

A REPORT ON

# PARTICIPATORY FOOD SECURITY POLICY MAPPING IN NEPAL

**REPORT BY**

LWF Nepal in support of RtFN, FIAN Nepal

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## FOREWORD

It is our pleasure to share the report on participatory food security policy mapping in Nepal which encapsulates policy provision, program and plan for food security in Nepal under *"Improving Food Security Governance in South and South East Asia through strengthened participation of farmers (briefly known as Regional Food Security Governance) Project"*. Conceptually, with support of strategic partners Centre for Equity Studies (CES) and Centre for Science and Environment (CSE), participatory food security policy mapping was designed by employing participatory alliance building and popular alliance mobilisation for collective advocacy, campaigning and right to food movement at regional levels especially in Nepal, Bangladesh and Myanmar. This is an account of Lutheran World Federation (LWF) Nepal, Right to Food Network (RtFN), Food-first Information and Action Network (FIAN) Nepal and along with the project's implementing partners and members of alliance for participatory food security policy mapping in Nepal.

LWF Nepal, a member of ACT Alliance, accomplished this task and brought the report in this shape in financial support of European Union (EU) and Dan Church Aid (DCA). LWF Nepal got platform for coordination with involved stakeholders for constructive engagement to initiate the mapping process through consultative process in various stages. This report has been prepared with generous support from Centre for Equity Studies (CES), India and the Centre for Science and Environment (CSE), India. This work could not have been possible without active engagement of all involved thematic lead and members organizations.

This report is the results of hard work and dedication of all involved persons / representatives of thematic, member organizations, implementing partners, associate partners and technical partners of the project along with editorial team, reviewer etc. Therefore, many thanks goes to Mrs. Mouli Benerjee and Dr. Arnav Roy of CES, India and Mr. Vineet Kumar and Mrs. Kiran Pandey of CSE, India for their constant feedbacks and back up for preparation of terms of reference, facilitation of mapping process and fine tuning of this report.

We would like to express our appreciation to the project team of DCA and LWF Nepal. Many thanks also goes to the team of RtFN, FIAN Nepal, NNDSWO, FEDO and all those who moderated this report and, in that line, improved the manuscript significantly. Equal appreciation goes to other lead thematic alliance members, CSRC, COLARP, DPNET, OXFAM, CARE NEPAL, SAHAS NEPAL, NFGF, HELVETAS, FAO, SEWA, NNDSWO, CARITAS Nepal, etc. who had greatly contributed for this report.

We would like to thank our staffs, right holders, implementing partners, donors and stakeholders including government agencies for their contribution, suggestions; inputs, comments on earlier versions of the manuscript during the whole mapping process at different time and stages, although any errors are our own and should not tarnish the reputations of these esteemed professionals.

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## ACRONYMS

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ADB	-	Asian Development Bank
ADS	-	Agriculture Development Strategy
AFSP	-	Agriculture and Food Security Project
APP	-	Agriculture Perspective Plan
CBS	-	Central Bureau of Statistics
CEDAW	-	Convention for the Elimination of all forms of Discrimination against Women
CES	-	Centre for Equity Studies
CFUG	-	Community Forest Users Group
CIP	-	Country Investment Plan
CSE	-	Centre for Science and Environment
DCA	-	Dan Church Aid
DDC	-	District Development Committee
DFTQC	-	Department of Food Technology and Quality Control
EU	-	European Union
FEWUN	-	Forest Environment Workers Union Nepal
FIAN	-	Food-first Information and Action Network
FNSP	-	Food and Nutrition Security Plan
FOHRID	-	Human Rights and Democratic Forum
GAFSP	-	Global Agriculture and Food Security Program
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ILC	-	International Labour Convention
ILO	-	International Labour Organisation
JuRI Nepal-	-	Justice and Rights Institute Nepal
LAPA	-	Local Adaption Plans for Action
LWF	-	Lutheran World Federation
MDG	-	Millennium Development Goals

MSP	-	Minimum Support Price
NAFAN	-	National Forum for Advocacy, Nepal
NAPA	-	National Adaptation Programme of Action
NARC	-	Nepal Agriculture Research Council
NDRF	-	National Disaster Response Framework
NeSAP	-	Nepal Food Security Monitoring System
NSDRM	-	National Strategy for Disaster Risk Management
OAP	-	Old Aged Allowance Program
RtFN	-	Right to Food National Network, Nepal
SAR	-	South Asian Region
SDG	-	Sustainable Development Goals
UDHR	-	Universal Declaration of Human Rights
UNDP	-	United Nations Development Program
UNISDR	-	United Nations International Strategy for Disaster Reduction
UPR	-	Universal Periodic Review
VDC	-	Village Development Committee
WB	-	World Bank
WFP	-	World Food Program

## EXECUTIVE SUMMARY

### 1. CONTEXT

The concept of Food Security, has undergone great changes over the last few decades, with broadened understanding of the concept on food security and increased multi-pronged approach. From the 1974 understanding of food security as merely the total availability of the volume food grains with a nation and concerns about the fluctuation of food grain prices, we have come a long way, where in 2009, FAO Expert gave a working definition of food security: “Food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life”<sup>i</sup>.

It is now acknowledged that the achievement of an effective policy structure for ensuring food security would require a multipronged approach that covers a vast array of interventions- from improved agricultural production in order to ensure production and availability of food, to better livelihoods and employment to all groups of people for better access to food, better education on not just food but also health and nutrition, so as to ensure better food utilisation, and supplementary water and health security in order to ensure holistic intake, to parallel empowerment of historically disadvantaged and vulnerable groups like women and indigenous communities, for example, for social protection and equitable distribution of food resources. Food security, thus, cannot truly be achieved without taking all factors into account, namely, “food security” (availability), “food sovereignty”, “non-food determinants of nutrition”, and other vulnerabilities like “poverty and social discrimination”<sup>ii</sup>.

Nepal, as per the United Nations, is one of the only two South Asian countries to have been able to achieve their Millennium Development Goal hunger target of halving their proportion of undernourished population to the total population, with its proportion of undernourished people to the total Population (in %) decreasing, from 22.8% in 1990-92, to 7.8% in 2014-16<sup>iii</sup>. Yet, gap still exists. This report has identified and investigated some of the legal provisions, constraints, and challenges that hindered in fulfilling the gaps under food security are:

#### 1.1 Right to Food

Despite various legal provisions, policies, plan and programs under right to food in Nepal in recent time, the issue is still being in a verse of inappropriation. The major challenges could be the gaps in recognition of customary rights and legal policy frameworks under country code. Numerous legal provisions such as water resource act as special legislation gets primacy over country code’s cahpter on land cultivation which needs to be amended to incorporate several customary rights for appropriation of the provisions such as water resources rights of indigenous people, natural resources based subsistence economies, fishing rights under aquatic animal protection act which has undermined the livelihoods of landless fishing communities of Nepal (Bote, Majhi, Darai, etc)

Several landmark Supreme Court judgements have shown the inefficient implementation of multiple sectoral laws in Nepal in relation to the right to food, and therein are several orders by the apex court to the Government of Nepal, to provide specific benefits through laws and policies. However, there is no accountability or monitoring to check if these are actually followed through. There needs to be a body established whose objective it should be to monitor the implementation of these government obligations vis-a-vis the right to food and related rights.

## **1.2 State Food Provisioning**

Nepal is a signatory to the International Covenant on Economic, Social and Cultural Rights, and the committee on ICESCR, evaluating Nepal's performance, provided several recommendations that must be implemented with regard to state food provisioning.

Besides, Central Bureau of Statistics (CBS), responsible for collecting and analyzing such data and information, do not allow for more detailed identification of the poor and vulnerable groups in society, particularly in terms of assessing the enjoyment of human rights, including the right to adequate food by these groups. Nepal Food Security Monitoring System (NeKSAP) has made significant improvement in collecting, analyzing and present information on household food security across Nepal, however, its indicators are still to be compiled with regards to human rights.

Targeted and comprehensive measures have to be taken to ensure food security and access to resources for all; particularly those who belong to the most disadvantaged and marginalized groups. Such comprehensive order made by the Supreme Court of Nepal in response to public interest litigation for the Government to immediately supply foodstuff in 12 remote hill districts of Mid and Far-Western regions in 2008 would be instrumental in employing such measures particularly in the issues of Dalits, lactating mothers, elderly, children, etc.

In state provisioning is not only limited by in adequate laws and policy but also on monitoring and enforcement of existing law/policy framework. Such as despite government enacting laws against caste based discrimination and untouchability Act 2011, in line with the ICESCR, it still prevel widely in Nepal. Dalits in Nepal have often been denied access to public water source.

Unlike other South Asian countries like India and Bangladesh, which have feeding programmes for adolescent girls, Nepal has no such programme, and this should be incorporated into government policies.

## **1.3 State Social Protection**

Existing legal provisions under social security have been mainly developed with a welfare-based approach and lack a human rights-based focus thus failing to enable the citizens to claim their right in case of denial and violation of the right and to hold the authorities accountable. Such as the National HIV/AIDS Strategy (2006-2011) does not have any specific references to the sexual and reproductive health and HIV prevention services needed for girls and young women. The strategy also has not given any attention to food security of the HIV/Aids infected. Similarly, the enforcement of the provisions and methods of payments for cenrtain provisions including elderly pension, allowances, etc. still have to be improved to outreach the unreached. The government has made arrangement for payment of social security allowances, pensions, etc. through bank against the previous mode of payment of direct cash, the new arrangement found not feasible due to limited access to bank by majority of the population.

## **1.4 Land Rights Laws**

Land is increasingly becoming scarce resource as a consequence of population growth and rapid urbanization. Therefore, the government requires to pursue a policy of implementing "scientific land reform" in its directive policies. Comprehensive land mapping including digitation of information management and land administration is vital to enhance inclusive equitable access, utilization, availability and sustainable management of land and land based resources with well defined tenure security that ultimate contributes to food security. Majors issues under land rights identified by the mapping exercise are as follows:

- The policies and laws have given less attention to the issues accessing lands by marginalised people especially landless, land poor Dalit and indigenous communities, freed bonded laborers particularly Kamaiyas and Haliyas, and women who have been living in the margin of the society in terms of enjoying their basic human rights. Empowering those people enabling them to participate in decision making and effective implementation for enjoying land rights from below would be instrumental for their food security.
- The Land Act under Section 40 provides for a compulsory deposit of food grains by every landlord and tenant, which is quite a positive provision. Unfortunately, this remains unimplemented and the Act is not clear with regard to the use of the deposited food.
- The Land Act also sets out the concept of cooperative farming, land zoning and plotting (Sec 51 (e), agriculture saving credit (Sec 40), and farmers' cooperative institutions (Sec 60). These provisions mostly remain non-implemented.
- Lack of effective Monitoring and lack of political commitment are serious problems in the land reforms in Nepal. The government needs to develop a Land Policy that includes provisions for recording, monitoring and harmonizing contradictory policies ensuring an integrated land policy. Land Court and Farmers Court can safeguard the proper policy enforcement and monitoring as well.
- Land issues in newly introduced federal state's structure should be addressed in line with inclusive provisions of newly promulgated constitution of Nepal.
- Strengthen decentralized governance of land tenure, land use planning and land zoning to (i) prevent further loss of productive agricultural lands, forests, wetland and grasslands, (ii) promote soil conservation and enrichment and protection from erosion and (iii) land consolidation, land leasing and cooperative farming to capture the benefits economy of scale in specific crop and livestock enterprises. It should follow the concept of Common Property Resource (CPR)

## 1.5 Labour Rights

Labour rights in Nepal has been established through different national and international legal instruments at different times with successive amendments of policy, acts, special provisions, plans and programs. However, there still have a gaps either in law formulation or in proper enforcement of the existing provisions.

Freeing of bonded labour Haliya and Kamaiya recently occurred is one of the great achievement abolishing bonded labour in Nepal. However, there are various traditional forms of bonded labourers such as Haruwa, Charuwa, etc. who are still to be freed in practice. Similarly, those freed labourers are still needs for their sustainable solution with self-reliant through comprehensive rehabilitation packages and sustainable livelihood improvement..

Child labour is still a big problems with aournd 38.8% of which 19.7% are working in hazardous conditions (ILO/GoN 2014). Following Nepal's ratification of the ILO Minimum Age Convention (No.138), Nepal is still exercising 14 years of Minimum age for employment (Child Labour Act 1999) which according to convention should be 17 years of minimum age.

Though the minimum wage based on the consumer index has been provisioned by Labour Act since the beginning, there should be a monitoring agency that is responsible for ensure regular updates of minimum wage limits. The Labour Act provides for the establishment of a Labour Court for legal settlements of disputes but access is still limited operating through only one court located in the capital. The case hearing authorities are also too few- there are only 10 of them in Nepal.

## 1.6 Small Farmers' Promotion and Protection

Despite government continue efforts to protect and promote small farmers, the provisions made are not sufficient with inefficient and ineffective enforcement. Numerous targeted programs were planned for small holders farmers such as small farmers development program, integrated development program, agriculture enterprise development, agriculture extension, insurances program, agriculture subsidy program, etc. but most remain unsuccessful in promoting and protecting the small farmers. Various strategies, plan, policy, laws and act developed to promote and protect small holders farmers, however, enforcement remain ineffective and weak. The food security policy mapping has identified some examples of such gaps as mentioned below:

- Farmers have to suffer losses because of non-effective minimum support prices for crops and procurement by state. State procurement of crops takes place only at few places. Sometimes, the minimum support prices determined for a crop is even lower than the last year's price.
- There are different fluctuations in prices due to market and natural calamities. Farmers should be given minimum wages at the time of unemployment.
- Nepal formally announced Crops and Livestock Insurance program from January 2013 after issuance of "Crop and Livestock Insurance Directive 2013" with provision of 75% premium subsidy to farmers but still small farmers find it difficult to adopt. Therefore government should have proper implementation mechanism so that small farmers can adopt the insurance scheme.
- Nepal has a well established agriculture extension services with different plans and programs/projects aiming at prospering agriculture. Despite these provisions farmers are not able to get adequate technical services and inputs. Establishment of community owned extension service centres at village level should be promoted.
- Agricultural credit in Nepal is insufficient and highly inadequate. The farmers initiated groups and saving and credit cooperatives should be promoted and supported by government. Small and medium farmers should be given special support in this regard.

## 1.7 Resilience Building

Nepal is 11<sup>th</sup> most vulnerable countries to climate change impact. Ensuring food security in the changing climate will mean doing development better and faster. This will also mean mainstreaming climate change responses into existing policies, processes, programmes and institutions. People in Nepal on the other hands are marginalized from different dimensions socially, economically, culturally, politically, institutionally that abide vulnerable to climate change as well. Therefore, Nepal should eliminate this marginalisation in order to be climate resilient. Reducing poverty can go a long way in reducing marginalisation and building resilience to climate change. Therefore, the report felt the needs of comprehensive actions by different departments/ministries of Nepal government to build resilience to ensure the food security. These are:

- Climate change related policies in Nepal are still in the initial stages. The policies in general seem to be relatively people centric, participatory, and inclusive planning and implementation.
- Nepal has to make a robust early warning system and adopt early warning information system for managing climate change risks in agriculture and food and nutrition security.
- Nepal has to conduct research on stress tolerant varieties and breeds of crops, livestock and fish for the development of climate resilient agriculture that are at the same time higher in yield.
- Mainstreaming disaster risk reduction (DRR) in sectoral policies and plans ensuring effective implementation of the food security policies including relief and rehabilitation policies, implementation of land use and settlement planning, and strengthening of DRR institutions to mainstream food security policies as well are some of the issues, which need to be taken care.

## 1.8 Natural Resource Management

Under this theme the policy mapping particularly focused on forest and water management with respect to climate change.

- Climate change adaptation in forests require communities who are the managers of most of the forest resources need to be aware on climate change effects. All the adaptation programs need to be planned and implemented safeguarding the natural resources, as recognized by the NAPA of Nepal.
- Climate change adaptation should focus on sustainable forest management, improved governance and capacity at the local level with special focus on the needs of most vulnerable communities.
- Instead of monocultures and plantations of exotic species on forestlands, Nepal must promote regeneration of native species which have significant food values such as tubers, fruits, vegetables, bamboo shoots, edible ferns etc.

The governments should document the indigenous knowledge of the local forest dependent communities and prepare biodiversity registers describing forest plant species with food values, their silvicultural requirements, nutritional values and Ethno-botany.



## **1. AIMS, OBJECTIVES AND METHODOLOGY OF POLICY MAPPING**

The food security policy mapping has conducted with the aim of identifying the clear picture of food security policies, plan and programs in Nepal, policy gaps and recommendations with critical analysis of the context i.e. in country context and the context of South Asia. Similarly, the mapping also envisioned to set policy baseline for food security in Nepal.

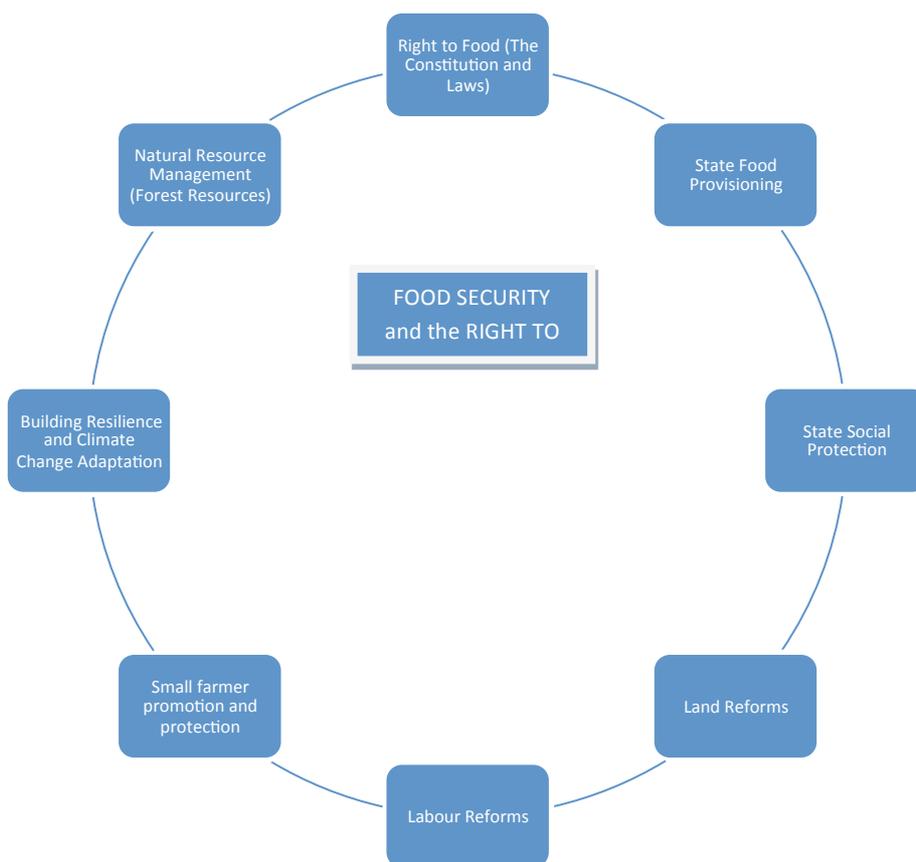
The main objective of this policy mapping action is to see the extent of civil society participation, particularly of the farmer groups, in the decision making role, and identify gaps in the existing policy/law, government's program and social protection schemes of the respective country government.

### **1.1 Themes and Sub Themes**

Eight Thematic Sectors have chosen for this policy analysis and mapping based on the interconnectedness to food security. The policy mapping exercise looks at each thematic area and the underlying sub – themes addressed therein.

The first thematic area addressed is the Right to Food, within which, the report looks at the Constitutional and legal provisions in Nepal and the potential for a framework legislation on the Right to Food. The second thematic area, State Food Provisioning, is further categorised into subthemes that look at existing policies and programmes in Nepal on the public distribution system, school meals, infant and young child feeding, nutrition counselling, breast-feeding support and crèches, feeding programme for vulnerable groups, and nutrition programmes for adolescent girls. The third thematic area, state social protection, is further categorised into subthemes that look at existing policies and programmes in Nepal on maternity entitlements, pension for the aged, social assistance for the disabled, social assistance for single women and their dependents, social assistance for the unemployed, including unemployment benefits, any other entitlements for marginalized communities and any entitlements for populations living in vulnerable areas.

The fourth thematic area, on Land Reform, looks at laws and policies on land tenure, land transfers, the rights of indigenous and marginalises communities on their land, and women and their land rights. The fifth thematic area, on Labour Rights, looks at provisions of minimum wages, employment benefits, women and their labour rights, and vulnerable communities and their labour rights. The sixth thematic area, on small farmer promotion and protection looks at the existing state procurement policies and minimum support price (MSP) programmes and guarantees in Nepal. The wage programmes and farmer income protection strategies have been adopted, existing financial safety net is available to farmers through agriculture insurance, loan grant provision for small and medium farmers and existing market support and linkages are available to farmers.



