gender biased labour markets, discriminatory laws, regulations and programmes affecting the enjoyment of the right to food and exclusion from decision-making processes. Similarly, intra family discrimination in relation to food prevails in Nepalese society and the needs of women who require special protection, e.g. protection of pregnant workers, sufficient maternity leave and equality in social transfer programmes, are often neglected. Against this backdrop, the Commission has the potential to play a more comprehensive role in bolstering the protection and promotion of women’s enjoyment of the right to adequate food, including through exercising its monitoring and investigative powers.

It appears that the aforesaid mandate has been underused from the perspective of the right to adequate food because of resource constraints among other reasons. With its limited capacity, the NWC has been conducting programmes to raise general awareness on land rights of women. The Commission has also conducted public hearing programmes in order to assess the impact of property rights related legal reforms on women. The NWC found that the equalization of property rights laws has little impact in reality since there exists a trend to bypass daughters in carrying out legal partition of parental properties.

The NWC had to write a letter to the Ministry of Land Reform to issue a circular to all Land Revenue Offices throughout the country to ask whether there was a daughter as coparcener. Though there is a Strategic Plan for the Commission, the right to adequate food of Nepalese women has not been properly integrated into its plans and programme. While revising the Plan, the food rights perspective can be incorporated. The Commission also faces shortcomings with regard to resources in order to discharge properly its mandate across Nepal. The NWC is still in the process of developing its networks at both the national and international levels. The NWC is currently trying to work in the districts by building a synergy with NGOs working in the districts. NWC has so far established its network in 50 districts. Another problem with exercising of the Commission mandate over food rights violations is its reliance on the complaints filed by individuals rather than taking up issues on its own initiative because women are often unaware as to whether they are victims of food rights violations.590

5.1.3 National Dalit Commission

The Government of Nepal’s executive order of 2002 established the NDC to protect and promote Dalits’ rights, especially through tackling the practice of untouchability and caste-based discrimination. Although the Commission has been in existence for 11 years, it is left without enabling legislation. While a draft bill was registered with the Legislature-Parliament in July 2009, more than four years later no progress had been made towards its adoption. However, the 2011 Anti-Untouchability and Caste Discrimination Act authorizes the NDC to intervene when the police refuse to register a First Information Report concerning an incident of caste-based discrimination and untouchability. Under the Act a list of actions impairing the enjoyment of the right to adequate food is deemed to amount to caste-based discrimination and untouchability. Such actions, inter alia, include: prohibiting the entry or expelling a person from public places; depriving him or her from using public services; participating in any activities that instigate caste-based discrimination; prohibiting a person from engaging in any occupation or business or refusing to employ based on caste, ethnicity or origin.591

The NDC faces various challenges in realizing its mandate and being able to promote properly and protect the rights of Dalits. Its mandate is limited to making recommendations and offering advice to the Government on policies that assist in socially and economically empowering Dalits and to promote the proportional representation of Dalits in state institutions. The NDC lacks a concrete legislative basis, having been established by an executive order rather than through a law. The absence of an adequate legal framework has fundamentally affected its independence and effectiveness.

590 Interview with Saraj Thapa, Legal Specialist, National Women Commission, 27 May 2013.
For example, the Government can decide to dissolve the NDC and has the ability to fire any or all of its Commissioners. While the NDC can receive complaints of caste-based discrimination, it can only take subsequent action in coordination with the National Human Rights Commission and the local administration, rather than directly. This lack of resources limits the NDC to operating solely from an office in Kathmandu. Lacking funding for offices, or even regular trips outside Kathmandu, the Commission has little opportunity to monitor, investigate, document and refer complaints properly in accordance with its mandate. Consideration should be given to adopting the enabling legislation with a comprehensive mandate on all human rights, including the right to adequate food. Until such a legal framework is adopted, the Commission can be empowered with adequate resources to carry out its promotional activities against the practice of untouchability and caste discrimination, including in the context of the right to adequate food.

5.1.4 National Muslim Commission

The NMC was created through an executive order dated 5 April 2012 with a view to advancing the interests and rights of Muslim minorities in Nepal. Eventually the Government appointed a 13-member commission. By virtue of the executive order, the Commission is, inter alia, mandated to recommend for formulation and implementation a national policy and programme aimed at empowering and developing Muslim communities in Nepal and for necessary amendment of legal and policy frameworks so as to ensure unhindered enjoyment of rights and entitlements. Similarly, the Commission has powers to probe into complaints regarding violations of rights and freedoms of Muslim minorities and make recommendations for necessary actions. The mandate of the Commission also relates to monitoring implementation of the laws, policies and programmes and raising public awareness, including through organizing seminars and meetings.