**Figure 1 Food Security and Right to Food thematic areas**

The seventh thematic area on building resilience towards cyclones, floods, droughts and climate change adaptation looks at promotion of sustainable agriculture technologies and cropping patterns, available extension services for promoting sustainable agriculture and cropping pattern, water shed development strategies and irrigation support provided to small and medium farmers and strategies on climate change adaptation and resilience building. Finally, the eighth thematic area on natural resource management (forest resources) looks at Nepal’s policies in place, for forest resource management and protection.

- The study design has followed eight comprehensible steps;
- Step 1: design the ToR for rapid policy/law, governance, programme and schemes;
  - Step 2: identify and select the priority themes and issues related to RtF (country specific);
  - Step 3: alliance building in line with selected themes/issues;
  - Step 4: capacity building of alliance members by CES/CSE;
  - Step 5: analyse the collected information/data and produce policy documents;
  - Step 6: sharing and verification workshop;
  - Step 7: advocacy strategies and advocacy plan development;
  - Step 8: orientation/capacity building of field staff on strategy/action for advocacy.

Following the above study framework and guidelines, several meetings and interactions were organised with alliance members and mobilized for information/data collection and production of country specific policy brief report. The thematic areas and list of alliance members is presented in the table below

SN	Thematic Areas	Lead Alliance Members	Other members of the alliance
1	State Food Provisioning and Social Protection	FIAN Nepal and NNDSWO	SEWA

2	Land rights and Labour rights	CSRC and COLARP	OXFAM
3	Small farmers' protection and promotion	NFGF	OXFAM, HELVETAS
4	Natural Resource Management	FECUFUN and HIMAWANTI	FEDWASUN, DANAR
5	Resilience Building (CCA and DRR)	SAHAS Nepal and DPNET	CARITAS, CARE, LWF

This activity has taken long time than planned for formation and mobilisation of alliance members and carryout follow up actions (steps) including capacity building of alliance members before carrying out study by CES and CSE.

Meanwhile, the mega earthquake that hit Nepal on 25April 2015 has shifted the program focus of all alliance members from development to emergency response, and all programme staff were engaged in the rescue and relief activities for more than three months. The constitution declaration process and low land (Terai) movement (more than 6 months) in Nepal delayed the processes. However, the study was completed and the report was prepared and shared with relevant stakeholders including partner organisations and their feedbacks/suggestions were collected. The report has now been in this shape.

## 2. INTRODUCTION

The definition of Food Security, as a concept, has undergone great expansion over the last few decades, and with every instance of broadening understanding of the concept, the need for a multi-pronged approach to the issue has increased. . From 1974 understanding of food security, the total available volume of food grain with a nation and it's concern about the fluctuation of food grain prices, have come a long way. Whereas in 2009, an FAO Expert Consultation on food security gave a working definition of food security as: "Food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life"<sup>iv</sup>.

It is acknowledged that the achievement of an effective policy structure is for ensuring food security, which would require a multipronged approach that covers a vast array of interventions from improved agricultural production. In order to ensure production and availability of food, for better livelihood and employment of all group of people for better access to food, education on food, health and nutrition. Better food utilisation, supplementary water and health security to ensure holistic intake, to parallel empowerment of historically disadvantaged and vulnerable groups like women and indigenous communities, for example, for social protection and equitable distribution of food resources. Food security cannot be achieved without considering all factors, namely, "food security" (availability), "food sovereignty", "non-food determinants of nutrition", and other vulnerabilities like "poverty and social discrimination"<sup>v</sup>.

Before drawing the focus on Nepal as a unique policy landscape for food security, it would perhaps be useful to understand Nepal within the South Asian context, as the countries of the South Asian Region (SAR) share certain geographical and socio-political factors that make the region particularly vulnerable to food insecurity. Nepal, as appeared from the assessment of UNDP data, has fared much better than most other South Asian countries, in achieving its Millennium Development Goals targets. All the countries of the SAR- Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka- were signatories to the United Nations' Millennium Development Goals (whose hunger target, 1C, was to measure the progress made by countries towards halving. Between 1990-92 and 2015, the proportion of people suffering from undernourishment, or to bring this proportion below 5 percent) and the World Food Summit target, which was to measure the progress made by countries towards halving the number of undernourished people between 1990-92 and 2015. Nepal and Bangladesh, according to the United Nations data, are the only two countries that have been able to achieve their Millennium Development Goal hunger target of halving their proportion of undernourished population to the total population (See Table 1)

**Table 1** Proportion of Undernourished people to the Total Population (in %)

Country	1990-92	2014-16	MDG 1c
Afghanistan	29.5	26.8	Not achieved
Bangladesh	32.8	16.4	ACHIEVED
India	23.7	15.2	Not achieved
Nepal	22.8	7.8	ACHIEVED

Again, with regards to the World Food Summit target, the data shows (See Table 2) that while none of the SAR countries have managed to achieve them, Nepal has been able to bring down the total number of undernourished or hungry people in the country significantly, in contrast with the performance of other countries.

**Table 2 Number of People undernourished (in Millions)**

Year	Afghanistan	Bangladesh	India	Nepal	Pakistan	Sri Lanka
1990-92	3.8	36.0	210.1	4.2	28.7	5.4
2005-07	8.3	24.3	233.8	4.1	38.1	5.9
2014-16	8.6	26.3	194.6	2.2	41.4	4.7

Source: FAO<sup>vi</sup>

While this does indicate that at some level, the food security policies and policies of public distribution may be in the right direction in Nepal, there is enough reason to be sceptical of such markers of improvement. We confronted, for example, with data from a 2013 World Food Programme Report, which states “3.4 million people are considered to face food insecurity 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.”<sup>vii</sup>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<sup>viii</sup>.

Here one observes, at the very outset, an interesting discrepancy, which in a way epitomises the need for a holistic policy-assessment on issues as vast and layered as food security. Discrepancy between data from different organisations indicates that oftentimes-generalised statistics delivered through a top-down approach run the risk of obfuscating problems instead of shedding light on them, and this is relevant while mapping relevant policies and their implement ability. Before we begin the sectoral analysis of food security in Nepal, it is useful to note some of the crucial steps already taken by the Government of Nepal in this regard.

### **2.1 Three Year Interim Plan FY2014-FY2016<sup>ix</sup>**

Nepal’s Thirteenth national plan has provisions to improve life standard of people through sustainable agriculture development. Insuring food sovereignty of people and strengthen all aspect of food or nutrition security, is a long-term goal of the Plan. To achieve this, it has provisions to provide seed money or soft loan to farmers with required skill or capacity building training. Another highlight of the Plan is the planned Food for Education program for 29 districts.

### **2.2 Sustainable Development Goals 2016-2030**

Moving on from the MDGs, the SDGs have set new targets for food security in the signatory countries, including Nepal. In the years to come, the goals will be of paramount importance for Nepal’s food security. Achieving the agricultural goal is instrumental for achieving several other goals including those concerning absolute poverty, education, health, environment and inequality. However, the global and regional high and unequal regimes of agricultural subsidies and Nepal’s low agricultural productivity and the small scale of subsidies implies that the country itself cannot protect its agriculture from external shocks.

### **2.3 Nepal: Zero Hunger Challenge National Action Plan (2016 - 2025)**

Strategic Pillars Emphasized by the ZHC Initiative includes:

- Pillar – I 100% access to adequate food all year round
- Pillar – II Zero stunted children less than 2 years
- Pillar – III All food systems are sustainable
- Pillar – IV 100% increase in smallholder productivity and income
- Pillar – V Zero loss or waste of food.

An intensive analysis of various sectors affecting food security show how by filling up the sectoral gaps, the above initiatives of the Government of Nepal can become more effective in making Nepal a more food secure country.

## 2.4 Existing Legal Framework on Right to Food

Right to Food is a human right. It is an idea that has been recognised and established repeatedly, in Article 25 of the Universal Declaration of Human Rights, Article 11 of the International Covenant on Economic, Social and Cultural Rights, Article 6 of the International Covenant on Civil and Political Rights through the Right to Life. In addition, through inclusion in other international instruments, such as the Convention on the Rights of the Child (Article 24 (2) (c) and 27 (3)), the Convention on the Elimination of All Forms of Discrimination against Women (article 12 (2)), and the Convention on the Rights of Persons with Disabilities (article 25 (f) and 28 (1))<sup>x</sup>.

By being signatory to these conventions and instruments, Nepal is obligated to ensure the Right to Food to each citizen. This recognition must come with legal enactments, in order to prevent the risk of devolving into a mere tokenism. It is important to recognise that the contribution of the right to adequate food to the eradication of hunger and malnutrition operates at three levels<sup>xi</sup>. First, at the level of being a self-standing right recognised in international law and in a range of domestic constitutions, it imposes on States the obligations to respect, protect and fulfil the right to adequate food. Second, the right to food encourages the transformation into legal entitlements of social welfare benefits that individuals or households receive, under policy measures such as governmental food security schemes. Finally, the right to food requires that States acknowledge the need to adopt national strategies in order to achieve the components of the right to food that cannot be immediately guaranteed by the states to its citizens<sup>xii</sup>.

Hence, a country's constitution plays a crucial and fundamental role in the realisation of the right to food because it is, in most countries, considered the supreme law of the land and the framework to most political decisions within a nation. Political principles of a functional democracy are enshrined in its constitution, and in some way or the other, acknowledgement of the Right to Food within the constitution of each country in order to bind the legislative and executive bodies in the nation to the provision of the right. This is also important especially in case of an executive or administrative act that in any way contravenes the provisions of the constitution, so that the judiciary can take steps to make such acts invalid and void<sup>xiii</sup>, and thus give the citizens a chance at judicial remedy for the denial of the right to food.

According to the United Nations, the Constitutional recognition of the right to food by any country can be categorised broadly in four ways- 'explicit and direct recognition, as a human right in itself or as part of another, broader human right', the implication of Right to food within a broader human right guaranteed by the constitution, the 'explicit recognition of the right to food as a goal or directive principle within the constitutional order'<sup>xiv</sup>. It is not a justifiable right but does reflect the political will of the government, and finally indirect recognition granted by the judiciary in the interpretation of other human rights.

## 2.5 Importance of Constitutionality: Nepal and the Right to Food

According to the FAO, until 2011, only 23 countries across the globe recognised the Right to Food as an explicit right in their constitutions, (none of them in South Asia), and out of those 23, 10 specified it as a right to be granted to only a certain section of the population<sup>xv</sup>.

Nepal is significant, especially in comparison with other countries of the SAR, as it does grant Right to Food as a fundamental right in its constitution. It is relevant that before 2000, the right to food was not mentioned in the Nepalese Constitution, but the Nepalese state is a state of constant transition in the past decades, and has seen seven constitutions in operation. In 2008, after a case on the right to food being a fundamental right was filed in the Constitutional Court of Nepal, the interim constitution of 2009 officially included the right to “food sovereignty” as a fundamental right<sup>xvi</sup>. The newly adopted 2015 Constitution of Nepal continued to keep this right intact and guaranteed right to food as a justifiable right to its citizens.

## 2.6 Relevant Provisions in the Constitution of Nepal

The new Constitution, promulgated on 20<sup>th</sup> September 2015, has many inclusive features and Acts, pertaining to the many facets of food security. The most important provision in the new Constitution of Nepal, with regard to this, is the one that guarantees food sovereignty as a right to all its citizens, namely Article 36 (Clauses 1, 2 and 3) which reads as:

### Article 36. ‘Right Relating to Food’:

- (1) Every citizen shall have the right relating to food.
- (2) Every citizen shall have the right to be safe from the state of being in danger of life from the scarcity of food.
- (3) Every citizen shall have the right to food sovereignty in accordance with law.

Other provisions of the Constitution that contribute to the assurance of a Right to Food are:

**Article 35 (4): Right Relating to Health:** Every citizen shall have the right to access to clean drinking water and sanitation.

**Article 42 (2) Right to social justice:** The indigent citizens and citizens of the communities on the verge of extinction shall have the right to get special opportunities and benefits in education, health, housing, employment, food and social security for their protection, upliftment, empowerment and development.

Several other provisions in the Constitution guarantee non-discrimination and social protection to socially and politically disadvantaged groups and communities, and these are relevant when looking at different aspects of social policy that affect food security, as later sections this report will elucidate in greater detail. Some of these are:

**Article 18 (3),** which guarantees non-discrimination on the grounds of “origin, religion, race, caste, tribe, sex, economic condition, language, region, ideology or on similar other grounds”

**Article 38 (5),** which gives women “the right to obtain special opportunity in education, health, employment and social security, on the basis of positive discrimination”

**Article 40 (3),** which guarantees, “Special provision shall be made by law in order to provide health and social security to the Dalit community”

**Article 41**, which says, “Senior citizens shall have the right to special protection and social security from the State”

**Article. 43**, which guarantees the right to social security to several disadvantages intersectionality, namely “indigent citizens, incapacitated and helpless citizens, helpless single women, citizens with disabilities, children, citizens who cannot take care themselves and citizens belonging to the tribes on the verge of extinction shall have the right to social security, in accordance with law”

**Article 40 (5)**, which provides land rights, viz. “the state shall once provide land to the landless Dalit in accordance with law”

**Article 42 (4)**, under the rubric of “Right to Social Justice” guarantees that “every farmer shall have the right to have access to lands for agro activities, select and protect local seeds and agro species which have been used and pursued traditionally, in accordance with law”

**Article 44** protects the “rights of the consumer” (relevant under the ambit of food safety), wherein Clause 1 states, “Every consumer shall have the right to obtain quality goods and services” and Clause 2 states, “ A person who has suffered injury from any substandard goods or services shall have the right to obtain compensation in accordance with law”.

Though these are not justifiable, they are relevant in understanding the responsibility and vision of the government, in framing its policies. The relevant portions in this Part of the Constitution are:

**Article 51[h (12)]**:“to provide for sustainable production, supplies, storage, security, and easy and effective distribution of foods by encouraging food production in tune with climate and soil, in consonance with the concept of food sovereignty, while enhancing investment in the agricultural sector”

**Article 51 [h (13)]**: “to ensure planned supply system by special priority to the remote and backward regions, while ensuring equal access of all citizens to basic goods and services”.

## 2.7 The National Code

**Nepal’s Country Code or National Code** has a few provisions that are also relevant and directly contribute to the spectrum of food security. For example,

- Chapter on Partition-Number 1 says that while partitioning a property after the commencement of this Number, it shall be partitioned between the father, mother, wife, son and daughter individually, subject to the provisions of this Chapter.
- Chapter on Husband and Wife- Number 4 says that a wife is entitled to get partition share from the partition share of her husband in condition of not providing food and clothes by family, and 4A clarifies that the court shall make decision on divorce only after having partition.
- Chapter on Pauper-Number 4 mandates the arrangement of regular ration (Sadabarta Handi) and two pairs of clothes for all destitute people.

## 2.8 A Right to Food Framework Law: Potential and Opportunity

While the new constitution makes provisions for the fundamental right to food and food sovereignty, there is not yet any framework legislation for the right to food in Nepal. Here it is important to note, that under the rubric of “implementation of fundamental rights”, the constitution guarantees, under **Article 47**.“The State shall, as required, make legal provisions for the implementation of the rights conferred by this Part, within three years of the commencement of this Constitution.”<sup>xvii</sup>

With a year past, since the promulgation of the constitution, the possibilities of progressive food security laws that Nepal's Constitution promises must be seized, in order to push for framework legislation, in order to make the rights promised operational in practice. This is the ideal legislative option in order to deal with cross-sectional issues that need addressing in order to ensure right to food, as it "lays down general principles and obligations, and leaves it to implementing legislation and the competent authorities to determine specific measures to be taken so as to realize such obligations, possibly within a given time limit"<sup>xviii</sup>. Since the Constitution itself already specifies a certain period, this opportunity must be utilised.

Without any specific legislation, the rights guaranteed are not enforceable by an independent agency. While there are important judgements by the Supreme Court of Nepal (as elaborated upon later in this Report), which are crucial to food sovereignty, having a framework law would strengthen government accountability, since it would ensure legal provisions for better monitoring, better access to courts for all citizens and also better administrative recourse mechanisms<sup>xix</sup>.

However, in the absence of governmental mechanism for monitoring and implementation, the work done by Right to Food Nepal (RtFN), a national level loose network that coordinates between individuals and organizations, engaged in promoting human Right to Food in Nepal, is useful to look at. It serves as a supervisory body that advocates for inclusion of right to food as fundamental and holds the State and other relevant parties accountable for realisation of the obligations to respect, protect and fulfil the human Right to Food as stated in Article 11 of the General Comment 12 on the International Covenant of Economic, Social and Cultural Rights (ICESCR) of 1966<sup>xx</sup>. Nepal is signatory to the important international conventions that are crucial for upholding the right to food, including the Universal Declaration of Human Rights (UDHR), International Convention on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), Committee on the Elimination of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

Her, it is also crucial to note the importance of the **Nepal Treaty Act, 1990 (2047)**, whose Article 9(1) states, "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"<sup>xxi</sup>. This means that in case there is a disagreement of goals between international treaties ratified by Nepal and Nepalese laws (again, according to the Section 2(M) of the Interpretation of Statute Act, Nepalese law does not include constitutional provisions<sup>xxii</sup>), the treaty's values will upheld, and the Nepalese law's provisions stands invalid.

Thus, this legal provision, in conjunction with the Constitution granting the right to food and food sovereignty as fundamental rights, provide strong basis for the Judiciary to uphold human right to food in Nepal, and lays a strong foundation upon which to push for a framework law for Right to Food.

## **2.9 Right to Food and Existing Sectoral Laws: An Analysis**

While framework legislation is ideal, in the meantime sectoral laws can fill up some of the gaps. The Ministry of Agriculture and Development, the Ministry of Health and Population, Ministry of Home Affairs, Ministry of Commerce, and Supply, Ministry of Science and Technology and Department of Food Technology and Quality Control are responsible for compliance of food security, food safety and food quality regulation laws. There are certain sectoral laws operational in Nepal, under the aegis of different ministries, which are relevant to the multiple issues that together concern the right to food.

### **3.9.1 The Food Act, 1967<sup>xxiii</sup> (2023)**

Authenticated in 1966 and in operation since 1967, the law states that this is to make provisions to maintain proper standard of foodstuffs and to prevent any undesirable adulteration in foodstuffs or prevent from reducing in, or extracting, any natural quality or utility from foodstuffs in order to maintain health and convenience of the public<sup>xxiv</sup>. It also makes legal provisions for prevention of adulteration of foodstuff, and on the sale and distribution of the same, and for penalising violators. The Act has been subsequently amended, through the Food (First Amendment) Act, 1974 (2030), the Food (Second Amendment) Act, 1991 (2048), the Administration of Justice Act, 1991 (2048) and the Food (Third Amendment) Act, 1992 (2049).

### **3.9.2 Essential Goods Protection Act, 2012 (1955)**

The Act is made to protect some specific essential goods of Public Use to maintain the interest of the General Public. The section 2 has listed the name of essential goods. Sub section (e) has defined Source of Drinking Water developed by the Government of Nepal or any other institution or developed with the permission of the Government of Nepal or other institution also as essential good. The section 3 of the act is restricted to unauthorized person for pull out, break down and destroys, steal or cause for the same any of the essential goods. The act has penalised people for such acts.

### **3.9.3 Essential Commodities Control (Authorization) Act, 1961**

This law intends to control the distribution, sale or trade of “food items, goods, and commodities which are essential for daily consumption, use and feeding”. It is useful to note that “essential commodities” include non-food related items I, basic food items like paddy, rice, millet, barley, different lentils, soybean, mustard seed, edible oil, milk and items made from it, sugar and salt are all included under its ambit. The law grants the Government of Nepal’s powers to increase or maintain distribution and ensures the availability of any essential commodity at low cost, and to control or regulate the production, distribution and trade of such items<sup>xxv</sup>.

### **3.9.4 Mother’s Milk Substitutes (Control of Sale and Distribution) Act, 1992**

The law makes provisions for safe and adequate nutrition for infants by protecting and promoting the breastfeeding and regulating mother’s milk substitutes as well as for the sale and distribution of infant foods<sup>xxvi</sup>. The law, drafted by the Ministry of Health, Government of Nepal, also confers upon the Ministry for the responsibility of forming a Breastfeeding Protection and Promotion Committee.

### **3.9.5 Consumer Protection Act, 2054**

The act is made for protecting consumers from irregularities concerning the quality, quantity and prices of consumer goods or services. Ensuring that no one lowers or removes the attributes or usefulness of consumer goods or services, preventing circumstances in which monopolies and unfair trade practices may lead to an increase in prices, as well as false and misleading propaganda regarding the use and usefulness of consumer goods or services, selling, supplying, importing, exporting and storing safe and quality consumer goods or services, and protecting the rights and interests of consumers through the establishment of an agency for redressing the hardships of consumers, and thus maintaining the health, convenience and economic welfare of consumers. The section 6 of the act talks about protection and promotion of consumer rights. Some major provisions of the section are as follows:

(a) Right to be protected from the sale and supply of consumer goods and services this may harm life, body, health and property. (b) Right to be informed about the prices, attributes, quantity, purity, quality, etc. of consumer goods and services to be safe from unfair trade practices. (c) Right to be assured of an opportunity to choose consumer goods and services at competitive prices as far as possible. (d) Right to be assured that an appropriate agency will hear matters concerning the protection of the rights and interests of consumers. (e) Right to be heard and compensated against exploitation and

grievances hardships resulting from unfair trade practices. (f) Right to consumer education. (2) Government of Nepal shall issue necessary directives to the Council in order to create an atmosphere favourable for the protection and promotion of the rights of consumers mentioned in Sub-Section (1).

### **3.9.6 Black-marketing and Some Other Social Offenses and Punishment Act, 1975**

The law, amended later through the Administration of Justice Act, 1991 and the Republic Strengthening and Some Nepal Laws Amendment Act, 2010, aims at controlling black-marketing, profiteering, adulteration and prescribes penalising measures for violations, “in order to maintain health, convenience and economic interests of the general public”<sup>xxvii</sup>.

### **3.9.7 Export and Import (Control) Act, 2013**

The section 3 of the Act has provided authority to the government to prohibit or control exportation or importation of any goods including critical shortages of essential foodstuffs or similar other products.

### **3.9.8 Nepal Water Supply Corporation Act, 1989**

This law was established in Nepal Water Supply Corporation, whose responsibility is to ensure availability of pure drinking water supply to all parts of the country and ensure the health and convenience of all citizens with respect to it. It is also responsible for carrying out research and survey on the source and distribution of drinking water, for carrying out development projects related to this with the Government, International development agencies or other bodies and for rendering service by providing facilities of drinking water and sewerage after charging a certain amount<sup>xxviii</sup>.

Food Security being an umbrella term implies that “all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food”<sup>xxix</sup>, having legal provisions that ensure each of these for the marginalised sections is expedient, and Nepal has the framework in place for some of these laws<sup>xxx</sup>.

### **3.9.9 Protection and Welfare of the Disabled Persons Act, 1982**

Which guarantees the right to equality, non-discrimination in education, work, social security, livelihood and so on [Section 5 (1), 5 (3), Section 8 (1), 8 (2) and 8(3)]. Section 8(3) of the Act also makes provisions for the government arranging “additional facility to the disabled labourers for at least normal livelihood”<sup>xxxi</sup>

### **3.9.10 Iodized Salt (Production, Sale and Distribution) Act, 1998 (2055)**

Which regulates the production, import, supply, sale, distribution of iodized salt, and establishes an Iodine Deficiency Disorder.

### **3.9.11 Caste Based Discrimination and Untouchability Act, 2011**

Which guarantees complete non-discrimination on the basis of caste, and prescribes punishments for any act of discrimination therein,

The National Foundation for Upliftment of Aadibasi Janjati Act, 2002 (2058),

The Land Acquisition Act, 1977 (2034),

The Labour Act, 1992 (2048), The Children Act, 1992 (2048)

### **3.9.12 The Supreme Court of Nepal and the Right to Food**

The Constitution of Nepal under Article 133 (Sections 1 to 5), allows the Supreme Court to provide remedies and issues orders in case of “the fundamental rights conferred by (the) Constitution or 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”<sup>xxxii</sup>. The citizens of Nepal can also file Public Interest Litigations (PILs) with requests of such judicial remedies and interventions, and several cases have set the precedent for this in relation to the human right to food.

The first such case where the Supreme Court accepted that the right to food is justifiable was in ***Madhav Kumar Basnet v. Prime Minister, Girija Prasad Koirala and Others***, regarding the issue of mass starvation that was causing heavy distress migration from remote districts like Mugu, Kalikot, Dolpa, Bajhang, Jumla, Bajura and Darchula.<sup>xxxiii</sup> The Court declared that the Government was obligated to supply foodstuffs in order to its citizens’ basic needs.<sup>xxxiv</sup>

However, even by the year 2008, the work done by the government was considered ineffective, and in ***Prakash Mani Sharma and Others***<sup>xxxv</sup> again, it was petitioned that since food was necessary to lead a life with dignity. The right to food was an inherently granted right, and hence the government was accountable for mass-starvation being faced in 12 hill districts in the Mid-West and Far-West of Nepal. This case was still sub-judice in 2014, but in the interim decision, the Court upheld the petition, and agreed that it was the government’s responsibility to ensure supply of adequate food in the food deficit areas, and it was accountable for any failure.<sup>xxxvi</sup>

Another important case was ***Bajuddin Miya and Others***<sup>xxxvii</sup>, wherein on the issue of government accountability for compensation for victims of food rights violation (since farmers in the Koshi Tappu Wildlife Reserve suffered destruction of crops by wild animals each year). The Supreme Court ruled that the government cannot shirk off its responsibilities in this case, by using the absence of laws or policies as a reason for not being accountable<sup>xxxviii</sup>.

In ***Prakash Mani Sharma v. Nepal Khanepani Sansthan (Nepal Water Supply Corporation) and Others***<sup>xxxix</sup>, the issue of the right to safe drinking water was raised, bringing into focus the inept work of the Nepal Water Supply Corporation. Based on research by the Communicable Disease Department of the Ministry of Health that revealed the presence of 9000 germs in 100 ml of water<sup>xl</sup>.

Again, in another petition, viz. - ***Prakash Mani Sharma and Others v. Prime Minister and Council of Ministers***<sup>xli</sup>, the issue of arsenic pollution of water was based on the work by the National Arsenic Direction Committee<sup>xlii</sup>. In the reply submitted to the court, 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. The Department of Water Supply and Sewerage also replied that it had conducted blanket tests in 11 districts of Nepal and adopted arsenic reduction and elimination methods in the most affected areas<sup>xliii</sup>.

In ***Raju Prasad Chapagain and Others representing Pro-Public v. HMG, Ministry of Health et al.***<sup>xliv</sup>, a child’s right to nutrition was brought into focus. The petitioners drew attention to the inaction of the Mother’s Milk Substitutes (Control of Sale and Distribution) Act stating that even ten years after the law had been in effect, most of the provisions of the Act, including appointment of an inspector, were not complied with<sup>xlv</sup>, and the Supreme Court ordered the government to do so.

Certain decisions by the Supreme Court of Nepal were crucial for the issues of gender and property rights (which affects social, physical and economic access to food as well), viz, ***Dr Chanda Bazaracharya v. HMG et al.*** and ***Mira Dhungana et al. v. HMG et al.***, wherein discriminatory provisions of Country Code, 1963 in relation to ancestral property were challenged. Again in ***Lily Thapa and Others v. HMG Cabinet Secretariat and Others***, the Supreme Court overturned Section 2 of the

Country Code's Chapter on Women's Exclusive Property that had a provision wherein 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 to dispose their immovable property, which was read down by the court<sup>xlvi</sup>.

In the case of **Sudarshan Subedi and Others v. Government of Nepal, Office of the Prime Minister and Council of Ministers**, the Court recognised that people with disabilities deserve to be specially treated by the state. The state must take seriously on how to ensure right to dignified life to those in extreme situations, including social security allowance and the establishment of residential houses. The Court also issued an order of mandamus asking the Government to provide sustenance allowances in the range of NRs 500 to NRs 3,000 per month to the identified disabled persons, including elderly who are unemployed or do not have any resources to cover sustenance expenses. A special monthly allowance in the range of NRs 3,000 to NRs 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<sup>xlvii</sup>.

A case that is important for food security vis-a-vis land rights is **Chandesory Karmacharya and Others v. Ashok K.C. and Others, 2004**, about increasing the fragmentation and destruction of fertile agricultural land due to commercial interests. The court in its judgement specified that fertile farmlands being excessively used for industrial or commercial purposes endanger the right to food sovereignty guaranteed in the Constitution.

Finally, some landmark judgements have been crucial for one of the communities that are plurals marginalised and food insecure- the Kamaiyas. In **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. The Government ordered to provide appropriate employment opportunities and carry out rehabilitation of freed Kamaiya labourers. Again, in **Uttar Tamata vs. Government of Nepal, Office of the Prime Minister and Council of Ministers** ensured to free Kamaiyas Rehabilitation Programme not limited to Terai districts, but extended to seven hilly districts (as the Kamaiya Act also recognises Haliyas (bonded tillers) as one of the forms of the Kamaiya system), the court stated that doing so was the obligation of the state. It also asked for constituting a committee for the rehabilitation and development of Haliyas in hilly districts<sup>xlviii</sup>.

### 3.9.13 Gaps, Weaknesses and Recommendations

- As a legal framework, the new Constitution's provisions ostensibly pave the way in the right direction for the inclusion of social, cultural and economic minorities. While this is a positive indicator to guarantee food security and sovereignty for all, some criticism must be taken into note.
- With respect to the limits of the rights granted by the Nepalese Constitution, Art. 18 (3), which guarantees equal protection, and opportunities of empowerment and development to socially and historically disadvantaged groups<sup>xlix</sup>, and Art. 43, which include "indigent citizens"<sup>i</sup>, are important to note, in context of the criticism that the new Constitution is politically biased (in terms of representation via seats in Legislature) in favour of the communities in the Hilly districts<sup>i</sup>.
- As critics have pointed out while the Interim Constitution was operational, "numerous legal provisions that empower the State to take actions towards remedying social and economic insecurities fail to internalise a human right-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.”<sup>iii</sup>

- For an effective policy framework that benefits all citizens equally and actually ensures food security for all, it is crucial to ensure that these do not become factors for failure.
- While considering legislative initiatives, it is extremely important to address the gaps of a normative framework dealing with food security issues. It is important for such legislation to ensure an effective legal protection, and a monitoring mechanism that is legally in place and accountable.
- The Right to Equality, granted by the Constitution in Article 18, does not fully guarantee the right to substantive equality, but only empowers the state to make special legal arrangement for specified groups. Legal provisions should explicitly recognise the obligation of the state to ensure substantive equality between persons and groups. The provision fails to recognise the caste-based discrimination in terms of wages, which should be recognised through laws.
- Again, Article 43 (Right to Social Security) states that “the indigent citizens, incapacitated and helpless citizens, helpless single women, citizens with disabilities, children, citizens who cannot take care of themselves and citizens belonging to the tribes on the verge of extinction shall have the right to social security, in accordance with law”. This is in contrast with the ICESCR (of which Nepal is a signatory), which asks state parties to recognise the “right of everyone to social security, including social insurance”<sup>iii</sup>. There should be mechanisms in place that ensures that technicalities are not used as an administrative excuse to not include individuals within the beneficiary categories, which needs to be made as inclusive as possible.
- Another legal loophole, which the citizens must be protected against, is that the scope of the economic, social and cultural rights, including the right to food sovereignty recognised in the Constitution. It is limited by references of the existing rights to the extent that they are provided ‘by law’, such as the Right to Employment (Article 33: a right granted, “As provided for in the federal law”<sup>iv</sup> and the Right to Food itself, (Article 36 (3): “Every citizen shall have the right to food sovereignty in accordance with law”<sup>iv</sup>.
  1. While it may appear as if they are guarantees without loopholes, these provisions indicate significant potential limitations on the rights as they can be restricted by the existing and future laws. For example, if the Constitution provides 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<sup>vi</sup>. These were problems with Nepal’s Interim Constitution and they have been carried over in the new one.
  2. While making a framework law for Right to Food, or even guarantee of rights through sectoral laws, these loopholes must be safeguarded .
- Again, though Article 36 (2) of the Constitution guarantees “the right to be safe from the state of *being in danger of life from the scarcity of food*”<sup>vii</sup> (emphasis added). It does not explicitly state that *freedom from hunger* is an enforceable fundamental right, and again, sectoral laws and eventually a framework legislation on the Right to Food must incorporate elimination of hunger, even when not immediately endangering life itself, as a crucial goal.
- Instead of such unqualified references to existing/future laws, the rights needs to be stated in their full form in the Constitution. If they aren’t (as is the case with some Articles in the present Constitution), these loopholes must be filled, by giving serious consideration to including ESC rights consistent with the ICESCR, of which Nepal is a signatory.
- 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 law needs to be amended to enable the Corporation to launch a programme of its own targeting the needy population who are unable to pay for safe drinking water. The affordable access to drinking water by local

communities, indigenous people, and the most disadvantaged and marginalised groups of society must be consistent with the state's obligations under ICESCR.

- 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. The Water Resources Act needs to be amended to incorporate customary rights of water use explicitly as guaranteed under the Country Code.
- The above laws are also flawed as they fail to recognise 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<sup>lviii</sup>. These laws need to be rectified and suitably amended.
- Several landmark Supreme Court judgements have shown the inefficient implementation of multiple sectoral laws in Nepal in relation to the right to food. There are several orders by the apex court of the Government of Nepal, to provide specific benefits through laws and policies. However, there is no accountability or monitoring to check if these are actually followed through. There needs to be a body established whose objective should be to monitor the implementation of these government obligations vis-a-vis the right to food and related rights.

### **3.9.14 Recommendations and Legal Pathway in Support of Framework Legislation**

Drawing on the comparative experiences on the right to food, the Special Reporter of the United Nations on the right to food. In his mission to Malawi, suggested the advantages of the framework legislation, including the institutionalisation of a coherent and integrated approach, through creation of an independent counsel formed by relevant Government ministries and institutions and members of civil society, associations of food producers and the private sector. They will provide advice to the Government on matters related to food and nutrition security, grounding of national policies and programmes in a society-wide consensus, increasing their survival in the face of changes in governments, predictability and ring fencing of resources for food and nutrition programmes, possibly through the establishment of a national fund and strengthened accountability and institutional oversight of food and nutrition security programmes. On the way information is collected and programmes assessed, increasing transparency and safeguards against the use of political criteria in the targeting of programmes<sup>lix</sup>.

While Nepal doesn't yet have a framework legislation on the Right to Food, in 2014, the United Nations noted, in report, via conversation with Ramesh Dhakal, Joint-Secretary/Head of Human Rights Division, Office of the Prime Minister and Council of Ministers, held in 2013, that "there has been a growing realisation within the government that there is a need for specific food rights legislation in view of the international human rights<sup>lx</sup>". In the earlier part of this report, the fundamental rights related to food security, guaranteed by the Constitution, have been elucidated upon.

It is useful to note that under Part -4 of the new Constitution (Directive Principles, Policies and Obligations of the State), Article 51[h (12)] promises provisions for "sustainable production, supplies, storage, security, and easy and effective distribution of foods by encouraging food production in tune with climate and soil, in consonance with the concept of food sovereignty, while enhancing investment in the agricultural sector". Article. 51 [h (13)] promises "to ensure planned supply system according to the special priority to the remote and backward regions, while ensuring equal access of all citizens to basic goods and services". Art 51 [i (2)] obligates the state "to guarantee social security, while ensuring

the basic rights of all labours, in consonance with the concept of decent labour”, “to keep on making appropriate arrangements for the livelihood for the helpless single women” Art. 51 (l), “to make special provisions for equal distribution of economic, social and cultural opportunities and benefits to the Madhesi community, Muslims and backward class, and for opportunities and benefits to the indigent citizens within such communities” Art 51 [i(10)] and so on. It is further relevant that Article 54 states that the government needs to create a “committee, in accordance with law, in the Federal Parliament in order to monitor and evaluate whether the directive principles, policies and obligations of the State set forth in this Part (4) have been implemented progressively or not.”

It is often held that since Article 55 then states that “No question shall be raised in any court as to whether any matter contained in this Part has been implemented or not”, (in effect implying that the Directive Principles are not enforceable by a court of law), this makes the obligations stated in this part merely tokenistic. While overall this provision must be eliminated, or safeguarded against, it is crucial to note that in case of ***Yogi Narahari Nath et al. v. Prime Minister Girija Prasad Koirala and Others (1996 NKP 33)***, the Supreme 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*<sup>lx</sup>. (Emphasis added).

Nepal is signatory to the important international conventions that are crucial for upholding the right to food, including the Universal Declaration of Human Rights (UDHR), International Convention on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), Committee on the Elimination of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

Here, it is also crucial to note the importance of the Nepal Treaty Act, 1990 (2047, whose Article 9(1) states: “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”<sup>lxii</sup>. Thus, this legal provision, in conjunction with the Constitution granting the right to food and food sovereignty as fundamental rights, provide strong basis for the Judiciary to uphold the human right to food in Nepal, and lays a strong foundation upon which to push for a framework law for Right to Food. **There are many advantages in adopting a framework law on the right to food:**

- The content of the right as well as the obligations of state authorities can be spelled out in some detail
- institutional arrangements can be made on a stable basis for a better distribution of responsibilities
- better coordination and more meaningful monitoring 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.
- It can also establish a right to a remedy clarify the role of human rights institutions and provide the basis for a subsidiary legislation.<sup>lxiii</sup>

The **Committee on Economic, Social and Cultural Rights** recommends the adoption of a framework law as a major instrument in the implementation of a national strategy for the right to food. Nepal, a signatory to this, has obligations to follow up with framework legislation.

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 above mentioned Committee,

through considering Nepal's reports in relation to ICESCR. The Committee had, by 2014, considered the initial and the second periodic report of Nepal on the implementation of the ICESCR and, 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, including these recommendations:

- 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 the most disadvantaged and marginalised groups
- Taking urgent steps to ensure food security and access to water for all, particularly those belonging to the most disadvantaged and marginalised groups
- Making sure that agricultural policies are aimed effectively at improving not only productivity and commercialisation 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<sup>lxiv</sup>.

### 3. STATE FOOD PROVISIONING

For all citizens of a country to have food security and food sovereignty, experts state that there are three main ways in which a household may be able to access sufficient food: by growing it themselves, by earning sufficiently in order to purchase food at market prices in their country (for both of which the state has the responsibility to facilitate equitable conditions via laws and policies) and finally, by state provisioning for food, which targets the most marginalised, for whom the first two ways are not feasible, being disadvantaged due to their gender, class, caste, ethnicity or religion and so on. In such cases, it becomes the state's duty to provide food for the citizens, who due to their socio-cultural or economic positions find it hard to feed themselves<sup>lxv</sup>.

State food provision can operate through various means: It could subsidize raw food such as through ration shops or supply-cooked food for a minimum payable price through soup kitchens for disadvantaged communities. It could provide free meals such as in schools, thereby incentivising education for the poor as well as ensuring nutrition for the schoolchildren. It could operate small child feeding centres or centres for destitute feeding. Additionally, it could make provisions for public employment works, or finally it could make direct cash transfers, such as welfare doles, pensions for the aged and disabled, and maternity benefits<sup>lxvi</sup> (which work under the assumption that they contribute towards fulfilling the basic needs, including food, for the economically disadvantaged).

As mentioned in the first part of this report, specific provisions in the new Constitution of Nepal, along with several landmark judgements by the Supreme Court of Nepal, clearly state that provisioning food is the responsibility of the state, and that the state must be held accountable for any failure to do so.

#### **Article 36. 'Right Relating to Food' of the Constitution states that:**

*(1) Every citizen shall have the right relating to food.*

*(2) Every citizen shall have the right to be safe from the state of being in danger of life from the scarcity of food.*

*(3) Every citizen shall have the right to food sovereignty in accordance with law.*

**39. Rights of Children:** (2) Every child shall have the right to education, health care nurturing, appropriate upbringing, sports, recreation and overall personality development from family and the State.

**Under Directive Principles, the Constitution states that it is the Government's responsibility to** "provide for sustainable production, supplies, storage, security, and easy and effective distribution of foods by encouraging food production in tune with climate and soil, in consonance with the concept of food sovereignty, while enhancing investment in the agricultural sector" (**Article 51[h (12)]**)

**Under Directive Principles, the Constitution states that it is the Government's responsibility to** "provide for sustainable production, supplies, storage, security, and easy and effective distribution of foods by encouraging food production in tune with climate and soil, in consonance with the concept of food sovereignty, while enhancing investment in the agricultural sector" (**Article 51[h (12)]**)

#### **3.1 Existing Policy Framework: An Analysis**

Keeping these arguments in mind, it is useful to analyse the existing policy framework for state food provisioning in Nepal, under the following heads:

##### **A. Public Distribution System**

Household food insecurity due to low agricultural productivity, limited livelihood opportunities, inefficient food distribution system, weak market linkage, poor infrastructure and lack of awareness about healthy food habit are some of the challenges related to food and nutrition security faced in Nepal. The Government of Nepal has developed a **Country Investment Plan (CIP)** in 2010 in consultation with donors, civil society organisations and other stakeholders to comprehensively address the gap of funding in the area of agriculture and food security issues including availability, access and utilisation of food.

It is important to note that most of Nepal's food distribution programmes are:

- For select areas only and not universal
- Only a sub-component in other larger agricultural development programmes that focus mostly on enhancement of food production and technologies related to the same
- Implemented mostly by international agencies and international NGOs, and not as a part of a comprehensive policy on food distribution by the Government of Nepal.