Like the NDC, the NMC also faces various challenges in realizing its mandate and being able to promote and protect the rights of Muslim minorities in Nepal properly. Its mandate is limited to making recommendations and offering advice to the Government on policies impacting Muslim communities. Most importantly, the NMC lacks a concrete legislative basis, having been established by an executive order rather than through a law. The absence of an adequate legal framework has made the Commission completely dependent on the Government and the Government can decide to dissolve the NDC, having the ability to fire any or all of the Commissioners. It is therefore important to prioritize the adoption of an enabling legislation with a comprehensive mandate to, in coordination with the NHRC and NWC, deal with overall aspects of human rights issues, including the right

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592 This power has been exercised on more than one occasion, and demonstrates the impact of political influence over the work of the Commission.

to adequate food for Muslim minorities. Until such a legal framework is adopted, the NMC can be empowered with adequate resources to carry out its promotional activities for the empowerment of Muslim communities, including in the context of the enjoyment of the right to adequate food.

5.2 Parliamentary oversights

5.2.1 Mandate of parliamentary committees

Pursuant to Article 58 of the Constitution, Section 110 of the Constituent Assembly (Conduct of Business of Legislature-Parliament) Rules, 2014 (2070 BS) provides for establishment of numerous thematic committees. The purpose of creating these committees is to hold the Government responsible to the Legislature-Parliament through providing necessary directions and suggestions to the Government on the basis of the evaluation and monitoring of the activities of the Government made in the past and being made at present.

As provided by the Rules, the committees, inter alia, include the Committee for Social Justice and Human Rights, the Agriculture and Water Resources Committee, the Development Committee and the Committee on Women, Children, Elderly Citizens and Social Welfare. In relation to their respective areas, these committees are charged with the responsibilities to give necessary directives to the concerned bodies through evaluating the policies, programmes, and resources etc., to scrutinize the estimates relating to revenue and expenditure, conduct studies, monitoring and evaluation on whether or not public property has been misused, and give necessary directives on the functions and activities under the prevailing Acts and Rules.

There is a special clause that obligates the Social Justice and Human Rights Committee to include in its report the following: whether or not good progress has been made in honouring, protecting and promoting human rights and securing effective implementation; whether or not the violators of human rights could have been brought to justice;

594 Activities of the Peace and Reconstruction Ministry, National Human Rights Commission and other matters related to human rights fall under this committee.
595 Activities of the Peace and Reconstruction Ministry, National Human Rights Commission and other matters related to human rights fall under this committee.
596 Activities of the Ministry of Energy, Ministry of Irrigation, the Ministry of Land Reform and Management and the Ministry of Agriculture Development fall under the jurisdiction of this committee.
597 Activities of the Ministry of Physical Planning and Construction, the Ministry of Information and Communication and the Ministry of Local Development and Federal Affairs.
598 The Ministry of Women, Children and Social Welfare, the Ministry of Health and Population, the Ministry of Education and the Ministry of Youth and Sports.
whether or not the activities in raising awareness of human rights are satisfactory; whether or not the status of implementation of international human rights instruments to which Nepal is a party is satisfactory; the types of policy or working procedures that need to be developed to implement the aforesaid activities effectively.

5.2.2 Exercise of the mandate

The practice of exercising parliamentary oversight in relation to human rights issues seems to have been increasing. Numerous issues of public importance were taken up by the parliamentary committees. One of the issues considered in this regard is the conservation of natural resources, including the Chure Range, which was reported to have been destroyed due to excessive extraction of boulders, concrete and sand. Following public complaints that the destruction of natural resources in the Chure Range contributed to increasing desertification of fertile land in the Terai districts, the Parliamentary Committee on Natural Resources and Means deployed a panel of parliamentarians to study the situation, including in relation to destruction of natural resources and the adverse effects, consult with the stakeholders to identify the intensity of the problems and make necessary interventions to hold the Government accountable. Taking into consideration the findings from the field mission, the Committee, in its report dated 26 September 2010, recommended development of forest in the Chure Range as a “Protected Forest Area” under the Forest Act. Similarly, the Committee recommended that the Government allocate the necessary budget to carry out conservation activities to ensure integrated development of the Chure Range by prioritizing it. Subsequently, the Supreme Court also passed an order to hold the Government accountable for not paying attention to the conservation issues. Similarly, the Committee has taken up the issue of excessive plotting of the agricultural land for commercial purposes. The Committee instructed the Government to adopt a national land use policy to categorize the land and preserve the fertile land for agricultural purposes.

Another issue that the Committee on Women, Children and Social Welfare considered was the diarrhoea outbreak, which was allegedly connected to the distribution of sub-standard rice in Karnali districts. The Parliamentary Committee on Women, Children and Social Welfare issued an instruction dated 24 July 2009 to the Ministry of Commerce and Supplies to prompt supply of adequate food in food deficit districts, including Jajarkot, and take measures to address the problem of the diarrhoea endemic.  

600 See, Report of the Legislature-Parliament Committee on Natural Resources and Means on “Study of Forest Protection Problems, 2067”.