### **3.2 The Nepal Agriculture and Food Security Project**

The Agriculture and Food Security Project (AFSP) designed by the Government of Nepal, is framed so as to target the problems of low agricultural productivity, limited livelihood opportunities, inefficient food distribution system, weak market linkage and poor infrastructure. It comprehensively addresses agriculture and food security issues, the Government of Nepal (GoN) submitted an investment proposal to the Global Agriculture and Food Security Program (GAFSP) and was competitively awarded a grant of US\$46.5 million in June 2011<sup>lxvii</sup>. GoN has finally designed Agriculture and Food Security Project (AFSP) of US\$58 million dollar including US\$11.5 million GoN contribution to secure food security from the FY 2013/14 for 5 years<sup>lxviii</sup>.

AFSP is implemented, with World Bank funding and consultation, in 19 districts of the Mid- and Far Western development region of Nepal (Darchula, Baitadi, Dadeldhura, Humla, Jumla, Mugu, Dolpa, Kalikot, Bajhang, Bajura, Jajarkot, Achham, Doti, Dailekh, Surkhet, Rukum, Salyan, Rolpa, and Pyuthan), and adapted to three agro-climatic zones: hills, low mountains, and high mountains. It is expected to reach about 162,000 beneficiaries.

AFSP takes a multi-sector approach to promote agriculture and food security and is supposed to be implemented jointly by the Ministry of Agricultural Development (MoAD) and the Ministry of Health Policy (MoHP). The MoAD is the lead ministry implementing AFSP. Project management and administration is supposed to be carried out by the PMU, headed by a Project Director deputed by the MoAD. The BCC (Behavioural Changes Communication) intervention will be implemented by the Ministry of Health and Population (MoHP). The PMU is supposed to work closely with MoHP in the implementation of this intervention. In addition, the Joint Secretary from MoHP is to be part of the Project Steering Committee (PSC), the main governing body for the project that will facilitate inter-agency cooperation. The project consists of four complementary components:

1. Technology Development and Adaptation
2. Technology Dissemination and Adoption
3. Food and Nutrition Status Enhancement
4. Project Management

#### **Gaps and Weaknesses**

- It is important to note that the GAFSP Implementation update in 2013 notes that the Nepal-AFSP project has taken almost 20 months between legal agreements and internal approval, before any policy framing could even take place. Of the 18 food insecure countries in which the

GAFSP projects are underway, the only other country where there has been this high in an administrative delay is Cambodia<sup>lxxix</sup>.

- After consultations with the government and the World Bank teams, it was decided that the impact evaluation of the Nepal-AFSP would concentrate on the 2 and 3 Components, which promote the adoption of more productive agricultural technology and better nutrition practices among target groups.<sup>lxx</sup> This leaves nutrition out of the focus area, thus failing on a holistic approach to food security.
- The public food distribution system is not universal as it is implemented in 19 hill and mountain districts of the Mid- and Far-Western Development Region of Nepal. The beneficiaries of the project are crop farmers (estimated direct beneficiaries 50,000), livestock farmers (32,500), women engaged in household/kitchen-garden production (35,000), and households with pregnant and nursing (with children 6-24 months) women (45,000).

### **3.3 Nepal and Food Aid the Nepal Food Corporation (NFC)**

Nepal has been receiving food aid since the 1950s, and the government has been supplying food aid as part of programmes to support immediate provision of food (rice mainly) as relief in emergency situations. The government, through the Nepal Food Corporation (NFC) has been spending between 250 to 300 million Nepali rupees (approximately 2.6 to 3.1 million USD) annually to provide subsidized food (mainly rice) to the populations in remote districts.<sup>lxxi</sup>

#### **Gaps and Weaknesses**

- The findings of a local study reveal that the real benefit of the poor people has been only temporary, since rice is supplied only in emergencies like in case of natural disasters<sup>lxxii</sup>. Structural transformation of food insecurity is not solved in Nepal in any measure by public distribution of the government.
- The government food aid programmes through NFC do not target well. Instead of targeting the vulnerable segments of population who are food insecure, which might be in any part of the country including the Terai (the plain area), the NFC has traditionally been limited to 30 districts<sup>lxxiii</sup> identified as vulnerable to food insecurity and starvation since a long time ago.
- In local studies conducted on the issue by organisations like FIAN Nepal<sup>lxxiv</sup>, people have voiced their discontent that the food channelled through the NFC do not reach the truly needy, indicating a pattern of discrimination or at least a lack of prioritization of the most marginalized and disadvantaged communities.
- Food distribution through the government has also been a politicised process, used by leaders as a means to garner votes in remote areas during elections.
- The NFC food aid (mainly rice) has been unpredictable and inconsistent, while the amount of rice received is adequate in terms of the quantitative requirement for adequate food.

### **3.4 Food Distribution under International Agencies: The World Food Programme**

The World Food Programme and the National Food Corporation (NFC) buy rice in the Terai District (which is Nepal's flat paddy farming plains). They transport it to the hill and mountain areas by helicopter, tractor, mules and porters. Studies found out that the transport costs is more than the food delivered cost, making this an unfeasible method<sup>lxxv</sup>.

#### **Gaps and Weaknesses**

- The WFP, mainly extending food aid through its Food for Work (FfW) initiative, has been widely criticised for having limited relevance in building sustainable agricultural systems at the local level with direct bearing on improving food security in the region.

- Few programs reported to primarily concentrate on construction of local level infrastructure such as foot /mule trails, dirt roads and community buildings in an inefficient manner.
- The programmes under WFP are one-size-fit-all: they do not respond to local needs. Studies conducted in the areas of Dailekh, Mugu & Bajura by FIAN show that they had listed the building and rehabilitation of small-scale irrigation schemes as their primary concern but the WFP concentrated on pre-fixed programmes and thus made food aid in these areas non-holistic and ineffective<sup>lxxvi</sup>.
- International food aid programs have not exhibited a human rights based approach and within a Global North developmental paradigm, food aid recipients are often viewed as beneficiaries of charity and not as rights holders.

### 3.5 Oxfam's Food Security Programme

Oxfam's programme, though it takes a different approach to the WFP and NFC ones, is a limited programme, targeting only 37,500 people (6,250 families) in 15 remote and isolated communities in the Dadeldhura and Dailekh districts of the Far- and Mid-Western regions. Their food security programme has the following components:

- Support for the creation, management, and maintenance of micro-irrigation schemes, to increase farm productivity
- Support for the creation, management, and maintenance of community seed and grain banks. - The promotion of improved seed varieties
- Cash-for-work schemes to build infrastructure that will support improved food security, such as micro-irrigation systems and seed/grain banks.
- Training communities (especially women) on new farming techniques and trial new crop varieties. - Distributing tools and improved drought-resistant seeds.
- 'Participatory learning' classes to support the development of women's knowledge and leadership skills.
- Building market linkages between communities and traders.

From February-August, 2010, Oxfam distributed food through a voucher system targeting vulnerable populations, particularly women. In contrast with WFP and NFC, Oxfam worked with local shopkeepers to facilitate this. The families were selected by the communities themselves and given the choice of what foods to buy, and when and where to buy them. The distribution was through cash transfers of 1000-rupees vouchers to the most vulnerable 25 per cent of households in each target village<sup>lxxvii</sup>.

### Gaps and Weaknesses

- The programme is too small to be assessed for efficiency in a country-wide perspective
- The cash transfers may not have been sufficient
- It was dated, to 2010-11, and there is not enough information on what has been done ever since.

### B. School Meals

The Government of Nepal's National Nutrition Policy and Strategy framework dated back to 2004, and no policy has been formulated since then to improve upon that. Under Objective 11, in the 2004 policy strategy, the government enlists: "School health and nutrition: To improve health and nutritional status of school children"<sup>lxxviii</sup>, within which, it lists an elaborate project (with collaboration with the MoE, MoLD, MoAC, SMC, MoH, MoHAPP) of, among other things:

- Incorporating school programs aiming SHN services into the School Improvement Plan
- Providing safe and hygienic food service in schools

- Provide adequate and safe water supply and sanitary facilities
- Build separate latrines for boys and girls
- Maintain hand-washing facilities at schools
- Conduct behaviour centered sessions on personal hygiene and nutrition
- Promote kitchen gardens at schools<sup>lxxxix</sup>

However, at the official level, very little information was for the implementation of any of these strategies, thus making this policy framework merely a token gesture on paper. There is however, a small programme of school meals, implemented by WFP together with the Ministry of Education. The objective of this programme is two-fold. In the short term, the programme aims to keep children in school as well as to enhance their attention through provision of a nutritious school meal. In the long term, the programme aims to break the cycle of hunger by promoting education, in particular of the women.

The programme, again, is not universal and implemented in some districts. The programme provides schoolchildren in grade 1-8 of selected districts (Far Western and Mid Western Development Region of Nepal) with a bowl of *haluwa*, a nutritious porridge-like meal. The food, consisting of a fortified wheat-soya blend with sugar and vegetable oil, is cooked at the schools. The food is provided in the school days. In 2013, up to 330,000 children benefited from the programme<sup>lxxx</sup>.

### **C. Infant and Young Child Feeding**

Nepal has an infant and young child-feeding programme, run by the Government of Nepal in collaboration with WFP. The primary objective of the WFP's nutrition activities would include prevention of malnutrition among children between 6-23 months, pregnant and lactating women through WFP's Mother-and-Child-Health and Nutrition Programme.

This feeding programme for infants and young children is again not universal, and is restricted to some districts of Nepal. The districts that come under this programme include Humla, Jumla, Dolpa, Kalikot, Mugu, and Solukhumbu. Pregnant women and infants under 36 weeks of age of these districts are considered the recipients of the feeding programme. Pregnant women and mothers of infants less than 36 weeks received 7 kg fortified blended food (fbf) initially. Now, there has been a downturn with a decrease in entitlement. Now Government of Nepal provides only 3 KG fbf to the beneficiaries of the programme<sup>lxxxi</sup>. In one estimate, the programme could bring yearly under its fold as many as 110,000 mothers and children. Apart from this, young children of certain areas and sections below 5 years of age also receive some Nutrition Subsidy of 200/ month. This programme, started in 2013, is targeted for all Dalit children and all children of Karnali Zone.

### **Gaps and Weaknesses**

- The programmes are very specifically targeted and not universal- they benefit very few.
- While the Government policies, in collaboration with international agencies, claims to include children's nutrition as a priority, this does not get reflected in any impact evaluation.
- There seem to be no efficient monitoring and evaluation mechanism for any of the policies, and very little government data on the same.
- The Nepal AFSP strategy states that a significant component of the programme includes: nutrition education on non-food aspects that affect nutrition (hygiene, sanitation, infant and young child feeding and caring practices) as well as better utilisation of iron folic acid and micronutrient powder supplements (last two delivered through parallel World Bank-supported operations in the health sector). There has been no data on the implementation or impact of the same.

#### D. Nutrition counselling, breast-feeding support and crèches

The **Multi Sector Nutrition Plan (2013-2017)** aims to provide counselling to mother about nutrition, childcare and general health. This is a follow-up to the **2004 National Nutrition Policy and Strategy**, which aimed that the target population for the nutrition education activities would be all the mothers of children 6-59 months, as well as pregnant and lactating mothers. It also targeted distribution of iron/folate tablets to pregnant women and lactating mothers through hospitals, PHCC, HPs, SHPs and ORCs, and planned to carry out an intensification program of maternal iron supplementation through Female Community Health Volunteers (FCHVs) in 12 districts<sup>lxxxii</sup>. **However, there is no information on how the government implemented the same, or how effective the policy was in practice.** The Government's programme appears to create awareness among the mothers about nutrition and breast feeding of the infants, though the method of implementation is not elucidated upon. This programme also does not have a universal coverage as it is restricted in the narrower circle of rural mountains and hilly areas of Nepal that include Eastern, Mid, Far Western Development Region etc.

One of the sub-components of the **Nepal-AFSP project component on "food and nutritional status enhancement"** focuses on:

- Improving feeding and caring practices by promoting Behaviour Change Communications and homestead production (kitchen garden and backyard poultry) groups amongst households with pregnant or nursing mothers and children under two;
- Providing nutrition education to farmers groups;
- Promoting simple household labour-saving and drudgery reducing technologies for women to liberate time for self and childcare<sup>lxxxiii</sup>.

On gender monitoring & evaluation, all GAFSP projects include gender-disaggregated indicators in the results framework, partly because this is one of the requirements specified in the GAFSP M&E Plan. In Nepal, the project monitors improved dietary intake for pregnant and nursing women<sup>lxxxiv</sup>. **However, no impact evaluation of the same is available for dissemination yet.**

The **Food and Nutrition Status Enhancement (FNSE)** component works to improve both supply and demand for nutritious food through nutrition education and Behaviour Change Communication (BCC). The main goal of this component is to improve the nutrition of young children and pregnant or breastfeeding mothers. FNSE plans to be implemented through Mothers' Groups (which already exist in each ward in Nepal)<sup>lxxxv</sup>.

- Members will be encouraged to use the food made available through the agriculture interventions to improve and diversify their diets, and provide nutritious recipes developed by the Department of Food Technology and Quality Control (DFTQC) using locally available nutritious foods, including those promoted by AFSP.
- Mothers groups will receive targeted agricultural interventions such as promotion of kitchen gardens and backyard poultry.
- These agricultural interventions will be delivered by the Ministry of Agricultural Development (MARD).
- Members of mother's groups receiving these nutrition-sensitive interventions will also likely be members of the crop and livestock FFSS.
- In addition, Mothers' Group members will also receive Behavioural Change Communication (BCC) messages through the Female Community Health Volunteer (FCHV).
- The nutrition messages received through the mothers groups will be reinforced through home visits conducted by one or two additional members of the mothers group selected by the FCHVs.

- The focus of BCC will be on promoting early initiation of breastfeeding and improving the quantity and quality of complementary feeding.
- The BCC is designed to be complimentary to the agricultural initiatives of AFSP, including promotion of dietary diversity made possible by production of different types of food.

However, this was still in planning stage in 2013, and no report is available on the implementation of the same or its efficacy. On top of that, landmark cases have brought into focus how the Mother's Milk Substitutes (Control of Sale and Distribution) Act. Even ten years after the law had been in effect, has had no impact, as most of the provisions of the Act, including appointment of an inspector, were not complied with<sup>lxxxvi</sup>, and even though the Supreme Court ordered the government to do so, no information is available on how the government fared with the compliance.

### **E. Feeding programme for vulnerable groups**

In 2013, the Government, with the support of Asian Development Bank and funding from IFAD, World Bank, FAO, WFP, the EU, SDC, JICA, DFID, USAID and DANIDA, formulated the Agricultural Development Strategy (ADS) for the period of 2013-23. Initiated in 2011, ADS aims to achieve competitive, sustainable, and inclusive agriculture development that brings economic growth, improved livelihoods, and food and nutrition security.<sup>lxxxvii</sup>

As a part of implementing ADS, the Government formulated Food and Nutrition Security Plan (FNSP)<sup>lxxxviii</sup>. The FNSP, according to the Ministry of Agriculture Development, complies with the National Planning Commission's (NPC) Three Year Interim Plan (2007-/10), its Three Year Plan (2010-13), the Ministry of Health and Populations National Nutrition Policy and Strategy 2004, and the Health Sector Strategy. The FNSP intended to serve as the Governments' standard document for food security interventions during 2013-22 for vulnerable populations<sup>lxxxix</sup>.

### **Gaps and Weaknesses**

- Initially the ADS passed through the rounds of consultation with stakeholders but did not include civil society representatives. They were added to the steering committee only on interventions protesting lack of representation<sup>xc</sup>. This hints towards a fundamental lack of holistic approach towards policy making with regard to food security, which must be safeguarded against.
- As of now, there have been no comprehensive reports on the implementation of ADS.
- However, tangible results of these policy and programmatic interventions have yet to be seen. One of the criticism of such policies and strategies, particularly from the human rights community in Nepal, FIAN suggests, based on discussion with representatives of Justice and Rights Institute Nepal (JuRI-Nepal) and Justice for All and Kathmandu-based NGOs involved in legal and policy analysis and advocacy concerning human rights, including ESCR, is that they lack human rights-based approach<sup>xcii</sup>. That is, they are not fully anchored in a system of rights and corresponding obligations established by national and international law, including the right to adequate food, nor do they strengthen accountability of non-implementation of these policies and programmes.
- In 2010, the Government of Nepal reviewed and updated the National Human Rights Action Plan (2010-2013), but failed to incorporate any specific programmes, targets and actions to advance the realisation of the right to adequate food. In February 2013, FIAN-Nepal, JuRI-Nepal and the Right to Food Network jointly submitted a memorandum to the Government calling on it to incorporate the right to adequate food in the action plan<sup>xciii</sup>. No implementation update is available on this either.
- In 2008, FIAN Nepal, in its Parallel Information to the Committee regarding the consideration of Second Periodic Report of Nepal, stated how the Dom community, one of the Dalit

communities in Terai was denied access to safe drinking water, when higher caste people in the community did not allow the members of Dom community to fetch water from any of the 17 public wells in the village. According to the FIAN report in 2014, the situation has not improved and the government has not taken steps to rectify the same.

- There are insufficient government interventions in case of HIV/AIDS affected vulnerable people. In Singasain, Singaudi, Tilepata and Rakam Karnali villages of Dailekh district of Mid-Western region, the prevalence of HIV/AIDS is high. In Rakam Karnali Village alone, 22 persons are affected by HIV/AIDS, out of which 18 are single women<sup>xciii</sup>. Women generally get affected by HIV/AIDs, contracting it through their partners who are often migrant labourers to India<sup>xciv</sup>. Government programmes do not sufficiently target this marginalisation.
- Another vulnerability the Government has failed to properly target is the Haliya system. 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 property owner. While Kamaiyas are mostly from the indigenous Tharu community, Haliyas are mostly from the Dalit community<sup>xcv</sup>. There are multiple levels of economic and caste based discrimination at work here, and the government policies do not target these effectively.
- In 2012, the Government developed an Action Plan on Implementation of the Universal Periodic Review (UPR) Recommendations, but it lacks concrete commitments and corresponding indicators to measure the outcomes. No adequate consultation with stakeholders was done at the time of the development of the action plan, whereas the Government, according to some civil society organizations, like Human Rights and Democratic Forum (FOHRID), a Kathmandu-based Human Rights NGO, merely "informed" them of its content.
- As of June 2014, the UPR Outcome Document was neither formally translated into the local language nor disseminated across the country making it more difficult for the grassroots activists to monitor the implementation of the recommendations.

### 3.6 Recommendations

- Nepal is signatory to the International Covenant on Economic, Social and Cultural Rights, and the committee on ICESCR, evaluating Nepal's performance, provided several recommendations that must be implemented with regard to state food provisioning.
- The Government needs to provide annual data, disaggregated by caste, ethnicity, and gender to enable monitoring and evaluate progressive realization of economic, social and cultural rights. No such system and practice as such is currently in place to generate disaggregated data, particularly on the prohibited grounds of discrimination.
- The Central Bureau of Statistics (CBS), responsible for collecting and analyzing such data and information, conducts population census every 10 years and carries out National Living Standard Survey periodically. However, the disaggregation of data of such surveys is chiefly limited to geographical location (districts and region) and based on gender and certain caste and ethnicity. Such broad categories do not allow for more detailed identification of the poor and vulnerable groups in society, particularly in terms of assessing the enjoyment of human rights, including the right to adequate food by these groups.
- Targeted and comprehensive measures have to be taken to ensure food security and access to water for all; particularly those who belong to the most disadvantaged and marginalized groups.

It is to be highlighted that in 2008, the Supreme Court of Nepal issued in response to public interest litigation<sup>xcvi</sup> an interim order for the Government to immediately supply foodstuff in 12 remote hill districts of Mid and Far-Western regions where mass starvation was reported and particularly Dalits, lactating mothers, elderly and children among those mostly affected. However, the Court declined to constitute or order the Government to constitute an inquiry committee to assess the extent of the starvation and provide adequate compensation to the affected individuals and families as well as hold the responsible accountable. These need to be looked into.

- The ICESCR Committee also asked the Government to provide in its third periodic report detailed information about the extent of food insecurity, the groups most vulnerable to it, and the concrete measures envisaged to address it. The Government of Nepal, however, failed to do so.<sup>xcvii</sup> No adequate and updated information is available in the state report submitted to the Committee with regard to the extent of food insecurity and the population that suffered. This needs to be rectified and the Committee's recommendations have to be followed.
- While the Nepal Food Security Monitoring System (NeSAP)<sup>xcviii</sup> is an improvement, since it collects, analyzes and presents information on household food security, emerging crises, markets and nutrition from across Nepal, its indicators are not compliant with human rights indicators and leave out crucial marginalization indices, which should be included.
- Dalits in Nepal have often been denied access to public water sources and have faced severe discrimination. The Committee on ICESCR asked that access to public wells be closely monitored by the District Development Committees or by another appropriate local body, which was followed by the government enacting the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011. However, the law is yet to be fully implemented, and there is need to regulate administration and implementation under this Act, in order to prohibit fully any kind of caste-based discrimination, especially with regard to access to food and water, to vulnerable groups like the Dalit communities.
- Under the Universal Periodic Review, Malaysia suggested to Nepal, the need for Stepping 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, which has not been implemented and should be done.
- Under the same UPR, Hungary recommended specific targeting of specific vulnerabilities, and improving food safety of vulnerable groups, particularly indigenous people, former bonded labourers, Dalits, Muslims, persons with disabilities and those who are infected with HIV/AIDS, which has also not been implemented.
- Unlike other South Asian countries like India and Bangladesh, which have feeding programmes for adolescent girls, Nepal has no such programme, and this should be incorporated into government policies.

## 4. STATE SOCIAL PROTECTION

Nepal has had a long history of state social protection via Social Security, albeit through a system that has several loopholes. As a signatory to the ILO conventions, Nepal is obligated to provide security in nine branches prescribed: sickness, maternity, employment injury, unemployment, invalidity, old age, death, provision of medical care and provision for families with children, as per the Social Security Minimum Standard Convention 102 of ILO (1984).

Social security may also entail smoothing consumption and help in reducing risks or spreading income over the life cycle. Often there is a redistribution of income among groups with differing needs, and differing levels of marginalisation. The objective of social security being the protection of the poor and the vulnerable, ensuring a higher standard of living for such groups via state social protection programmes also affects overall development and economic growth of the country positively<sup>xcix</sup>.

Nepal has had a reasonably strong history of social protection. In 1993, a Labour Code was developed requiring private sector employers to pay 50% of the wages for the sick and leave of up to 15 days each year, and the employer was required to employ at least one year continuously. In 1992, the Civil Servant Act was enacted which provided maternity leave of 60 days to women before or after birth for up to two children. ***The universal flat pension of Rs. 100 to all the elderly above 75 years was first announced in Nepal by the then Prime Minister of Nepal, Mr. Manmohan Adhikari (who led the Communist Party of Nepal- Unified Marxists and Leninists) on December 26, 1994.*** Five districts from the five development regions of Nepal were selected to pilot the scheme, and the first disbursement of the Old age Allowance Program (OAP) was made on July 2, 1995 for a six-month period from January to June. The implementation of the pilot project in five districts was carried out by the Ministry of Education and Sports and distributed at the grass-roots level by the Village Development Committees<sup>c</sup>.

From 1996 onwards, as of 2012, the Ministry of Local Development administered the OAP, and the ward offices in the urban areas and VDCs in the rural areas distributed the allowances. When the Nepali Congress came to power through a verdict of the electorate in 1996-97, it introduced two additional social security programs, namely the Helpless Widows Allowance for widows above 60 years of age and the disabled pension of Rs. 100 per month. In the International Year of Elderly Persons (1999), the ruling Nepali Congress raised the old age allowance from Rs. 100 to 150. Eligibility criteria: All Nepalese, men and women, who had completed 75 years of age and above were eligible for the pension. According to the directives issued by the Ministry of Local Development, the age mentioned in the Nepalese Citizenship Certificate is the basis for accessing the old age allowance. In 1996, the widow's allowance and disability pension were introduced<sup>ci</sup>. The following section looks at the current benefits available to citizens under social protection in Nepal.

### 4.1 Maternity Entitlements

The issue of maternity entitlement in the context of Nepal has been taken up in 2009 with a detailed guideline, passed by the Government of Nepal.

The original regulatory framework laws were the employer-provided medical benefits (1974), the 1992 labour laws and the 1993 labour regulations. For employed persons (under employer liability), there are sickness and maternity benefits, with special benefits for civil servants. There is no minimum qualifying period. 100% of the employee's wages is paid for 52 days before or after childbirth for up to two births (may be paid for more than two births if the children do not survive). The government also runs a Maternity incentive scheme as a part of its social assistance programme for needy pregnant women. For qualifying as "needy", the beneficiary must reside in a designated remote or mountainous region.

Under this, a lump sum of 500 rupees is paid in Terai, 1,000 rupees in hill regions, and 1,500 rupees in mountainous regions to cover the cost of transportation to health facilities<sup>cii</sup>.

#### **4.2 Pension for the aged**

Pension for the aged person is part of the State's cash transfer program and is connected with "Social Security Operation Procedure-2069 (2012)". There are different rules and acts connected with pension scheme. Mentions could be made of Senior citizen Act, Senior citizen rules. Pension for aged persons in the country is universal in nature, which supports all the senior citizens above 70 years age. However, in case of Dalit population and Karnali region, there was a relaxation in identifying the upper age limit. For the last two categories, the entitlement is received at the age of 60. *All the senior citizen above 70 receives NRs 2000 including NRs 1000 for old age treatment. The entitlement is NRs 2000 for all Dalits above 60 years of age and senior citizen of Karnali region. It is also a pension of 2,000 rupees a month for members of the Rautes, Chepang, and certain other identified ethnic groups.*

The entitlement is transferred through banking on a trimester basis. In an estimate, 964292 persons across the country have benefited from this pension scheme in 2015-16 financial years. It is very difficult to give an exact estimate about the budget of the current programme, as the budget for pension is linked with many other social security schemes. Thus, for instance, different social security schemes like Senior Citizen schemes, Disabled allowance, Endangered Ethnicity & Single Woman Security Scheme are clubbed together and expressed in one head. However, the allotted budget in 2014-15 was NRs. 12,596,090 thousands and in 2015-16 this was increased to NRs 16,048,032 thousands. The detailed and elaborate mechanism to monitor the implementation of the policy is well placed in Nepal.

Social Security District Coordination Committee in the coordination of Chair of DDC (one who performs the role of monitoring from district level) is primarily responsible for monitoring the programme. However, the role of the Local Social Security Coordination Committee at VDC and Municipality level could also be noticed. The existence of the sub-committee to monitor, supervise the scheme is a common practice in Nepal. The coordinator of sub-committee is Planning, monitoring and Administrative Officer of DDC. It is interesting to note that the same bodies/institutions like VDC, Local Social Security Coordination Committee and Social Security District Coordination Committee are accountable for catering any grievance with special reference to the scheme. The overall implementing right of the present scheme rests in the authority of Ministry of Federal Affairs and Local Development (MoFALD), which works primarily through local level VDCs and municipalities

It is useful to note that additional cash benefits are provided to Nepalese citizens based on ethnicity and geographic location. Government employees and their widow(er)s receive a non-contributory monthly pension in addition to the provident fund benefit. The 2011 law established a Social Security Fund Secretariat to administer a contributory social insurance scheme covering old-age, disability, unemployment, and various other insurance programs. Public- and private-sector employees already contribute 1% of earnings to the fund, but no benefits have been introduced.

#### **4.3 Social assistance for the disabled**

Nepal does have an act connected to giving social assistance for the disabled. Disability allowance is part of the State's cash transfer program and is connected with "Social Security Operation Procedure-2069 (2012)". It is implemented across the country and it is universal in the sense that anyone disabled, irrespective of their socio-economic status, would receive the benefit.

In order to receive the benefit of the programme, one has to hold a disability identity card (to qualify for which one has to be 16 or older and assessed as blind or having lost the use of feet or hands)<sup>ciii</sup>. People with partial disability receive NRs 300, while people having full disability receive an amount of

NRs 1000 every month. The entitlement is transferred through banking on a trimester basis. In an estimate, 60656 persons across the country have benefited from this pension scheme in 2015-16 financial years.

Mechanism for monitoring and remedial of grievances in disability allowance scheme is identical with that of pension programme in the country. Social Security District Coordination Committee in the coordination of Chair of DDC (one who performs the role of monitoring from district level) is primarily responsible for monitoring the programme. However, the role of the Local Social Security Coordination Committee at VDC and Municipality level could also be noticed. The existence of the sub-committee to monitor, supervise the scheme is a common practice in Nepal. The coordinator of sub-committee is Planning, monitoring and Administrative Officer of DDC. It is interesting to note that the same bodies/institutions like VDC, Local Social Security Coordination Committee and Social Security District Coordination Committee are accountable for catering any grievance with special reference to the scheme. The overall implementing right of the present scheme rests in the authority of Ministry of Federal Affairs and Local Development (MoFALD).

It is very difficult to give an exact estimate about the budget of the current programme, as the budget for social disability is linked with many other social security schemes, as mentioned earlier. Thus, for instance, different social security schemes are clubbed together and expressed in one head in the country's budget. However, the allotted budget in 2014-15 was NRs. 12,596,090 thousands. In 2015-16, there was a further increase in the allocation and it was raised to NRs 16,048,032 thousands.

#### **4.4 Social assistance for single women and their dependents**

Social assistance programme for the single women and their dependents support all single women or widow above the age of 60 years. This is part of the State's cash transfer program and is connected with "Social Security Operation Procedure-2069 (2012)". This universal programme is operational in both rural and urban areas. Entitlement is made in cash through banking transfer on a trimester basis. Every recipient receives an amount of NRs 500.

Survivor allowance is also paid to Nepalese widows aged 60 or older who satisfy a means test (no personal income, no family support, and no survivor pension as a widow) and for Dalit children or children younger than age 5 from the Humla district. The allowance paid is 500 rupees a month to widows aged 60 or older; 200 rupees for each child, up to two children<sup>civ</sup>.

Monitoring and grievance remedial mechanism is identical with that of pension scheme and social disability scheme, as described earlier. The budget is clubbed and expressed under one head with other social security schemes, as mentioned earlier in case of pension allowance and disability schemes. According to the sources, 621,980 single women received benefit of this programme in the financial years 2015-16. Like many other social security schemes, Ministry of Federal Affairs and Local Development (MoFALD) is the highest implementing body of the programme.

#### **4.5 Social assistance for Children under 5 years of Age**

The scheme to support the children below 5 years of age is part of the State's cash transfer program and is connected with "Social Security Operation Procedure-2069 (2012)". This targeted programme is operational in both rural and urban areas. The entitlement is given to improve the level of nutrition of the children of targeted group. The benefit of the programme is to reach two children from each poor Dalit family across the country and two children from each family of Karnali Zone. Entitlement is made in cash through banking transfer on a trimester basis. Every recipient receives an amount of NRs 200 in a month to assist increasing the level of nutrition among the children of the Dalit and Karnali region family.

Monitoring and grievance remedial mechanism is identical with that of pension scheme and social disability scheme, as described earlier. The budget is clubbed and expressed in one head with other social security schemes, as mentioned earlier in case of pension allowance and disability schemes. According to the sources, 483,034 children received benefit of this programme in the financial years 2015-16. Like many other social security schemes, Ministry of Federal Affairs and Local Development (MoFALD) is the highest implementing body of the programme.

#### 4.6 Any other entitlements for marginalized communities

The scheme to support the marginalized communities is part of the State's cash transfer program and is connected with "Social Security Operation Procedure-2069 (2012)". It is a targeted programme, benefitting 10 ethnic communities, particularly the communities like Kusunda, Raute, etc. Every recipient receives an amount of NRs 1000 in a month. Monitoring and grievance remedial mechanism is identical with that of pension scheme and social disability scheme, as described earlier. The budget is clubbed and expressed in one head with other social security schemes, as mentioned earlier in case of pension allowance and disability schemes. According to the sources, 2899 people received benefit of this programme in the financial years 2015-16. Like many other social security schemes, Ministry of Federal Affairs and Local Development (MoFALD) is the highest implementing body of the programme.

#### 4.7 Gaps, Weaknesses and Recommendations

- Nepal has no government assistance in form of social assistance for the unemployed, including unemployment benefits. Even though the right to employment is enshrined within the Constitution, there is no comprehensive policy for social security to the unemployed. Nepal needs legislation to address inadequate allowances, low level of public awareness regarding allowance schemes, limited capacity of the institutions to ensure smooth and effective distribution of the allowances coupled with corruption and irregularities.
- Moreover, existing legal provisions surrounding social security have been mainly developed with a welfare-based approach and lack a human rights-based focus; meaning, they fail to enable the citizens to claim their right in case of denial and violation of the right in question and to hold the authorities concerned accountable<sup>cv</sup>.
- There is still improvement needed, in particular with regard to the right to food of the HIV/Aids infected women. The National HIV/AIDS Strategy (2006-2011) does not have any specific references to the sexual and reproductive health and HIV prevention service needs of girls and young women. There are limited plans on addressing the infected and affected women's issue of livelihood opportunities and social security schemes and ensuring their nutrition requirement for effective treatment<sup>cvi</sup>.
- In 2012, the Nepal Planning Commission conducted a survey in the remote districts, trying to assess the implementation mechanism of the Social Security projects in Nepal, which are described above. According to the survey, a number of gaps came up.
- A few VDC secretaries observed that some clauses of the social security manual were either unclear or confusing.
- Some rules relating to the classification of disabilities and definition of Dalits need more clarity. Annex 8 and 10 in the Procedure Rulebook are unclear in many respects. The Working Procedure is silent with the issue of "migrant household". These issues have to be rectified.
- **Political Pandering:** Quite a few officials admitted that they honour recommendations from the political parties to register eligible beneficiaries.
- **Irregularity in Update of Data:** Little less than half (45%) of the surveyed VDCs and one-third of the municipalities observed that the beneficiaries' list was updated once a year while another one-third (32.6%) admitted that they did so once in six months.

- The physical verification of the ID card in many surveyed VDCs revealed that it was not renewed regularly as claimed by many VDCs
- **Lack of Transparency:** 31 VDCs claimed that they had been publishing the list of beneficiaries. Survey results, however, did not support this claim. All officials of the surveyed institutions observed that they receive adequate amount for distribution and payment is confirmed through thumbprint. Sizable VDCs have followed a public and social audit system to keep the distribution transparent. The list of beneficiaries is pasted on the notice board of the VDC office. The Planning Commission could not verify this claim<sup>cvi</sup>.
- **On the Problems in Updating Records, some of the reasons listed by Nepal's Planning Commission include:**
  1. Lack of support staff and non-registration of the deaths of the beneficiaries were the most commonly cited problems in updating the records.
  2. Some other less common problems reported were: too old to visit the office, difficulties in identifying those receiving government pension, tendency to misreport age (reporting higher than actual), none reporting from migrant households and lack of timely contact by the beneficiaries.
  3. The field survey team found that the list of beneficiaries is not updated as the list also included those beneficiaries who have already died. Altogether 92 cases of deaths were traced during the survey across eight sampled districts. This accounts for 1.78% of the total sampled beneficiaries
- **Recommendation on Payment through Banks:** According to the NPC's 2012 survey, majority of the VDCs (61%) and municipalities (83%) were of the view that payment through banks is not feasible. Non-availability or limited availability of banking services in the rural areas has been the most common reason cited for considering payment "not feasible" through banks.

## 5. LAND REFORM

### 6.1 The Disputes and History of Land Reform in Nepal

The case of land reform in Nepal has always been a debatable/disputed issue, which attracted different historical actors/institutions over the passage of time. One of the early land reform acts was passed in the middle of the 20<sup>th</sup> century. After that, the most important policy related to land was introduced in 1962 – the Land Survey and Measurement Act. It aimed to measure and classifies land resources to improve the land use system. This policy classified land into four main types- *Abal*, *Doyam*, *Sim* and *Char*. In addition, the Act of 1962, in order to maintain information on land holding pattern for effectively managing revenue collection, intended to create a map-based land record system.

However, the first Land Act came into existence only in 1964<sup>cvi</sup>. The objective of the 1964 Lands Act was to alter existing property relations by redistributing land to the working tillers after introducing a ceiling on land holdings. The Nepal Government realized the issue of concentration of land in the hands of a few and thereby furthered the process of the ceiling on land. Provision of land ceilings as expressed in the 1964 Lands Act are as follows:

**Table 3 Provision of land ceiling 1964**

Geographical region	Agricultural land ceiling	Rural residential land ceiling
Terai and Inner Terai regions	25 bigha	3 bigha
Hill regions	80 ropanis	16 ropanis
Kathmandu Valley	50 ropanis	8 ropanis

Source: (Sugden and Gurung 2012, 13)

There were several amendments of the Land Act 1964, but it could not deliver the promises that it had made earlier and could not be implemented. It was in 1990 that the King lifted the ban on the political parties and the multiparty general election took place in the subsequent year. Nepali Congress won the first general election but failed to promote a successful land reform agenda.

With the 1994 general election, Communist Party came to power and they took up the issue of land reform. Badal Commission was instituted that mentioned the following agendas to be implemented for the successful story of land reform. A new ceiling has been proposed:

**Table 4 Land Ceiling proposed by Badal Commission**

Ceiling proposed by Badal Commission		
S. N.	Area	Ceiling
1	Tarai and Inner Tarai	4.5 bigha
2	Middle Hill Area	40 ropanis
3	Himalayan Area	80 ropanis
4	Kathmandu Valley	20 ropanis
5	Urban Area:	
5.1	Municipal area of Kathmandu, Lalitpur and Bhaktpur	10 ropanis
5.2	Other municipalities, district headquarters and developing urban areas	20 ropanis or 1.5 bigha

Source: (Sugden and Gurung 2012, 19)

The new recommendations, although progressive, were not implemented. Towards the beginning of the century, Maoist movement had grown stronger in different parts of the country. It started mobilizing especially rural population for an insurgency. It is in this context that the ruling Nepali Congress Government had to take up the issue of land reform again and in 2001 announced a radical land reform programme. Deuba Government further ridiculed land ceilings fixed in 1964. The new reduced ceiling is given in the table below:

**Table 5 Revised land ceiling-2001**

<b>Geographical region</b>	<b>Agricultural land ceiling (1964)</b>	<b>Rural residential land ceiling (1964)</b>	<b>Revised ceiling under Deuba Government in 2001</b>
Terai and Inner Terai regions	25 bigha	3 bigha	10+5 bigha
Hill regions	80 ropanis	16 ropanis	70+5 ropanis
Kathmandu Valley	50 ropanis	8 ropanis	25+5 ropanis

Source: Ibid.

However, the reduction on ceiling was hardly implemented. The history of land reforms in Nepal shows how popular politics has interfered and ineffectualised reforms.

Thus, the story of land reform has been such an issue that was made into law in several political regimes, but was hardly put into practice, the cause of which largely remains political. The government data on the amount of land distributed in the last three years was not available. However, an important step has been taken in the new Constitution.

Article 40 (5), under fundamental rights, states "The State shall once provide land to the landless Dalit in accordance with law. "

Article 42 (4):, against under fundamental rights to social justice, states: " Every farmer shall have the right to have access to lands for agro activities, select and protect local seeds and agro species which have been used and pursued traditionally, in accordance with law"

Finally, the Directive Principles chalk out the ideal land policies of the state:

Art 51 [e (1-5)]: Policies relating to agriculture and land reforms:

- (1) to make scientific land reforms having regard to the interests of the farmers, while ending the dual ownership existing in the lands,
- (2) to enhance product and productivity by carrying out land pooling, while discouraging inactive land ownership,
- (3) to make land management and commercialization, industrialization, diversification and modernization of agriculture, by pursuing land use policies to enhance agriculture product and productivity, while protecting and promoting the rights and interests of the farmers,
- (4) to make proper use of lands, while regulating and managing lands on the basis of, inter alia, productivity, nature of lands and ecological balance,
- (5) to provide for the farmers' access to agricultural inputs, agro products at fair price and market.

## **6.2 Tenancy Laws and Reforms**

The case of tenancy reform law is also identical with that of land reform at least in terms of its successive failure to successfully implement and protect the tenancy rights in the country. The genesis of the tenancy right could be found in 1964 Land Act which had a section that mentioned the following: 1) tenants were ensured rights as long as they paid and cultivated the land, 2) permanent tenancy right

was bestowed upon them, 3) eviction of the tenants could only be possible only through legal action if they did not pay rent, discontinued cultivation for one year, did something to reduce the productivity or value of the land. The act also reduced the rent. Except Kathmandu valley (it was fixed in Kathmandu valley), the rent was set at no more than half of the total crop. Later in 1968, it was reduced to half of just the main crop. Then another major turn in connection with the tenancy rights came into play through the **4<sup>th</sup> amendment to the 1964 Land Act in 1997**. The Land Act 2021 defines a tenant as a *person (a 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<sup>358</sup> and the obligation not to sell or purchase a tenancy right.

### **6.3 The Fourth Amendment (1997) to the Land Act 1964**

The 4th amendment has ended the ground of claiming tenancy rights by unregistered tenants and increased the percentage of entitlement to registered tenants from 25% to 50% over the land under cultivation in the name of ending dual ownership in land. It has opened the door for land allotment between owner and tenant. This amendment stopped ways of providing land access to landless people, as the policies in place were not truly implemented. This reduced the productivity and enforced the peasant household to diversify livelihood from farming to non-farming sectors. Peasants consequently became labourers in farming as well as non-farming field.

### **6.4 Fifth Amendment (2001) to land act 1964**

Ceiling of landholding prescribed by the original Act was narrowed down from 58 Ropani to 30 Ropani in Kathmandu Valley and 28 bigha to 15 bigha in Terai. In addition, it has put smaller landholding to tenants in comparison to that of landowner. Fifth Amendment made put break on the unlimited openings of applications for land allotment between owner and tenants. Therefore, government took the application for specific time generally ranging from six months to one year as specified in gazette published on various dates.