601 Legislature Parliament Committee on Women, Children and Social Welfare (2068 B.S.), Report on the regarding the Study of implementation of committee directives, Kathmandu.
In another report, the Committee directed the Government to take numerous steps to address the socio-economic problems facing the Badi Community. Key recommendations include that the households of the Badi Community be offered land together with housing facilities, micro-loans without interest and collateral, a subsistence allowance within the range of Rs 3000 – 7500, promotion of self-employment opportunities and support for housing and food.\textsuperscript{602}

The Committee has also considered the issue of Haliyas (bonded tillers) and made a comprehensive set of recommendations for socio-economic uplifting of the freed Haliyas. In its report dated 6 May 2011, the Committee found that the Government efforts were not adequate to address the plight of the Haliya population. According to the committee, the Haliyas were denied a minimum wage and were deprived of basic minimum requirements. There were large gaps in the rehabilitation and distribution of land as agreed with the Haliyas, and a massive problem of unemployment. Since the Haliyas belong to a Dalit community, they were denied entry to public utilities, including the water tap and the streets, and the vulnerability of women and children within the Haliya population was very high.

Based on the analysis of the problems and existing status of Haliyas, the Committee issued the following recommendations: to form immediately a committee on rehabilitation at central and district level to identify the freed Haliyas, categorize them and issue them with identity cards; to initiate the process of rehabilitating the Haliyas in the targeted districts (Kanchanpur, Kailali, Deddhdhura, Bajura, Darchula, Bajhang, Baitadi, Doti, Humla, Surkhet, Aacham and Jajarkot); to finalize the draft bill on abolition of the Haliya system in a consultative manner; to launch the Haliya Housing Programme; to make a provision for compensating the freed Haliyas at the earliest opportunity; to encourage Haliya families to establish and run cooperatives; to ensure participation of Haliyas in the rehabilitation process; to offer cost-free foreign employment opportunities for those interested; to adopt a policy of enhancing access of freed Haliyas to natural resources including water, land, forest/community forest, drinking water and community development programmes; and to protect and promote traditional knowledge and skills of freed Haliyas.

Though there are a number of reports commissioned by the Committees with potential to have positive implications for the right to adequate food, there is no follow-up mechanism with the Parliamentary Secretariat\textsuperscript{603} to look at the implementation aspects. It is also advantageous if the Secretariat develops such a mechanism and works towards raising public awareness of the value of parliamentary oversight and the activities of the committees in relation to human rights, in particular, the right to food.

\textsuperscript{602} Ibidem.

\textsuperscript{603} Interview with Keshav Aryal, Under-Secretary, Committee on Women, Children and Social Welfare, Secretariat of the Legislature-Parliament, 29 May 2013.
6 Conclusion and recommendations

6.1 Concluding observations

Nepal has a very good track record in terms of ratifying international human rights treaties. By virtue of the ratification of international human rights instruments, including the ICESCR, Nepal has made commitments to respect, protect and fulfil a wide range of human rights for the Nepalese, including the right to adequate food.

Similarly, Nepal has a tradition of constitutional protection of basic rights and freedoms as “fundamental rights”. The constitutional protection of economic and social rights, including the right to food sovereignty, right to live a dignified life, and right to social security are of particular importance in terms of the right to adequate food. Such a catalogue of the fundamental rights is also combined with a number of directive principles and policies relevant to the right to adequate food. Giving effect to the international treaty provisions, the Interim Constitution in its Chapter on Responsibilities of the State also obligates the state to implement effectively the international treaties and agreements to which Nepal is a party.

Relying on the foundation of the Interim Constitution and the international human rights obligations of Nepal, the Nepalese judiciary has also taken positive action on the right to food. For over 20 years the Supreme Court has been able to address a significant number of issues impacting the right to adequate food through its public interest litigation jurisdiction. The role that the Nepalese Judiciary played in terms of advancing the jurisprudence on the right to adequate food is commendable. The judicial intervention under the Public Interest Jurisdiction has been instrumental in making many legal provisions work and in accelerating legislative reforms, putting them in line with international human rights obligations. There has also been scope for non-judicial remedy through NHRIs, in particular the National Human Rights
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Commission. The committee system under the Legislature-Parliament also offers an important opportunity to exercise parliamentary oversight in relation to the enjoyment to the right to adequate food by Nepalese people.

There also exists a significant legal framework for many of the key areas relevant to the right to food. Much of such legislation relates to the right to information, good governance, consumer protection, labour rights, and social protection for women, children and other vulnerable groups, and poverty alleviation. However, the existing legislative framework suffers from a number of shortcomings. One such shortcoming is the absence of implementing legislation in relation to guarantees to the right to food (e.g. right to food sovereignty and right to social security) under the Interim Constitution.

Similarly, though most of the protective legal provisions empower the state to take actions towards remedying the social and economic insecurities that exist in the society, they fail to internalize a rights-based approach that enables the citizen to claim protection from the state. Such provisions could be strengthened through a legislative initiative that converts the prevailing welfare-based provisions into the one that is rights-based. Most strikingly, numerous protective legal provisions suffer from lack of implementation. It is therefore worth noting that the vulnerable and disadvantaged groups at whom these provisions are targeted have rarely benefited. The implementation gap is not in terms of the legal provisions but does apply to judicial decisions pertaining to the right to food.