### **6.5 Sixth Amendment (2015) to land act 1964**

This amendment has focused on confiscation of excess land over the specified ceiling if the landowner has deceived while providing details of land holdings owned by him/her. Government has recently opened the application registration from interested owners and tenants for land allotment with incentive to support the tenants such that they can be benefitted from facilities, fund reliefs provided by National Reconstruction Authority in order to reconstruct their residence damaged during mega earthquake 2015. From land sharing, tenants will get ownership certificate, which made them eligible to claim the relief fund provided by National Reconstruction Authority. This amendment has also specified on the use of land as categorized by land use policy 2072.

### **Gaps, Weaknesses and Recommendations**

- The statutory purpose of the land ceiling was to acquire the land in excess from the property owners 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. Similarly, it was also supposed to contribute to increasing the agricultural productivity by providing access to those who actually cultivate the land. However, these positive outcomes of it fail to be implemented in practice.

- The Act imposes an explicit prohibition 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.
- 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. In addition, 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<sup>cx</sup>. Thus the very purpose of the legislation itself is in a sense defeated, as the economically and politically powerful stakeholders get to misrepresent ownership information and grab more land from the marginalised through fraud.
- 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<sup>cx</sup>, 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. However, this provision remains unimplemented. There should be pressure put on the government to do so.

## 6.6 Women and Land Rights in Nepal

A separate civil code for women does not exist in Nepal. However, 11<sup>th</sup> amendment of Country code has remarkably brought many explicit provisions for women. Some positive changes are also seen in 11<sup>th</sup> amendment of Country Code (Muluki Ain), 1963. This amendment has been helpful to give equal rights to women to parental property since the birth. According to this law, there are two ways for women to gain access to property. These are:

- In the form of stridhan which includes dowry, pewa, swa-arjan (own income), gift and bakas (donations); and
- In the form of stri-ansa (share) on property. Land Draft Policy 2013, Clause 7, sub-clause 7.1 provides access and involvement of woman on land by providing discount on land taxes. The string that attached with this policy is a promise of 50 % reduction in land tax for registration of land if the titleholder is women. The progressive provision of the Nepal law, with special reference to securing the condition of women and giving them property rights over land, has noted that both husband and wife's name should figure in lalpurja (land certificate) as titleholders. The policy of registering the name of women as landholder seems to have gained currency in the country. As one estimate notes that, the recent tax redemption by 50% has attracted the family to register the land in the name of the women in the family.

The new Constitution, Article 18(5) comments that there shall be no gender discrimination regarding the right to parental property with regard to all family members. The government of Nepal has also introduced several special measures to enhance women's access to land. A tax rebate provision is one of the measures that have been in existence since 2006. Similarly, there is provision that encourages joint landownership of husband and wife. Both measures were introduced in response to the Civil Society Campaign for women's access to land<sup>cx</sup>.

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, the United Nations and FAO assessments report that the policy of a fee waiver has generally contributed to advancing landownership of women<sup>cxii</sup>. 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<sup>cxiii</sup>.

## 6.7 Land Rights and Marginalized Communities

The Constitution of Nepal, NFDIN Act 2002, Local Self-Governance Act, 1999, Forest Act (1993) and Forest Regulation (1995) and periodic Five Year Plans have been placed significant emphasis on social development and delivering basic services to the disadvantaged and indigenous people, Dalits, women, disabled and other vulnerable groups while implementing any development programs and projects. Similarly, the Forest Act 1993 and Rules (1995) provide numbers of rights to Nepalese citizens who depend on forest and who are willing to be the members of a CFUG (Community forest users group). The different rights, provided by this Act, have given incentives to the local forest dependent citizens to participate in forest governance.<sup>cxiv</sup>

There has been some provisions made in the Land Act 1964 about redistributing land to the historically marginalized groups that include primarily Kamaiya and Haliya (bonded labour). Later on, in the early 20<sup>th</sup> century, a particular programme called **Freed Kamaiya and Freed Haliya Rehabilitation Programme** provisioned land distribution for these historically disadvantaged groups. According to MoLRM report of 2013, the 24330 Kamaiyas families are rehabilitated in this process and access to small amount of land was granted. However, there is no such provision in the law that would protect and develop land belonging to marginalized communities.

The case of the indigenous community has received some attention in the last few years. National Foundation for Uplift of Adivasi/*Janajatis* Act 2002 has defined indigenous peoples (*adivasi / janajati*) as *'those ethnic groups or communities enlisted in the Appendix I Schedule of the Act who have their own mother tongue and traditional customs, distinct cultural identity, distinct social structure and written or oral history of their own'*. According to this Act, 59 ethnic groups or communities have been identified as indigenous nationalities. Natural resources like land, forest and water provide important cultural and religious symbols for indigenous peoples of Nepal, who originally lived close to these resources. However, Nepal does not have a standalone policy on Indigenous Peoples and other vulnerable communities.

In Draft Land Policy 2013, Clause 7, sub-clause 7.1, there is provision that provides land right to indigenous people in their community land. **However, there is no specific policy to address the concern of the nomadic communities like Raute and Chepang on the issue of land allotment or property rights etc.** There is no specific policy regarding the Fisheries Tenure as well.

## 6.8 Land Use and Land Acquisition Policies

The Land Use policy of 2012 attempts to classify land into 7 categories that include agricultural land, forest, residential, industrial area, community land, religious land etc. The Nepal Government had also promulgated Land Acquisition Act 1977 to establish procedures for acquiring private lands for the purpose of public use. In constitution of Nepal under right to property, there is provision that compensation shall be provided for any property requisitioned, acquired or encumbered by the

State. However, the Land Acquisition Act of 1977 recognizes the necessity for compensation to the affected people, but the mode of compensation is not exclusively defined. However, in practice, it refers to cash compensation. The Act does not have any provision for land compensation and rehabilitation of the affected people.

**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 or his family, schools, religious places, hospitals, public libraries, orphanages and inns cannot be requisitioned.

**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. As defined by the Act, 'Public purpose' means in the interest of or for the benefit or use of the public, or functions to be undertaken by the Government of Nepal.

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, Rajguthi and Kipat and outlines the procedure for eviction of a tenant, eviction of a landowner, and eviction of Jamidars/Talukdars<sup>cxv</sup>.

## 6.9 Land Records Management

There is initiation for transparent land management system. At national level DoLIA, Survey Department, Cadastral Survey Branch, National Land Use Project etc. are operational. At District level also, Survey offices, land reform offices and revenue offices are working for scientific and transparent land record management. Modern technologies like GIS, RS, and TS are being used now days. Platforms like Parcel Editor, Saex, and SOLA etc. are also in use. Different organizations like Courts (at different levels), MOLRM,,SD, District Land Revenue Office, District Survey office, Village Development Committee (VDCs) are engaged in dealing with the grievances related to land. Several methods like arbitration, mediation, litigation etc. are in practice to settle the current disputes over land.

### Gaps, Weaknesses, and Recommendations

- Special attention must be paid to the plurals marginalised sections, especially the indigenous communities, while making reforms vis-a-vis land rights.
- Although there is a rehabilitation programme as described above, the freed bonded labourers, particularly *Kamaiyas* and *Haliyas*, continue to live in the margins of society in terms of enjoying their basic human rights, including the right to adequate food. In particular, the abject living condition of 10093 former *Haliyas*<sup>cxvi</sup>
- Moreover, the land provided by the Government in most instances is infertile to grow crops or subject to flood and inundation, and erosion. This has compelled many former *Kamaiyas* to return to their former property owners simply to exist. For example, according to the Freed Kamaiya Development Forum, the government rehabilitated 90 freed Kamaiya families at Ramnagar in Sorahawa of Bardiya district six years ago, providing each family five kattha (approx 18225 sq. ft.) of land. However, out of them, 40 families have returned to their formal property owners saying that the land provided is uncultivable and insufficient to grow crops, and therefore to sustain their life.<sup>cxvii</sup>
- Land is also becoming an increasingly scarce resource because of population growth and rapid urbanization. The Constitution requires the government to pursue a policy of implementing

“scientific land reform” in its directive policies, but nothing has been done on the same as of now.

- Around 37 percent of the land is in the hands of 5 percent of wealthy people who themselves are not engaged in cultivation.<sup>cxviii</sup> This means that over 5.5 million Nepalese<sup>cxix</sup> people are landless. Having no land of their own, the landless and land poor are left at the mercy of big farmers and landlords, and are often forced to sell their labour for a negligible wage which eventually leads to a state of bondage.
- To address food insecurity, the Land Act (in Section 40) provides for a compulsory deposit of food grains by every property owner and tenant, which is quite a positive provision. Unfortunately, this remains unimplemented and the Act is not clear with regard to the use of the deposited food.
- The Land Act also sets out the concept of cooperative farming land zoning and plotting (Sec 51 (e)), agriculture saving credit (Sec 40), and farmers’ cooperative institutions (Sec 60). These provisions mostly remain non-implemented. Political will must be collectively garnered in order to push for these reforms.
- Lack of effective Monitoring and evaluation, and a lack of political commitment are serious problems in the sector of land reforms in Nepal.

## 6. LABOUR RIGHTS

Labour could broadly be divided into three categories that include formal sector labour, informal sector labour and unorganized labour. Former sector labour is defined primarily in terms of access to social security, protection of job and regularisation of benefits. In Nepal, there is sufficient legislation to secure labour rights for the formal sector. On the other hand, informal sector labour is one that does not enjoy social security, job protection and thus entailing a contract-based job. Agricultural labourer, construction workers, self-employed small producers all belong to the category of informal sector labour. The nature of unorganized labour is also identical with that of informal sector. Nepal, like many other countries of the poor world, is home of a huge amount of unorganized/informal labours.

### 6.1 The Labour Act, 1992, and Minimum Wages in Nepal

The Labour Act, 1992 (2048 BS) is the primary 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 (Section 2 (b)).<sup>cxv</sup>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
- minimum age of employment
- regular payment of salary and minimum wage
- a weekly rest
- maternity leave and sick leave
- occupational safety and health.

There are also legal provisions 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<sup>cxvi</sup>. The wage structure for the labourer is different and varied in Nepal largely. The government formally fixed NRs. 5,100 as the minimum monthly salary for the industrial workers. Similarly, it decided to provide NRs. 2,900 as dearness allowance per months while the minimum wage per day is NRs. 318. As per the recommendation of Minimum Wages Fixation Committee, the government published the newly introduced minimum wage and salary in Nepal Gazette. With this, the total remuneration of the factory workers amounted to NRs. 8,000 a month. A formidable number of Nepalese labourers are employed in the tea estate. According to the government regulations, they are entitled to a minimum wage of NRs. 230 per day. Minimum wage for the agricultural sector is also NRs 230. There is a provision of determining minimum wage rate (Minimum

wage fixing committee) by state. Local bodies (e.g. VDCs) can modify as per need and interest of local people at their territory. According to Labor Act 1992, no worker or employee shall be deployed in work for more than eight hours per day or forty-eight hours per week and they shall be provided one day as weekly holiday for every week.

## 6.2 Labour Rights and Women in Nepal

A significant portion of the workforce, both in the formal and informal/unorganized sector, is women. There is provision for equal work for women and men in formal sector. However, the practice of discrimination in terms of wage etc. continues to exist in different informal sector economy. Apart from this, there is no provision for the women workers in the informal sector to enjoy maternity benefits. Closely connected with this issue, we have not seen any legal avenue for lactating mothers for childcare and breastfeeding facilities in the worksites. Nevertheless, some private companies have provisions for care of children. However, this is not implemented across the informal and unorganized sector where a significant section of women workforce is involved. In the agricultural and informal sectors, women form the bulk and are the greater 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<sup>cxxii</sup>. 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. Women and children, many of whom are migrants or members of historically disadvantaged communities, mostly carry out domestic work. With agricultural and domestic work not being brought under the ambit of regularised labour laws, women, and especially women from economically disadvantaged households, suffer the most.

## 6.3 Worker's Protection Provisions in Nepal

The policy of social security for the workers points out rather a gloomy picture in the country. There is no insurance scheme at the national level for government employees. In private sector, also it is yet not a well-formulated practice. Different insurance companies are also working for health as well as life insurance of workers. In accordance with this situation, the informal/unorganized sector labourers do not have any retirement benefit. However, the employees of the government sector enjoy both pension and gratuity benefit after retirement. In the private sector, employees of firms with 10 or more employees are granted compensation from employers for work injuries. This does not include self-employed persons and household workers. The total cost comes from the employer, who provides benefits directly or pays insurance premiums. In case of temporary disability, the worker gets paid 50% of earnings (100% if hospitalized) from the first day of incapacity for up to a year. To qualify for it, an approved doctor assesses the degree of disability, as prescribed under the law. In case of permanent disability suffered, the worker gets a lump sum of five years of the insured's earnings for a total disability (100%). In case of a partial disability, a percentage of the total disability lump sum is paid according to the assessed degree of disability. In addition he or she also receives education benefits, in the form of 1,800 rupees to 2,400 rupees, depending on the insured's earnings, for up to two children younger than age 18 if the insured is assessed with a total incapacity for work due to a work-related injury.<sup>cxxiii</sup>

## 6.4 Gaps, Weaknesses and Recommendations

**Kamaiya Workers and Rights:** It is useful to note some landmark judgements, where the Supreme Court has held the Government accountable for the wellbeing and basic human rights of Kamaiya workers, stating that simply "freeing" them from bonded labour by a legislation does not ensure rights for them, unless rehabilitation programmes are properly implemented<sup>cxxiv</sup>. The implementation of government rehabilitation programmes are still poor<sup>cxxv</sup> and need to be rectified.

**Child Labour:** A joint report of the Government and ILO reveals that as of 2014, 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. 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.

However, the law prohibits the engagement of children below 14 in any kind of employment. It needs to be amended to make 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. Therefore, a significant number of children are engaged in hazardous work.

**Regularising the 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<sup>cxvii</sup>.

**Effective implementation of minimum wages:** Surveys suggest that though the update of the minimum wage based on the consumer index has been a provision of the Labour Act since the beginning, considering implementation of it is a relatively recent phenomenon. There should be a monitoring agency that is responsible for ensure regular updates of minimum wage limits. The law should also be amended to ensure that employers are penalised for failure to pay the minimum wage and for committing wage discrimination on prohibited grounds, including gender, disability and caste

**Labour Court and Labour Offices:** The Labour Act provides for the establishment of a Labour Court for legal settlements of disputes. However, it not accessible to most workers as there is only one located in the capital. The appellate courts can be given the power to adjudicate appeals so that workers in remote areas can also have access to redressal mechanisms like these.

The first instance case hearing authority (Labour Offices) are also too few- there are only 10 of them in Nepal. There should be more Labour Offices (this will also improve the monitoring of compliance with labour rights) and the local bodies can be empowered to deal with complaints related to the minimum wage at local level.

## **7. SMALL FARMERS' PROMOTION (AGRICULTURE and LIVELIHOOD)**

Currently agriculture sector in Nepal is in low development stage, there is growing food trade deficit, and malnutrition is high. Most of the cultivated area is devoted to cereals supported by other subsectors such as dairy processing, poultry, tea, vegetable seed and fisheries. It is said that currently agriculture sector is in relatively good position as compared to the previous years, after the long-term agricultural strategic plan known as the Agriculture Perspective Plan (APP) was launched in 1995-96. However, the overall progress made by agriculture sector needs to be further enhanced. Productivity, infrastructure, food security, and poverty have improved over time but food and agricultural trade deficit and land per capita have regressed. Reasons identified for this weak growth includes inadequate institutional capacity for implementation, poor plan formulation; low public and private investment in agriculture.

Nepal government has come up with new strategy Agriculture Development Strategy (ADS 2015-2035). This will be the driving force for the agriculture sector in Nepal. ADS plans to become self-sufficient in food grains by turning the current situation of food grain trade deficit of 5% to trade surplus of 0 to 5% in food grains. Year round irrigation target is to increase from current 18% to 60% in 10 years and 80% in 20 years. Similarly, it has targets of improving the situation of the soil organic matter, degraded land, agriculture land productivity, while keeping the forest cover constant in the coming years. Agribusiness as percentage of GDP is planned to increase from current 10% to the 20% in next 20 years by 2035. ADS vision document wishes to increase percentage of farmland owned by women or joint ownership from existing 10% to 50% by 2035. It says that existing situation is such that 12% of farmers are covered under agriculture programmes, it wishes that agriculture programmes would cover 30% farmers by 2035. Similarly, it wishes to increase average annual growth of AGDP from existing 3% to 6% by 2035. Poverty in rural areas is planned to be reduced from existing 27% to 10%. It wishes to reduce food poverty from existing 24% to 5% and wish to improve the nutrition level. Government wishes to perform better to achieve these targets by improving governance, productivity, profitable commercialization and competitiveness.

To improve agriculture productivity, ADS says that it will focus on effective agricultural research and extension; efficient use of agricultural inputs; efficient and sustainable practices and use of natural resources (land, water, soils, and forests); and increased resilience to climate change and disasters. However, if we talk about actual implementation of these policies, then it has been mentioned that in most cases agriculture and related policies have not been implemented effectively in Nepal because of various factors, including limited human resources and implementation capacity, lack of supportive legislation and monitoring and evaluation, poor coordination and weak planning<sup>cxvii</sup>. Total number of farmers covered by the existing agriculture related programmes and policies of Nepal is a very small number and need to be improved significantly.

### **8.1 Food security policy mapping related to Agriculture and Livelihood in Nepal**

Nepal is considered one of the most food insecure and vulnerable countries in the world. According to Global food security index 2015, an annual measure of the state of global food security, Nepal is ranked 85th among 109 countries in the world in food security status<sup>13</sup>. 65.6% of total population of Nepal is dependent on agriculture sector in Nepal. Almost half of the small and marginal farmers and majority of landless agriculture workers comes below the poverty line. Main reason for food insecurity, under nutrition, social, healthcare and other deprivation is can be attributed to poverty. Low productivity is considered one of the major contributors to poverty and food insecurity.

Population living in remote hills and mountains of far and mid-west Nepal is suffering most because of poverty, as almost 70% population lives below national poverty lines and local production is generally sufficient for only 3 to 6 months. Available evidence indicates that approx. 60% of households in Nepal have only 6 months of food sufficiency from their own production. Poor families in Nepal spend about

60% of their household income on food requirements. Situation of food availability in Nepal is affected because of insufficient agriculture productivity, seasonal food shortage and inadequate rural infrastructure. Total cultivated agriculture land is only 21% of total land available and year round irrigation is 38% and 62% is rain fed.

## **8.2 Policies framework related to food security in Nepal: Main features and concerns**

Formal policy development process in Nepal for agriculture and food security sector started only after the formulation of Agriculture Perspective Plan (APP) in 1995, before that related policies were guided by periodic plans. The recent policies and plans for agriculture and food security are related to three year plans, national agriculture sector development priority plan (NASDP 2011-2015), and country investment plan (CIP). Further, climate change policy (2011) has some provisions for climate change adaptation to ensure local and national food security. There are many policies, acts, regulations and guidelines related to agriculture and food security sector of Nepal. In agriculture sector alone, there are 10 policies, 18 Acts, 9 regulations and 6 orders and most of them was formulated and implemented by Ministry of agriculture and development.

There were two broader agriculture development policies: APP (1995-2015) and national agriculture policy 2004. In the context of food security, focus of APP and national agriculture policy 2004 is on increasing commercialization and competitive agriculture with support to small holders. For both of these policies Ministry of Agriculture Development is the implementing agency. During 1995-2015, Nepal's agriculture sector development was guided by 20-year Agriculture perspective plan (APP). The APP strategy was technology-driven. Its priority inputs cover fertilizer, irrigation, roads, electrification and technology. It emphasized livestock, high-value crops, agribusiness and forestry as its priority outputs.

Now the Government of Nepal has come up with Agriculture Development Strategy (ADS) 2015 to 2035, which will guide the agriculture strategy in Nepal<sup>cxviii</sup>.

## **8.3 Policies, provisions and concerns: Agriculture Perspective Plan APP (1995-2015)**

This is a visionary document to achieve broad based economic development and poverty reduction through accelerated growth of agriculture and non-agriculture sector through multiplier effects. Objectives of APP are as given below:

- To accelerate agricultural growth rate through increased factor of productivity,
- To alleviate poverty through growth and expansion in employment opportunities,
- Transformation of agriculture from subsistence to commercial one through diversification and realization of comparative advantages,
- Fulfilment of preconditions of agricultural development to expand opportunities for an overall economic transformation.
- To identify immediate short, medium and long-term strategies, implement and
- Prepare future periodic plans and programs based on guidelines developed.

**Strategies: Strategies of APP are as follows:**

- Technology based green revolution acts as initial engine of growth,
- High growth in agriculture creates demand pull for both high value agriculture, and non-agriculture products with large multiplier effects,
- Societal equity objective is achieved by employment creation with growth,
- Few but critical priorities get investment with public policy support,
- Terai, hills and mountains deserve differentiated but balanced strategies with
- Package approach to development, and

- Holistically, the strategy is regionally balanced and participation of women is ensured.

It has adopted different strategy for Terai, mountains, and hills. In Terai region, focus is given on agriculture crops and in mountain and hilly regions; focus is given on high value crops and livestock husbandry. Priority inputs for this strategy includes Green revolution agriculture technology with research and extension focus, Chemical fertilizer in combination with organic manure, Year-round irrigation with emphasis on shallow tube wells in the Terai plain, and Farm to market agriculture road and electricity to run tube wells in the Terai. Priority outputs for this strategy includes Livestock, High value crops, Agribusiness, and Forestry. Some of the shortcomings of Agriculture Perspective plan:

- APP could not address the concerns related to livelihood inequalities in rural Nepal. There is no targeting of livelihood vulnerable people by economic, social, geographical or age factors.
- The APP is correct in assuming that agriculture is vital to virtually all livelihoods in Nepal. That places a heavy burden on agriculture policy to deliver explicitly for all, not only to those with relatively secure livelihoods but also to vulnerable section of the society.
- Issue of migration has been neglected in APP. Women are on the Margin in the APP15cxxx.
- Lack of focus on local food security crops (finger millet, buckwheat, barley, foxtail and porso millet) in remote food insecure area (e.g. Karnali) in policy document
- Absence of provisions for human resource development strategy in achieving targets
- Inadequate investment on resources /fund to achieve proposed targets,
- Poor coordination among key ministries, departments and private sector institutions for implementation
- Lack of detailed implementation plans and poor supply of inputs (e.g. fertilizer)cxxx

#### **8.4 The National Agricultural Policy (2004)**

This policy intends to facilitate the farmers of both types: (a) the farmers who have access to means and resources, and (b) the farmers who have comparatively low access to the means, resources and opportunities. Following are the stated objectives of national agriculture policy, for contributing to the task of ensuring food security and poverty alleviation by achieving a high and sustainable economic growth a commercial and competitive farming system:

- Agricultural production and productivity shall be increased.
- The bases of a commercial and competitive farming system shall be developed and made competitive in the regional and world markets.
- Natural resources, as well as the environment and bio-diversity, shall be conserved, promoted and properly utilized.
- Following provisions have been made under National Agriculture Policy 2004 to fulfil its stated objectives:
- Provision of free inputs, technical support, lease hold land and irrigation facilities for the landless and farmers with less than half a hectare of land.
- Provision of low price shops, food coupons and food credit cards in food insecure regions.
- Provision of guaranteed employment (at least 100 day/family/years) to every family in food insecure areas, together with and access of poor people to agricultural land, forest and other resources are expected to increase their access to food.
- Policy focused on improvement in production and income generation avenues and local participation will be ensured for transportation, storage and distribution.
- Purchasing of locally available foods from local market will be promoted (MoAC, 2065)cxxxi.

Some of the shortcomings in national agriculture policy 2004 are illustrated as below:

- Policy does not foresee and specify specific legislative and institutional framework for implementation and there is a lack of formulation of legislations and absence of institutional framework
- Absence of provisions for human resource development strategy in this policy
- Poor resource allocations and institutional coordination
- Lack of monitoring framework<sup>cxxxii</sup>.

## 8.5 Agriculture Development Strategy (ADS) 2015 to 2035

When the long-term agricultural strategic plan known as the Agriculture Perspective Plan (APP) was launched in 1995-96, Nepal agricultural sector was in a worse situation than today. The ADS is expected to guide the agricultural sector of Nepal over the next 20 years. Over the course of this period, the structure of the agricultural sector in Nepal will change considerably and agribusiness and non-farm rural activities will grow relatively to agriculture. Strengthened linkages between agriculture and other sectors in the economy will be critical to the reduction of poverty particularly in rural areas where the development of non-farm activities based on agriculture will be fundamental for the growth of an overall robust economy, a more balanced rural economy, and employment generation.

A self-reliant, sustainable, competitive, and inclusive agricultural sector that drives economic growth and contributes to improved livelihoods and food and nutrition security leading to food sovereignty. Component of the ADS framework: ADS is based on the following components:

- Improved Governance.
- Higher Productivity.
- Profitable Commercialization.
- Rights
- Commercial farmers, Subsistence farmers, and the Landless

Further, it emphasizes on following things related to Farmers' Rights:

- Institutional mechanisms to ensure farmers' participation in the planning, decision making, implementation, and monitoring of the strategy.
- Will ensure the establishment of a high-level fully authorized and permanent type of Farmers' Commission to help advance farmers' rights<sup>cxxxiii</sup>.

Flagship programs of ADS: The flagship programs of the ADS are as followings:

- Food and Nutrition Security Program (FANUSEP)
- Decentralized Science, Technology, and Education Program (DSTEP)
- Value Chain Development Program (VADEP)
- Innovation and Agro-entrepreneurship Program (INAGEP)

Total budget allocated allocation made to ADS for FY 2073/74 is 28995474.5 Nepali rupees. Out of this, money allocated to flagship programmes (FNUSEP, DSTEP, VADEP, and INAGEP) is 3551000 Nepali rupees, which is 12.25% of total allocation made to ADS. 57.62% of total budget is allocated to the core programmes<sup>cxxxiv</sup>.

## 8.6 8.6 Agribusiness Promotion Policy (2006)

This policy aims to reduce poverty by encouraging production of market-oriented and competitive agro-products. **Focus of this policy is on following aspects:**

- This highlights the diversification, commercialization and promotion of agriculture sector with private sector involvement in commercial farming.
- It emphasizes that the living standard of the farmer would not improve unless the agriculture sector is transformed from subsistence level to commercial farming
- Focus on production for marketing and value addition of agro-products through PPP and support for infrastructure development

**Some of the shortcomings** in the agribusiness promotion policy are related to following aspects:

- The provision of facilities, support and subsidies are not guaranteed by development of legislation and regulations.
- Inadequate institutions, legislation, hinder Field level implementation, coordination and human resources trained in business sectors.

### **8.7 National Agro biodiversity Policy (2007)**

The Agriculture Bio-diversity Policy 2063 (2007) has been framed in accordance with the objectives of National Agriculture Policy to protect, promote and utilize bio diversities. Focus of this policy is on conservation and sustainable use of agricultural biodiversity in the country. Some of the shortcomings in this policy is related to legislations and programs on conservation and sustainable use have not been implemented (e.g. Plant Variety Protection and Farmers Rights Bill and legislation in harmony with MLS<sup>cxxxv</sup>. Agro-biodiversity policy does not envision about arid land use and technology promotion in mountain agro - ecosystem.

### **8.8 Multi-sector Nutrition Plan 2013-2017 (2023)**

Nepal government has come up with a new multi-sectoral nutritional plan for Accelerating the Reduction of Maternal and Child Under-nutrition in Nepal. The main purpose of this is to strengthen the capacity of the NPC and key Ministries on the multi-sector nutrition programme policy planning, implementation and monitoring for improved maternal and child nutrition at all key levels of society. Some of the shortcomings in Multi-sectoral Nutritional Plan (2012) were related to inadequate mechanisms and institutional structure for inter-ministerial and multi-sectoral coordination. It will require strong political commitment, institutional mechanisms and investment<sup>cxxxvi</sup>.

The expected key outcomes and results of the MSNP are as following:

- Policies, plans and multi-sector coordination improved at national and local levels.
- Practices that promote optimal use of nutrition 'specific' and nutrition 'sensitive' services improved, ultimately leading to an enhanced maternal and child nutritional status.
- Strengthened capacity of central and local governments on nutrition to provide basic services in an inclusive and equitable manner.

Key challenges and constraints identified for this plan are as follows:

- There is the uncertainty surrounding the process of decentralisation, which is the key to developing multi-sector approaches.
- To identify just a few interventions in each sector to impact on the window of growth is also a challenge.
- There are many sectors within government competing for the limited available resources. Therefore, it is necessary to ensure political commitment at the highest level of government
- Ensuring coordination and synergy among the different interventions across the sectors is also an uphill task<sup>cxxxvii</sup>.

## **8.9 National Policy for Education (1998)**

This policy only mentions technical and applied education; and does not give any focus on food security by linking education with agriculture. Further, there is poor coordination of Agriculture with Education Sector due to lack of policy coordination mechanism in the policy.

## **8.10 Local Self Governance Act (1999)**

The Local Self-Governance Act 1998 authorises the local bodies such as Village Development Committees (VDC), District Development Committees (DDC) and municipalities to formulate and implement policies, programmes and activities related, among others to agriculture and rural development. Some of the shortcomings are related to inadequate policy linkage with National Agricultural Policies (e.g. APP) and sector policies (e.g. Fertilizer) and Field level implementation is hindered by dual role of local government and central government in policy and program activities<sup>cxxxviii</sup>.

The implementation of LSGA has hindered the seed business due to the imposition of unnecessary local taxes on seed movements across districts<sup>cxxxix</sup>.

## **8.11 Irrigation Policy (2003)**

Extension of irrigation services is important in the context of meeting the objectives of increasing agricultural production and reduction of poverty as perceived by the APP. This demands promotion of conjunctive use of ground and surface water based irrigation systems along with new / non-conventional irrigation systems such as rainwater harvest, pond irrigation; sprinkler irrigation, drip irrigation and treadle pump irrigation.

The policy aims to develop irrigation facility for the achievement of following objectives:

- To avail round the year irrigation facility through effective management of existing water resources;
- To develop institutional capacity of water users for sustainable management of existing systems; and
- To enhance knowledge, skills and institutional working capability of technical human resources, water users and NGOs relating to development of irrigation sector.

This policy focuses on conventional approach with major focus on large-scale surface irrigation. Emphasis has also been given on sectoral approach with limited focus of integrated water management and non-conventional irrigation.

Some of the shortcomings in this policy are related lack of irrigation legislation to implement current policy, lack of integrated water management. Further, there is no provision for linkage of Irrigation with on Agriculture R& D and food Security programs.

## **8.12 National Fertilizer Policy (2002) and Government Decision (2009)**

The National Fertilizer Policy was formulated to support agricultural production by ensuring supply (production, import and distribution) of good quality fertilizer. This policy focuses on nutrient management, private sector participation in fertilizer delivery; Subsidy introduced after 2009. Some of the shortcomings in this policy are related to poor mechanism for monitoring and quality control of fertilizers; Provision of subsidized fertilizers only through Cooperatives / Sahas of AIC but not through private dealers. Further, there is poor implementation of integrated plant nutrient management (IPNMS) due to limited investment, human resource and institutional capacity to adopt IPNMS.

### **8.13 Seed Production Guidelines (1998), Seed Policy (1999), Seed Act (1988; revised 2008), Community Seed Bank Guidelines (2009) and National Seed Vision (2013 –2025)**

Seed production guidelines were developed in 1998 to start commercial seed production programmes in potential districts. The Seed Policy (1999) has been developed to effectively manage production, processing and testing of high quality seeds and their timely availability to the farmers. This is a flexible policy for involvement of public, private and community sector in seed production and marketing. Some of the shortcomings of this policy are related to lack of strong policy guidance on overall coordination of seed sectors from private, public and community sectors. This is implemented only in few districts due to various reasons like lack of adequate human resource and institutional capacity. Community Seed Bank Guidelines 2009 provides establishment and management of community seed banks where seeds produced in the community are processed, stored and sold locally under the leadership of the concerned community.

### **8.14 National Seed Vision (2013 – 2025)**

Improved crop varieties and quality seeds are the most viable ways of improving agricultural production and food security in a sustainable manner. Seed Sector Development Strategy (Seed Vision 2013 - 2025) is prepared to address the longstanding need in Nepal's seed sector at the request of National Seed Board, Ministry of Agricultural Development (MoAD), with financial assistance from Swiss Agency for Development and Cooperation (SDC).

The seed vision aims at increasing crop productivity, raising income and generating employment through self-sufficiency, import substitution and export promotion of quality seeds. Seed vision envisages doubling the number of location specific high yielding competitive varieties to be released by 2025. Improved seed production will be increased threefold through formal system. Strengthened public and private seed laboratories will have a capacity to test and analyse over 40,000 seed samples per annum. Seed replacement rate will be increased at least up to 25 percent for cereal crops and over 90 percent for vegetables. Yield of rice and vegetables will reach 3.8 mt. and 19 mt. per hectare respectively<sup>cxl</sup>.

**Barriers and issues** identified in seed sector in Nepal are followings:

- Inadequate varietal choice and limited number of breeding lines and inadequate production of source seeds
- Inadequate high quality seed production and low capacity for seed processing and storage
- Lack of proactive marketing mechanisms for seeds and poor availability of quality products<sup>cxli</sup>

### **8.15 Nepal Agriculture Extension Strategy (2007)**

Focus of this policy is on devolution and decentralization of agricultural extensions. Some of the shortcomings is related to inadequate implementation due to poor coordination with local government, limited resources and stable government. In addition, it is not supported by the formulation of relevant institutions and regulation.

### **8.16 NARC Vision (2011-2030)**

Focus of this policy is on research activities towards ensuring food and nutrition security. Nepal Agriculture Research Council (NARC) currently conducts, promotes, supports, coordinates, and evaluates research activities related to agriculture, including crop husbandry, livestock husbandry, aquaculture, natural resources, and rural development. Some of the shortcomings are related to lack of

institutional mechanisms for decentralizations and reforms in research to act as NARS. Further, government of Nepal (approved by only NARC Council in 2011) does not approve it officially<sup>cxliii</sup>

### **8.17 Forestry Sector Policy (2000)**

This policy focuses on provision of food production through soil conservation, water shed management and Agroforestry. Some of the shortcomings are related to gaps in specific policy content for linking forestry with agriculture, despite one of the policy objective is on food production. Further, its focus is on natural forestry and there is poor coordination of agriculture sector with forestry in soil conservation, watershed management and Agroforestry.

### **8.18 Minimum Price Support (MSP) Policy (2012) in Crops**

Minimum Price Support focuses on two major food crops (Rice and Wheat). Nepal government used to fix MSP until 1999, when this provision was fully abandoned. The supporting price was announced not before starting of planting season, thus Nepal never had effective MSP policy. Some of the shortcomings related to this policy is that MSP too few key food grains will provide disincentives to growers of underutilized crops that are important for local food security. Further, there is delayed implementation (late announcement) of Minimum Price Support in Nepal. In addition, Most of Nepal borders India, and this border is extremely permeable. This has made independent agricultural policy making within Nepal very difficult. After liberalization in early 1990s output pricing, policies do not exist in Nepal. Inputs, however, are sporadically subsidized and seeds and fertilizers have been the inputs that have been focused upon<sup>cxliii cxliv</sup>.

### **8.19 Agriculture Insurance Policy (2013)**

Focus of agriculture insurance policy is on few key crops and livestock e.g. rice, wheat, vegetables, dairy animals, goat etc.

Some **distinct features of agriculture insurance** directives are as follows:

- Crops insurance covers the production cost (including purchase of seedlings, fertilizers, labour charge) incurred until the crops/horticulture are ready for the harvest.
- Livestock and poultry insurance will provide coverage to all types of cows, oxen, buffalos, yak, female yak, sheep, goat, swine, chicken and ducks based on sum insured fixed by the Insurance Board.
- Premium rate - 5% for Livestock and Crop,
- Subsidy in premium by Government of Nepal:- F.Y. 2012-13 –Nil, - F.Y. 2013-14 -50 %, - F.Y. 2014-15 -75 % (contd. in FY 2015-16)

Agriculture insurance volume has increased because of the increase in subsidy to 75% in 2014-15. Budget allocated by Nepal Government for agriculture insurance subsidy for F.Y. 2015-16 (2072-73) was 120 Million Nepal rupees. To implement crop insurance effectively it needs strong technical capacity for monitoring and implementing insurance schemes. Crop insurance policy has to be make farmer friendly. Presently crop insurance in Nepal is in a very early stage and will require huge reforms to make it affordable, attractive to farmers and subsequently spread its coverage in entire country. Major issues identified to Agriculture, Livelihood and Nutrient related Policies:

- Poor access of small-scale farmers of remote areas on ecological farming and market access.
- Extension/Promotion of sustainable agriculture considering the nutrition impacts of such practices (nutrition-sensitive agriculture) is required.
- Malnutrition in rural areas and in mountain regions is a serious concern.
- Right of people to have access to safe, sufficient and nutritious food need to be implemented.

- Stunting (low height-for-age), wasting (low weight-for-height) and underweight of children under age 5 year.
- Limited diversification of crop production, insufficient nutrient intake, behaviour change communication, poor dietary diversification, water sanitation and hygiene, poverty and awareness.
- Poor understanding of importance of agro-ecological practices on food and nutrition security among policy makers and donors.
- Inadequate capacity of rural service providers and their un-coordinated mobilization to implement multi-sectoral nutrition interventions.
- Classification of farmers' and their identity card and farmer's social security on the basis of classification
- Access to reasonable agriculture loan/credit
- Crop/livestock insurance
- 15% budget allocation from local authorities for agricultural development
- ADS issues (European model, development of large scale farming, poverty reduction in high rate, high input agriculture)
- Agriculture extension services in each VDCs and wards of municipalities
- Restructuring of agricultural agencies/organizations/institutions (centralized system in Capital city, outreach of agriculture technicians)
- Small holders can cultivate a variety of commodities including fruits, vegetable and small livestock, which could increase household food and nutrition security as well economic growth.

After careful mapping of policy and programmes and review of their implementations, our **recommendations** are:

- State procurement, MSP programs and guarantees: Minimum support prices for crops and procurement by state is not effective in Nepal. Farmers have to suffer losses because of non-effective minimum support prices for crops and procurement by state. State procurement of crops (wheat, rice) takes place only a few places. Sometimes, the minimum support prices determined for a crop is even lower than the last year's price. Government should protect farmers by giving appropriate price support and procurement for their crops. There should be an appropriate pricing and procurement policy keeping in mind the ground reality of different crops in different regions<sup>cxlv</sup>
- Farmer income protection strategies: There are different fluctuations in prices due to market and natural calamities. Small and marginal farmers should be provided adequate support by government to ensure at least some minimum income in the event of any fluctuation. Farmers should be given assurances for the good prices of their crops and all the arrangements should be done appropriately for the procurement of farmers produce by the state. Farmers should not be left on market's mercy, intermediaries often exploit the farmers. Farmers should be given minimum wages at the time of unemployment. Provisions of providing guaranteed minimum employment for 100 days a year to at least one member of poor family have been made under National Agricultural Policy (2004) in Nepal and in 2012, Nepal government brought employment guarantee act in this regard<sup>cxlvi</sup>. This is in line with India's Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA). This needs to be implemented effectively for below poverty line families across all regions of Nepal.
- Financial safety nets in the form of crop insurance, relief and compensation to farmers: Farmers should be protected by making provisions of appropriate safety nets like crop insurance etc. in the event of their crop losses. Nepal formally announced Crops and Livestock Insurance program from January 2013 after issuance of "Crop and Livestock/Poultry Insurance Directive 2013". Non-insurance organization used to provide insurance service occasionally for

Livestock and Crop in limited areas up to 2012. Nepal government provide 75% of premium subsidy to farmers but still small and marginal farmers find it difficult to afford the premium, therefore premium to be paid by farmer should be made affordable for farmers. The crop insurance coverage should be increased to larger number of crops in such a manner so that it does not discourage crop diversification and biodiversity or new cropping practices.

- Procedures related to crop insurance, especially claim process should be made easy and farmer friendly and should be able to adequately compensate the losses suffered by farmers. A robust system should be built for correct assessment of crop losses and any moral hazards should be prevented. Usage of innovative technologies like remote sensing, GPS enabled mobile phone, drones, digitization of land records etc. might also be promoted. An effective grievance redress system should be made for addressing farmers concerns. A proper monitoring of the actual implementation of the scheme and periodical review of scheme is must for the effective implementation of the scheme. Issues related to lack of reinsurance, public awareness, and presence of adequate technical workers, infrastructural issues, availability of information related to input cost of crops should be addressed to make the crop insurance popular and effective in Nepalcxlvii. In addition to crop insurance support, the government should also provide other supports and adequate relief to farmers in the event of crop loss due to various reasons including natural calamities.
- Market support and linkages: As of now farmers, especially small and marginal farmers don't have appropriate market access and linkages. There are policies like Agribusiness promotion Policy (2006), which promotes the market linkages for farmers. In addition to this, there are specific provisions made for providing market related support to farmers under ADS (2015-2035) under "Profitable Commercialization" theme. However, actual implementation and effectiveness of these policies is a serious concern. Small and marginal farmer's accessibility to market requires special attention. Farmers should be informed about market related updates like crop prices in different regional markets etc. For this purpose, Apps can be developed for farmers and regular usable information can be provided to them on their mobile phones. A reliable toll free helpline can also be provided to farmers to give them the opportunity to interact with agriculture experts, market experts etc.
- Promotion of agro-ecological and other sustainable farming practices and less dependency on market for farming inputs: Currently the focus seems to be on increasing the agriculture productivity using chemical fertilizers and pesticides etc. Agro-ecological farming practices should be promoted to make the farming climate resistant, less input cost intensive and profitable for small farmers. Practices like zero budget farming etc. should be promoted.