6.2 Recommendations

6.2.1 Key recommendations on a priority basis

i) **Enacting framework legislation on the right to food:** It is recommended that a framework law be adopted as a means of ensuring effective implementation of the right to food guaranteed under the Interim Constitution and International Human rights instruments to which Nepal is a party. In line with the recommendation of the ESCR Committee, such framework legislation should include provisions on its purpose; the targets or goals to be achieved and the timeframe to be set for the achievements of those targets; the means by which the purpose is to be achieved in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for monitoring, as well as possible recourse procedures. Mindful of all three levels of the state obligations – obligation to respect, 604

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604 For instance: The prohibition of forced eviction of vulnerable groups from their bases of subsistence, mechanisms for compensation in cases where forced eviction has already been effected and the revision of all forms of discrimination inherent in legislative and budgetary measures.
obligation to protect\textsuperscript{605} and obligation to fulfil\textsuperscript{606} – in relation to the right to food, the framework legislation should adequately address the core content of the right to food.\textsuperscript{607}

\textbf{ii) Strengthening the fundamental guarantee of the right to adequate food in the new Constitution:} Consideration should be given to guaranteeing explicitly freedom from hunger as an enforceable fundamental right and also incorporating a fuller term of the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions without reference to existing or future enactments.

\textbf{iii) Taking immediate steps towards effectively implementing affirmative and protective provisions under various laws impacting upon the enjoyment of the right to adequate food:} Such as the provisions under \textit{Muliki Ain Garib Kangal Ko Mahal} (Country Code’s Chapter on Pauper), Children Act, Disability Act, Labour Act, Senior Citizen Act, Local Self-Governance Act, Poverty Alleviation Fund Act, Social Welfare Act, Domestic Violence Act, Land Act and Consumer Protection Act.

\textbf{iv) Strengthening judicial compliance:} Ensure effective implementation of the judicial decisions, including in relation to supply of adequate foodstuffs in food deficit areas, implementation of land ceiling and redistribution provisions, making a provision for social security allowance for people with disabilities, protection of farmland and other productive resources, and implementation of nutrition-related laws.

\textsuperscript{605} For instance: Mechanisms for protection when third parties evict a vulnerable group from its bases of subsistence, and mechanisms of punishment and compensation for evictions already effected, guarantee of security of land tenure and other productive resources, effective regulation of workers’ rights, guarantee of non-discrimination against women in the area of work as well as in relation to ownership of property and productive resources, the guarantee of the traditional rights of indigenous communities in relation to their natural resources.

\textsuperscript{606} For instance: Identification of vulnerable groups and causes of their vulnerability, ensuring the application of legislation for a minimum salary that covers the basic food basket, ensuring the application of legislation that guarantees the maximum use of available resources to improve the access to productive resources (such as through agrarian reform) of social groups affected by malnutrition, ensuring the application of legislation that guarantees a minimum income for social groups affected by malnutrition, ensuring the application of legislation that guarantees food aid or other support in emergency situations to groups threatened by malnutrition.

\textsuperscript{607} As defined by the Committee on ESCR, the core content of the right to food includes “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other rights”. Similarly, the Special Rapporteur on the Right to Food also describes the core elements of the right to food as “the right to have regular, permanent and unobstructed access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free from anxiety”.
v) **Prompt legislative reform on various areas of laws impacting upon the enjoyment of the right to adequate food:**

   a. bring together all existing social protection/security schemes through the adoption of a comprehensive legal framework that sets out national standards and procedures for establishment and implementation of social security and social protection schemes and social assistance related transfer programmes;

   b. adopt as a matter of priority a legislative framework on disaster management that, *inter alia*, enables people in emergencies to claim the right to food and other relief materials and provides an adequate legal basis for operating an emergency response system;

   c. consideration should be given to codifying and integrating the numerous legal and regulatory norms included under different legislation dealing with food safety issues;

   d. in order to address all important issues in relation to access to land and land tenure, adoption of an integrated land law consistent with the *Interim* Constitution and Nepal’s international human rights obligations should be a priority for the Government;

   e. amend the Labour Act to pave the way for bringing informal sectors (e.g. agricultural sector) into the arena of Labour Law;

   f. adoption of a statutory framework for NDC and NMC should be given high priority;

   g. the legal framework for National Foundation for Development of Indigenous Nationalities (NFDIN) should be revised to offer a comprehensive mandate, including in relation to protection and promotion of the right to adequate food for indigenous nationalities.

vi) **Exercise effectively the mandate of NHRIs especially of the NHRC in order to remedy violations of the right to adequate food:** NHRIs, including the NHRC, should effectively exercise their mandate to monitor the violations of the right to adequate food, including through: i) mainstreaming the perspective of the right to adequate food in its functions and activities, ii) taking up food rights issues on their own initiative and iii) conducting proactive investigations and monitoring and making recommendations to the concerned authorities.

vii) **Ratify the Optional Protocol to ICESCR:** Strengthen Nepal’s commitment to realization of ESCRs, including the right to food, through ratifying the Optional Protocol to ICESCR.

viii) **Ensure protection from forced eviction:** Make sure that provisions in relation to eviction incorporate adequate procedural safeguards (e.g. verifying the encroachment, procedures for the giving of notice, procedures for consultation
with the communities affected, procedures for access to a forum for appeal of the decision, and provisions for compensation for wrongful action). The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), endorsed by the Committee on World Food Security in 2012 provide useful guidance in that regard. Mainstream gender and social inclusion perspectives in enacting new legislation, amending the existing legal and regulatory framework and adopting policy measures that have implications for the right to adequate food.

6.2.2. Detailed recommendations on a thematic basis

i) Strengthening constitutional protection related to the right to adequate food:
   a. strengthening provisions on non-discrimination, including through: i) prohibiting all forms of discrimination on the basis of property, birth, disability, sexual orientation, age; ii) leaving the list of prohibited grounds open-ended so as to ensure scope for inclusion of other grounds through judicial interpretation in the future; iii) including a more elaborated understanding of discrimination referring to both ‘direct’ and ‘indirect’ discrimination; iv) explicitly recognizing the obligation of the state to ensure substantive equality between persons and groups so as to ensure that formally equal rules do not lead to discrimination against a particular group;
   b. the guarantee of equal remuneration for work of equal value should be extended to protect people from the practice of discriminatory wages on the basis of caste;
   c. the constitutional provision on the right to social security should be revised to ensure its universal application;
   d. consideration might be given to revise the 'right to work guarantee' to incorporate all relevant work related rights protected under the ICESCR;
   e. consideration should be given to guaranteeing explicitly the freedom from hunger as an enforceable fundamental right and also incorporating a fuller term for the right to an adequate standard of living including adequate food, clothing and housing, and to the continuous improvement of living conditions without reference to existing or future enactments;
   f. without leaving for later legislation, the principle of fair and adequate compensation for violations of human rights, including the right to food should be set out within the Constitution;
   g. bearing in mind the judicial precedents in favour of the enforceability of the directive principles in certain circumstances, it would be preferable for the new Constitution not to have any such provision that out-rightly bars the justiciability of directive principles;
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h. While there is the right to seek a constitutional remedy under Article 32, it would be preferable for the new Constitution to provide adequate guarantee of the right to effective remedy (all judicial and non-judicial remedies) and reparations.

ii) Promoting national application of international human rights law dealing with the right to adequate food:

a. Ratify the Optional Protocol to ICESCR, thereby strengthening Nepal’s commitment to realization of ESCRs including the right to food;

b. It would be preferable for the new Constitution to allow for automatic operation of core international human rights treaties, including ICESCR, in the Nepalese domestic system, and that such treaty has a ‘constitutional status’ so as to invalidate inconsistent legislative/administrative actions;

c. Consideration should also be given to stipulating a constitutional requirement for the courts to interpret the Constitution and law in harmony with international human rights law.

iii) Advancing judicial activism in remedying violations of the right to adequate food:

a. Make sure that the judicial decisions giving effect to the right to adequate food are effectively implemented;

b. Continue exercising the judicial powers including through the Strategic Litigation aimed at protecting and promoting the right to adequate food;

c. Maintain judicial uniformity in giving effect to the directive principles vis-à-vis the fundamental rights guarantees, including in relation to the right to food;

d. Promote effective exercise of the writ jurisdiction of the lower courts in order to enhance the practical enjoyment of the right to adequate food by women, children and other marginalized groups at local level;

e. Build capacity of the judges, lawyers and judicial officers on justiciability of ESCRs, including the right to adequate food.

iv) Promoting role for national human rights institutions:

a. The National Human Rights Commission should effectively exercise its mandate to monitor the violations of economic, social and cultural rights, including the right to adequate food;

b. The National Women Commission should mainstream the perspective of right to adequate food in its functions and activities;

c. Consideration should be given by all NHRIIs to taking up food rights issues on their own initiative and conduct proactive investigation and monitoring of the food rights violations;

d. Adoption of a statutory framework for NDC and NMC should be given high priority. Similarly, both commissions should be explicitly mandated to deal with...
the violations of human rights, including the right to adequate food, and make necessary recommendations;

e. until such a legal framework is adopted, both commissions should be empowered with adequate resources to carry out promotions in relation to their respective mandate;

f. the legal framework for National Foundation for Development of Indigenous Nationalities (NFDIN) should be revised to offer a comprehensive mandate including in relation to protection and promotion of the right to adequate food of indigenous nationalities;

g. it is important to make sure that the NWC, NDC, NMC and NFDIN carry out their functions pertaining to promotion and protection of human rights in coordination with NHRC.

v) Promoting the effective use of parliamentary oversights:

a. develop a mechanism to work towards raising public awareness on the value of parliamentary oversight and the activities of the committees in relation to human rights, in particular, the right to food;

b. accelerate effective use of parliamentary oversight system in terms of implementation of the commitments under law and policies;

c. ensure effective implementation of the committee recommendations (e.g. supply of adequate food in Karnali, conservation of Chure Range and land use).

vi) Advancing food security and nutrition, social security and protection:

a. consideration should be given to creating a set of social protection entitlements to food under law;

b. bring all existing social protection/security schemes under the legal framework, including through adopting a comprehensive legal framework on food/social security that sets national standards and procedures for establishment and implementation of social security schemes and social protection related transfer programmes;

c. while framing the comprehensive legislative framework, consideration should also be given to addressing a number of shortcomings associated with the existing social security schemes;

d. such a legal framework should be human rights-based, including through creating an explicit legal entitlement for vulnerable groups to benefit from social transfer programmes;

e. consideration should be given to ensure effective implementation of anti-untouchability and caste discrimination law, ensuring equal access to social protection and enhancing ability of Dalits to invoke the justice system;
f. create an accountability mechanism with a responsibility to exercise oversight, receive complaints and administrate necessary remedy measures in relation to social security and protections;

g. it is recommended to ensure effective monitoring of local government performance in relation to social justice and serious consideration should be given to restoring the representativeness of local government through conducting the election of local government officers as a matter of priority;

h. there should be an adequate allocation of annual budget for addressing the increased demand of food transfers targeting both urban and rural poor;

i. the ongoing process of identifying the poor and accoring them with an identity card needs to be completed as expeditiously as possible in order to pave the way for reaching out to needy people;

j. consideration should be given to decentralize the service of Social Welfare Council, Poverty Alleviation Fund and National Foundation for the Development of Indigenous Nationalities at local levels;

k. consideration should also be given to strengthening horizontal, vertical and cross-sector coordination with the different layers of Government involved in providing social protection;

l. while formulating the comprehensive legal framework dealing with the right to food and nutritional and food security, consideration should be given to ensuring that women are entitled to adequate nutrition during pregnancy and lactation.

vii) Securing effective implementation of national labour rights standards:

a. amend the Labour Act to pave the way for bringing informal sectors (e.g. agricultural sector) into the arena of Labour Law;

b. ensure that minimum wages are updated on an annually based on the consumer index and that effective steps are taken to enforce minimum wages;

c. consideration should be given to decentralizing the labour court as appropriate and ensuring accessibility to first instance case hearing authority (labour offices) throughout the country;

d. ensure effective labour inspection service, including through expansion of the inspection system throughout the country;

e. implement effectively the welfare-related provisions under labour law;

f. the national standard on uniform maternity leave for all working women should be adopted as expeditiously as possible in consultation with concerned stakeholders;

g. due consideration should be given to ensuring effective implementation of these legal provisions, including through pro-active compliance monitoring, awareness building and enhanced access to justice.
viii) Ensuring food rights in emergencies:

a. give high priority to immediate humanitarian assistance including food support and evacuation of people and property;

b. adopt as a matter of priority an effective legislative framework that, enables people in emergencies to claim the right to food and other relief materials and provides an adequate legal basis for operating an emergency response system in view of the national strategy on natural disaster management, *Interim* Constitution and international legal obligations;

c. make mandatory legal provision to establish an early warning system in disaster prone areas and create strong disaster response mechanisms;

d. there should also be a stand-alone institutional mechanism for emergency response in terms of a pre-disaster preparedness plan and post-humanitarian assistance;

e. ensure effective functioning of central and district level Disaster Relief Committees in coordinating and facilitating disaster relief programmes;

f. provide for fast-track procedures for emergency procurement of essential goods, including food items;

g. recognize the responsibility of private entities towards making food arrangements to cope with emergency situations;

h. future legislation should create a legal basis for a powerful and independent national level disaster management authority to administrate disaster management activities in a coordinated fashion throughout the country;

i. formulate minimum standards and procedures for relief assistance and create a grievance redressing mechanism to address grievances of any person affected by disaster;

j. provide adequate provisions for penalizing discriminatory acts, obstruction to any authority involved in disaster management, non-compliance of directives, false claim for relief, misappropriation of resources, false alarm or warning as to a disaster in severity and magnitude leading to panic;

k. take measures to ensure that all committees and mechanisms vis-à-vis emergencies are inclusive, due care is given to children, women, elderly and people with disabilities during rescue, response or relief operations, given disproportionate effect of natural disasters.
ix) Strengthening protection of women and children:

a. adopt targeted measures, including a legal penalty in order to eliminate intra-household discrimination against women in terms of distribution of foods;
b. consideration should be given to ensuring effective implementation of the affirmative provisions under the Children Act;
c. harmonize ‘age of minority threshold’ of the Children Act (16 years) with the CRC (18 years);
d. mindful of the lack of effective implementation of the protective and remedial provisions under the Domestic Violence Act, take adequate measures, including legal awareness and assistance programmes, to enhance access to justice for victims of domestic violence;
e. adequate attention should be given to materializing the constitutional imperative for gender inclusion and proportional representation in state structures and all decision-making institutions in political, social and economic fields;
f. substitute the age threshold with a criterion that is based on scientific grounds (e.g. socio-economic indicators) to obtain social security allowance and give due consideration to Dalit women, women with disabilities, women living in extreme poverty and women from other marginalized groups mostly in need of social protection;
g. the Country Code provision containing discrimination against married daughter should be deleted;
h. adopt legal awareness measures at local level and avail effective legal aid opportunities to those discriminated against in terms of parental property;
i. adopt adequate measures to eliminate defective cultural practices that stop women accessing food and nutrition.

x) Food safety and consumer protection:

a. create an integrated and stand-alone inspection service to look after compliance of standards in relation to food safety and consumer protection;
b. ensure regular and routine monitoring of food safety and consumer protection based on quality standards;
c. access of marginalized and vulnerable communities to safe and nutritious foodstuffs should be given consideration when carrying out the monitoring;
d. the monitoring committees under the Consumer Protection Act should be adequately represented by consumer representatives;
e. make a mandatory provision of food safety standards for all foodstuffs either in accordance with the Food Act, the Nepal Standard Mark Act or the Consumer Protection Act;
f. create a stand-alone fast-track redressing mechanism to receive complaints, try cases and award appropriate compensation vis-à-vis violation of consumer rights;

g. promote awareness among consumers, in particular women, children and the marginalized, regarding food safety, including through establishing consumer information and awareness building centres in each district;

h. make provision for certain incentives for those who produce safe, nutritious and hygienic foods;

i. transform the Consumer Council into an independent consumer protection commission;

j. consideration should be given to adopting comprehensive legislation that deals with food safety aspects that: i) codify and consolidate all legal norms existing currently under a plethora of laws, ii) create an institutional mechanism such as the Food Council to advise the authorities on formulation and implementation of necessary policies on a regular basis, iii) make the DFTQC a competent authority for all food products after harvest (of plant products) and collection (for dairy products) with the exception that meat be regulated by the Slaughterhouse and Meat Inspection Act, and iv) establish and run reliable and credible laboratories equitably distributed throughout the country;

k. in view of the ongoing constitution-making process, consideration should also be given to translating consumer rights protection under the Consumer Protection Act into fundamental rights under the new Constitution. 608

xi) Promoting access to productive resources: forest, water and land: 609

**Forest resources**

a. provide an independent review mechanism in relation to withdrawal of community forestry and denial of its registration;

b. while spending income generated through community forestry, priority should be given to the needs of local people living in extreme poverty, members of indigenous communities and marginalized groups;

c. amend existing forestry law to recognize community ownership of forest land and provide for a requirement to consult in a gender-equitable way with the

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608 For instance, Article 46 of the Constitution of Kenya 2010 incorporates consumer rights as fundamental rights: (1) consumers have the right (a) to goods and services of reasonable quality; (b) to the information necessary for them to gain full benefit from goods and services; (c) to the protection of their health, safety, and economic interests; and (d) to compensation for loss or injury arising from defects in goods or services; (2) parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising; (3) this Article applies to goods and services offered by public entities or private persons.

609 The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), endorsed by the Committee on World Food Security in 2012 provide useful guidance, in particular to address the recommendations of this entire section.
community while executing the development project affecting the interest of the forest-dependent indigenous communities;

d. make sure that indigenous peoples are sufficiently represented in the management and mechanisms in place to compensate or consult indigenous communities;

e. develop a mechanism to provide redress to Adivasi Janajati communities for their loss of land or access to natural resources incurred without their free, prior and informed consent;

f. amend the Forest Act to remodel leasehold forestry and make it pro-poor and pro-marginalized for excluded groups, including through enhancing their participation in the management of forests;

g. make sure that provisions in relation to eviction incorporate adequate procedural safeguards (e.g. verifying the encroachment, procedures for the giving of notice, procedures for consultation with the communities affected, procedures for access to a forum for appeal of the decision, and provisions for compensation for wrongful action);

h. consideration should be given to adopting a set of special measures, including the guaranteed representation, legal recognition of women's traditional knowledge in terms of conservation and sustainable use of resources, clear stipulation of access rights of women and other appropriate mechanisms so as to enable women to participate in decision-making processes meaningfully.

Water resources

a. amend existing laws to establish the mandatory duty of the State to ensure access to safe drinking water for its population;

b. amend the mandate of the Drinking Water Corporation to enable it to launch a programme to ensure access to safe drinking water by the needy population who are unable to pay for safe drinking water;

c. revise the Water Resources Act to incorporate explicitly customary rights of water uses guaranteed under the Country Code;

d. the water resources laws should recognize traditional rights of indigenous communities in relation to water resources vital for their livelihoods;

e. set a mechanism to monitor whether the statutory yardsticks such as 'beneficial use' of water resources are duly followed;

f. the regulatory framework should therefore be amended in order to discourage the 'licence brokering' regarding the use of water resources;

g. the Local Self-Government Act should be amended to confer the explicit duties of local government to provide affordable drinking water and irrigation facilities to local people;
h. take steps to restructure the current water resources management scheme to mainstream gender perspectives and issues, including through recognizing at all levels that women are resource users and managers, and the acceptance of women’s resource and management needs.

**Land and land tenure**

a. address the existing disparity in landholdings, including though effectively implementing a land ceiling and land distribution provisions consistent with the Supreme Court Order;

b. take adequate steps to implement effectively the National Policy on Land Use 2012 through making necessary legal, institutional and budgetary arrangements;

c. implement the constitutional directives for abolishing the feudal system of land holding, curbing the widespread inequalities in access to land, and preventing concentration of the available resources and means within a limited section of society through adopting appropriate measures;

d. future legislative measures should recognize both the individual and collective land rights of the indigenous communities consistent with Article 14 (1) of the ILO 169 Convention;

e. while determining the ceiling, consideration should be given to distinguishing between irrigated and non-irrigated, fertile and non-fertile and rural and urban land. The recent land ceiling is unequal in terms of value of land;

f. it is important for the Land Act to provide for a penal provision to make officers accountable for intentional lapses in terms of identifying, acquiring and redistributing land;

g. create a mechanism to recognize unregistered tenants and redress their problems;

h. consideration should be given either to introduce a new system of tenancy or a comprehensive legal regime to protect adequately the rights and interests of agricultural labourers;

i. put an end to exploitative tenancy relationships that authorize the landowner to charge rent or collect division thereof from the tenant for up to 50 percent of the annual crop yielded from the land;

j. the provision aimed to putting an end to dual ownership through allocating the land proportionately between landowners and tenants should be effectively implemented;

k. there should be a clear provision to ensure that the land is distributed to the landless free of cost as in the distribution of Government land to freed bonded labour or other landless from time to time;
l. make the Land Use Council effective in order to materialize the concept of a land use programme envisioned under the National Land Use Policy;

m. in order to address all the stated issues in relation to access to land and land tenure, adoption of an integrated land law consistent with the Interim Constitution and Nepal’s international human rights obligations should be prioritized in the National Human Rights Action Plan of the Government;

n. together with retaining fees reduction and joint landownership drive, it is also crucial to introduce other creative measures, including a loan scheme on a minimal interest rate to enable women to purchase land, subsidies on agricultural inputs if women landowners use their land for farming, and leasing cultivable Government/public land for collective income generating activities by groups of rural women.

xii) Creating a conducive environment for the effective enjoyment of the right to information and freedom of association:

a. consideration should be given to adopting a number of measures to raise public awareness, including through making it compulsory to provide school-level education on the right to information;

b. roles for local government should also be promoted to raise public awareness on the right to information;

c. a number of important provisions under the Good Governance Act aimed at promoting transparency and good governance should be duly implemented;

d. consideration should be given to allow running the unregistered association subject to certain terms and conditions;

e. consideration should be given to decentralizing the service of the Social Welfare Council at local level in order to enable grassroots organizations, in particular those working in food deficit districts, to access the service of the Council;

f. future reform initiatives should decentralize the Information Commission at local level and offer accountability for denial of disclosure of the information and non-compliance of the Commission’s decision under the Act;

g. the Government should make sure that all public agencies have their own officer responsible under the Act and the obligation for disclosure of information is complied with;

h. the Government should accelerate the process of harmonizing other laws with the Right to Information Act and the Good Governance Act;

i. relax the threshold to establish trade union association of those engaged in the informal sector in order to have an impact in terms of promoting the enjoyment of trade union rights by labourers engaged therein
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## Annexes

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<td>Binod Saha</td>
<td>Food and Agriculture Organization of the United Nations</td>
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<tr>
<td>S.N.</td>
<td>Name</td>
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<td>30</td>
<td>Shrawan Adhikary</td>
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<td>31</td>
<td>Sarmila Shrestha</td>
<td>Advocate/Justice for All</td>
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<td>32</td>
<td>Shreekrishna Mulmi</td>
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<td>33</td>
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<td>National Federation of Disabled Nepal</td>
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<td>Sushila Kumari Thapa Magar</td>
<td>CARE-Nepal</td>
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<td>Namita Nepal</td>
<td>Woman’s Rehabilitation Centre(WOREC), Nepal</td>
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<td>Pawan Jaiswal</td>
<td>Advocate/ Supreme Court Bar Association</td>
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<td>38</td>
<td>Chandika Paudel</td>
<td>National planning commission</td>
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<td>39</td>
<td>Yubraj Koirala</td>
<td>Food-first Information and Action Network (FIAN) Nepal</td>
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<td>Basudha Gurung</td>
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<td>Ramesh Roka</td>
<td>Lawyers Forum for Civil Liberties</td>
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<td>42</td>
<td>Anju Kayastha</td>
<td>Advocate, NGO-FONIN</td>
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<td>Bishal Khanal</td>
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<td>Laxmi Rai</td>
<td>Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)</td>
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<td>Dinesh Tripathi</td>
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<td>46</td>
<td>Suraj Kunwar</td>
<td>Reporter/Kantipur Daily</td>
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The publication *Review of the Legislative Framework and Jurisprudence Concerning the Right to Adequate Food in Nepal* provides a critical assessment of constitutional as well as legislative provisions related to the right to food in Nepal. It offers a thorough analysis of Supreme Court jurisprudence pertaining to the right to food. In addition to judicial remedy, the review also covers non-judicial means of remedy against the violation of food rights.

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For more information contact: righttofood@fao.org or visit our website: www.fao.org/righttofood