## 8. RESILIENCE BUILDING (CCA AND DRR)

Nepal is one of the most climate vulnerable countries in the world. Weather station data indicate an increase in temperature trends across Nepal in the period 1975- 2009. In most of the Himalayan region and the middle mountains there has been rapid warming, while in the Terai and Siwalik regions there has been a cooling trend. Communities in the Himalayan region have also perceived an elongation of the summer season and a shortening of winter. In contrast, people in the Terai have reported a longer and colder winter season in recent years<sup>cxlviii</sup>. Gridded station precipitation data in Nepal shows high inter-annual and inter-decadal precipitation variability although an overall decline has been observed during 1960-2005<sup>cxlix</sup>.

Communities in the Himalayan and hill regions have observed a change in the type of precipitation from snow to rain. Communities have also reported that the duration and magnitude of winter drought have increased in recent years compared to the 1980s and 1990s, while the intensity of monsoon rains has increased and the timing of rains has become increasingly erratic and unpredictable, with implications on livelihoods and food security, again, compared to the 1980s and 1990s<sup>cl</sup>. Climate sensitive Sectors like agriculture, water, forestry, health, urban infrastructure and tourism are particularly vulnerable to changing climate.

### 9.1 Climate change vulnerabilities in Nepal

More than 1.9 million people are highly climate vulnerable and 10 million are increasingly at risk in Nepal. Most of the people living in mid and far western region are amongst the most vulnerable in Nepal, because of their poverty rates and heavy reliance on small-scale agriculture. Degree of vulnerability within different districts of Nepal varies highly because of prevalence of disparity among population, lack of access to basic services and social protection mechanism. Poor people are vulnerable to loss of physical capital (damage to shelter and infrastructure), human capital (malnutrition and disease, mental stress), social capital (displacement of communities and social relation), natural capital (loss of productivity in agriculture and fisheries and environmental services) and financial capital (more disaster and climate risk and lower income).<sup>clciiiii</sup>

### 9.2 Climate change scenario in the context of food security

Food security in Nepal is highly sensitive to climate risks. Recent climate-related events, such as floods of 2008 and winter drought of 2008-09 highlighted potential impacts of climate on food production, access to markets and income from agricultural activities. Impact of Climate change on agriculture is particularly critical because of the fact that a large number of people depend on agriculture for livelihood. The problem of food security is more in Nepal's mountains due to fragile environment and limited availability of suitable land for large-scale commercial production of food grains. Presently, approximately 3.4 million Nepalese require food assistance and a staggering 6.4 million are chronically food insecure. Domestic food production is insufficient to meet per capita caloric needs; Nepal has become a net importer of food. Reliance on imports made the poor increasingly vulnerable to price shocks and has exacerbated food insecurity<sup>cliv</sup>. Agriculture is predominantly rain fed, depending heavily on monsoon rains. Increasingly erratic rainfall patterns over the last few decades and a perceived decline in precipitation in some areas, especially in food deficit areas after 1960s suggest that continued climate variability could have a detrimental effect on food security in the country. The combination of consecutive winter droughts and a poor monsoon in 2008-09 affected 3.4 million people. Mountain people with small landholdings are highly vulnerable to climate change and extreme weather events. Local communities have identified changes in climate as being largely responsible for declining crop and livestock production. Farming will be facing risk due to change in reliability of stream flow, a more intense and potentially erratic monsoon rainfall, impact of flooding, decline in rainfall from November to April negatively impact winter and spring crop. Under such circumstances, we need to

promote sustainable climate resilient agriculture, which can deal with the changing climate. Rice yield is sensitive to climatic conditions; it may fall in western region of Nepal. Threat to food security will also be due to loss of some local land races and crops.<sup>clv</sup>

### **9.3 Policies related to climate change in Nepal**

Nepal has made the National Adaptation Programme of Action (NAPA) in September 2010 and Nepal's Climate Change Policy in January 2011. In line with Nepal's climate change policy and as a means of implementing NAPA and integrating climate adaptation options into development policy and planning process, government has devised a National Framework on Local Adaptation Plans for Action (LAPA) in November 2011.

**9.3.1 National Adaptation Programme of Action (NAPA) & National Framework on Local Adaptation Plans for Action (LAPA):** Government of Nepal facilitated preparation & implementation of the NAPA and endorsed National Framework on Local Adaptation Plans for Action (LAPA). The aim of which is to integrate climate change adaptation activities into local and national development planning processes to ensure climate resilient development.

**9.3.2 NAPA 2010:** (NAPAs) provide a process for Least Developed Countries (LDCs) to identify priority activities that respond to their immediate needs to adapt to climate change, ultimately leading to the implementation of projects aimed at reducing the economic and social costs of climate change. Nepal has identified Agriculture and food security, Water resources and energy; Climate induced disasters, forests and biodiversity, public health, urban settlement and infrastructure as key priority areas.

**9.3.3 LAPA 2011:** Nepal has prepared the National Adaptation Program of Action (NAPA), which was endorsed by the Government in September 2010 and is under implementation. The Government of Nepal has started the implementation of the Climate Change Policy, 2011 that has the goals of improving livelihoods by mitigating and adapting to the adverse impacts of climate change, adopting low-carbon emissions for socioeconomic development path, supporting and collaborating in the spirit of the country's commitments to national and international agreements related to climate change.

The Policy emphasizes the implementation of activities related to climate adaptation and resilience. Both NAPA and the Policy have made mandatory provisions to disburse at least 80 percent of the available budget for the implementation of climate change adaptation activities at the local level. This is expected to support the most climate vulnerable communities and people to adapt with climate change and improve livelihoods. The disbursement and expenditure procedures will be project and/or program based.

Along with NAPA and Climate change policy, the National Framework for LAPA has been formulated in order to translate the suggestions into action and to assist identification of local adaptation actions with people's participation as prescribed in NAPA, development and implementation of action plans. The aim of the LAPA is to integrate climate adaptation activities into local and national development planning processes and to create a situation for climate resilient development. The LAPA Framework facilitates formulation of the LAPA at local bodies such as VDC, Municipality and District Development Committees (DDC).

The LAPAs represent local priorities around agriculture, livestock & food security, forest management & biodiversity, water resource & energy, climatic hazards & physical infrastructure, Human resources & livelihood, Human health.

- The LAPA Framework provides a way to integrate local people's adaptation needs or climate change resilience into local-to-national planning systems.

- The LAPA Framework ensures that the process of integrating climate change resilience into local planning is bottom-up, inclusive, responsive and flexible.

The MoSTE implements the NCCSP in close coordination with MoFALD and the Alternative Energy Promotion Centre (AEPCC). In response to this framework, NCCSP facilitated the preparation of 70 LAPAs in 14 programme districts of the mid and far western regions of Nepal. Across the districts, 5,059 LAPA actions were identified, out of which 3,036 are urgent and immediate action plans. This work formed the basis for the NCCSP implementation plan.

UNDP is providing technical assistance for the implementation of NCCSP. A Project Steering Committee at the central level provides necessary policy guidance, takes strategic decisions and monitors the achievement of the overall goal and targets. At district level, District Development Committees (DDCs) are the key implementation partners. Within DDCs, District Environment, Energy and Climate Change Sections assume responsibility for NCCSP implementation. At District and village level, Climate Change Coordination Committees have been established. Implementation on the ground delivered through a range of services providers, line agencies and community groups.

#### **9.4 Nepal Climate Change Support Programme**

The Nepal Climate Change Support Programme (NCCSP) is the first significant, Government led initiative, to implement Nepal's National Adaptation Programme of Action (NAPA), with a focus on priority area – promoting community-based adaptation through integrated management of agriculture, water, forest and biodiversity sectors. NCCSP programme has following objectives:

- To enhance the institutional capacity of the Government of Nepal (GoN) to implement LAPA and Nepal's Climate Change Policy. In particular the Ministry of Science, Technology and Environment (MoSTE) and the Ministry of Federal Affairs and Local Development – (MoFALD) and other stakeholders at the regional, district, village and community level who are implementing LAPA.
- Aim of NCCSP is to mainstream climate change into Nepal's national development agenda, contribute to poverty reduction, livelihood diversification and community resilience.
- To ensure that the most urgent and immediate adaptation actions are implemented so that the poorest and the most vulnerable communities in Nepal are able to adapt to the effects of climate change.
- NCCSP provide necessary technical support in developing local and regional mechanisms for implementing climate change adaptation (CCA) activities; building technical and institutional capacity of government and non-government institutions; establishing funding mechanisms for CCA at the district level, and exploring collaborative partnership with private sector.
- NCCSP assists in reviewing the climate change related policies and guidelines, strengthening and expanding the role of Multi stakeholders Initiative on Climate Change and mainstreaming gender into climate change policies and strategies.

#### **Learning from NAPA, LAPA- Gaps and Work Done**

- Ownership of the government, for mainstreaming the adaptation program
- Building on existing systems and mechanism
- Strengthening the system - to directly benefit the climate vulnerable communities and to ensure delivery of LAPA priority actions
- Flexible management approach to be responsive to the local context and to deal with hurdles in LAPA delivery.
- Mainstreaming and leveraging finances at local level Gaps identified by the government in the implementation of NAPA and LAPA

- Number of interventions/projects – increased operational cost of the system;
- Some projects are being run off-budget and off treasury;
- Projects tend to invest the most in policy and central level activities;
- Quality data and information is a concern
- Measuring community and system resilience;
- 'No regret options' as the basis for decision.clv

## 9.5 Climate Change Policy, 2011

Nepal government has come up with the 2011 climate change policy. The main goal of this policy is to improve livelihoods by mitigating and adapting to the adverse impacts of climate change, adopting a low-carbon emissions socio-economic development path, supporting and collaborating in the spirits of country's commitments to national and international agreements related to climate change.

### Climate change policy 2011 focuses mainly on following objectives:

- To implement climate adaptation-related programmes and maximize the benefits by enhancing positive impacts and mitigating the adverse impacts;
- To reduce GHG emissions by promoting the use of clean energy, such as hydroelectricity, renewable and alternative energies, and by increasing energy efficiency and encouraging the use of green technology;
- To enhance the climate adaptation and resilience capacity of local communities for optimum utilization of natural resources and their efficient management;
- To adopt a low-carbon development path by pursuing climate-resilient socioeconomic development;
- To develop capacity for identifying and quantifying present and future impacts of climate change, adapting to climate risks and adverse impacts of climate change; and
- To improve the living standard of people by maximum utilisation of the opportunities created from the climate change-related conventions, protocols and agreements<sup>clvii</sup>.

**Some of the good aspects of the climate policy are following:** Bottom-up participatory planning, integrated approach, ensuring the participation of poor people, Dalits, marginalised indigenous communities, women, children and youth in the implementation of climate adaptation and CC-related programs. 80% fund will be allocated to the local level, poverty reduction and livelihood focus, mainstreaming CC adaptation to the national development agenda<sup>clviii</sup>.

## 9.6 Climate change budget code 2013

Climate Change Budget Code 2013 is recently introduced by the Government of Nepal. A budget code refers to a number given as a symbol to the budget of each major development programme/project in the budget document. The term 'code' has been used as an 'indicator' to identify climate related programme. Some criteria's have been developed and based on these criteria, it will be decided if the expenditure proposed for particular activity under budget falls into the climate expenditure category or not. As per the figures available, the government allocated 10.3 per cent of its budget to climate change in 2013/14, while total adaptation-friendly commitment from international sources was US\$236.62 million for 2009–2012<sup>clix</sup>. About 5.4 percent of total budget was directly related to climate change adaptation and about 4.9 percent was indirectly related to environment, climate change and others natural preservation and conservation. The Climate Change Budget Code has been implemented in the National Budget to facilitate tracking of climate expenditure<sup>clix</sup>.

## 9.7 Soil and Watershed Conservation Act, 2039 (1982)

Soil and Watershed Conservation Act, 2039 (1982), amended to 2010, is administered by the Department of Soil Conservation and Water Management. Main purpose of this act is to conserve land and watersheds by controlling natural calamities such as flood, landslide and soil erosion. It can regulate the agricultural activities, so that it do not destroy or weaken the long-term use of the land. This Act empowers the Government to declare watershed conservation zones and to specify what activities can or cannot be conducted in them. The powers provided under the Soil and Watershed Conservation Act can be used for broad controls over waterways, in the interests of flood prevention and mitigation. However, the limitation of this act is that there is lack of clarity roles for district and local government officials, making it unclear on how water management can be integrated into disaster management and disaster risk reduction plans<sup>clxi</sup>.

Soil and Watershed Conservation Act aims to construct and maintain a prevention or control dam, check dam, embankment, terrace improvement, ditch, feeder ditch or diversion channel or drainage, retaining wall, pond or similar other necessary structure to carry out plantation of seedlings, planting grasses other vegetation, maintain and grow the same. To conserve, maintain and support the forests, grasses and other natural vegetation in the lands where landslide may occurs and in the sloppy lands; to do crops and fruits farming; to maintain the soil fertility and the cleanliness of water and environment in a balanced manner to make electrification in the concerned places; to carry out such other soil and watershed conservation related acts as prescribed by The Government of Nepal.

Presidential Chure Terai Madhesh Conservation Program has been initiated by the Government of Nepal in order to protect and conserve Chure region, which covers around 12.78% of total area. Chure hills are supposed to be very fragile in nature, and very prone to soil erosion, which ultimately results in drying up of water from tube wells, deep wells, sweeping away of lands, displacing settlements etc.

## 9.8 Gaps identified in climate change policies in Nepal

- National Climate Change Policy does not give appropriate details on how to work with communities. Implementation strategy is not clear and schedule of implementation with clear goals and quantitative targets is missing.
- Main agents of implementation have not been identified, which might result into no one taking ownership over the specific objectives and activities of the policy.
- The policy identifies local communities as the stakeholders and earmarks up to 80% of the climate funds for the local communities. However, these communities are regarded as passive beneficiaries instead of active partners in development. There are no clearly defined roles, rights, and responsibilities of the community. Therefore, communities might not be able to play the role of active partner in the implementation of the policy.
- In the absence of elected government at local level and no any mechanisms for coordination among the line agencies, implementation of the CC program, and ownership, responsibilities for achievable goal is questionable.
- Existing institutional arrangement of having the Ministry of Environment as the main entity responsible for the result oriented implementation of the CC Policy needs to be revisited.
- In the absence of decentralised executing units at the district and village level, the implementation of the policy on ground seems extremely difficult<sup>clxii</sup>.
- The effective and successful implementation of climate policy also calls for institutional and structural restructuring of the implementing government agencies.

## **9.9 Policies mapping related to disaster risk management in Nepal**

Nepal faces high magnitudes and intensities of a multitude of natural hazards such as flood, landslide, earthquake, fire, cyclonic winds and hailstorms, cloudburst, Glacier lakes outburst floods, drought, famine, and epidemics. Presently, Disaster Relief Act 1982 and Local Self Governance Act 1999 are the basic legal provisions for disaster management in Nepal. National Authority for Disaster Risk Management (NADRM) serve as the national focal point and coordinating body for facilitating, monitoring and implementing disaster risk management strategies in Nepal. NADRM is being the single authority to manage response, early recovery, reconstruction and rehabilitation in case of national or regional disaster.

### **9.10 Natural Disaster Relief Act, 1982**

The Natural Disaster Relief Act is the first well-structured disaster policy in Nepal. Natural Calamity Relief Act 1982 mandated the Ministry of Home Affairs (MoHA) as a lead agency for immediate rescue and relief works as well as disaster preparedness activities. MoHA, is entirely responsible for disaster management and has been coordinating the activities of disaster preparedness and rehabilitation after disaster. The national strategy for disaster risk management formulated in 2009 to develop Nepal as a disaster-resilient country. The formation of Central Natural Disaster Relief Committee (CNDRC), Regional Disaster Relief Committee (RDRC), District Disaster Relief Committee (DDRC) based on Natural Calamity Relief Act 1982 for the overall disaster response in Nepal<sup>clxiii</sup>. The major gap in this Act is lack of risk reduction, mitigation and preparedness measures. Therefore, the new DM Act is urgently needed and it is still pending with Nepal Parliament.

### **9.11 Local Self-Governance Act, 1998**

The Local Self-Governance Act, 1998 aims to provide the opportunity for the sovereign people to participate in the process of resource mobilisation, development and distribution of the result of development process to the local communities by the process of decentralisation of different powers in the country.

### **9.12 National Disaster Response Framework (NDRF), 2013**

National disaster response is defined as the “actions taken immediately before, during, and after a disaster or directly to save lives and property; maintain law and order; care for sick, injured, and vulnerable people; provide essential services (lifeline utilities, food, shelter, public information, and media); and protect public property.”

### **9.13 National Strategy for Disaster Risk Management (NSDRM), 2009**

The foundation of the National Strategy for Disaster Risk Management, 2009 is the Hyogo Framework for Action and the strategy is utilised by the Government of Nepal as the national framework to protect, grow, and promote national heritage and physical infrastructure<sup>clxiv</sup>. Government of Nepal has signed Sendai Framework DRR (2015-2030) and is currently reviewing NSDRM. Government of Nepal is preparing an action plan in accordance with SFDRR. Nepal has District Disaster Management Planning Guideline 2013, Local Disaster Risk Management Guideline (LDRMP) 2012, which talks about complete Disaster Risk Management cycle (Preparedness, Response, Recovery and Mitigation). Guidance note on Disaster Preparedness and Response (DPRP) 2011 also exist, which talks about preparedness for effective response to disasters.

#### **9.14 Nepal government strategies for building climate resilience**

Ministry of Science, Technology and Environment (MOSTE) Government of Nepal has been implementing Pilot Program for Climate Resilience (PPCR) financed by the Climate Investment Funds in order to pursue a climate-resilient development path that reinforces poverty reduction goals. Nepal prepared the “Strategic Program for Climate Resilience (SPCR) to outline its program to respond to priority climate risks. The SPCR complements the National Adaptation Program of Action (NAPA), Climate Change Policy and Local Adaptation Plan of Action (LAPA). There are **five components of SPCR**, which are listed below:

Component 1: Building Climate Resilience of Watersheds in Mountain Eco- Regions

Component 2: Building Resilience to Climate-Related Hazards

Component 3: Mainstreaming Climate Change Risk Management in Development

Component 4: Building Climate Resilient Communities through Private Sector Participation

Component 5: Enhancing Climate Resilience of Endangered Species

#### **9.15 Gaps identified in DRR strategies in the context of Food Security**

Disaster Risk Management is yet to integrate into the planning and programming initiatives in the agricultural sector. There is a lack of emergency assistance networks in both production and food supply, with poor seed and food storage facilities. There is a need to build up institutional mechanism within the offices of the Ministry of Agriculture and Cooperatives to address the issues of disasters into the sectoral plans and programs; an emergency preparedness plan needs to be drawn/updated for the sector. Improvement in early warning system can enhance efficiency in preparedness for flood and droughts. There is a need to enhance DRM capacity among professionals within the sector in both government and private sectors<sup>clxv</sup>

#### **9.16 Major issues identified**

- Ownership of the prepared local level plans such as CBDRMP, LDRMP, CAPA and LAPA
- Resource leverage for implementation of activities for CCA and DRR in community
- Mainstreaming CCA and DRR activities with regular development program
- Inadequate coordination among concerned stakeholder
- Project oriented and focused to achieve the project objective rather than community wellbeing
- Community capacity enhancement and reduction of vulnerabilities of communities
- No conceptual clarity on access, benefit sharing mechanisms and resource tenure on REDD Programme

Countries like Nepal where more than 67% population depends on agriculture and whose livelihood depends on climate sensitive resources are the most vulnerable to climate change. Nepal has been ranked one of the most vulnerable countries to climate change. Climate change has various impacts in different sectors and in different geographical regions of Nepal. Nepal’s remoteness, undulating terrain, fragile landform, and extremely diverse landscape poses different levels of location and context-specific climate change impact. Precipitation data does not reveal any significant trend in Nepal, however there is inter-annual variation of rainfall, particularly monsoon precipitation.

Seasonal variation in annual precipitation shows a general decline in pre-monsoon precipitation in far and mid-western Nepal and in rest of the country there is a general trend of increasing pre-monsoon precipitation. Some parts of Nepal show increasing erratic and intense rains, and such climatic trends

combined with fragile topography, deforestation and eroded soils are leading to landslides and flash flood hazards<sup>clxvi</sup>. To deal with climate change, Nepal government has come up with many policies and programmes including NAPA 2010, LAPA 2011, and climate policy 2011<sup>clxvii</sup>. However, Nepal's climate change policy, programmes, and plans are still in the beginning phases and needs to be developed further with strong institutional commitment to implement these policies. Climate change impacts in Nepal are under the following themes:

#### **Agriculture and food security:**

- Climate change largely responsible for declining crop and livestock production
- Changes in reliability of stream flow, a more intense and potentially erratic rainfall and flooding
- Change in rainfall will adversely affect winter and spring crop
- Rice yield may fall in western region
- Threat to food security due to loss of local land races and crops

#### **Water resources and energy generation:**

- Climate induced water stress affect agriculture productivity
- Too much water impact human settlement, infrastructure and agriculture land
- Irregularities in stream flow affect reliability of hydropower. Siltation from landslides and flood events reduce power generation efficiency. (Approximately 90 % of Nepal's electricity production is from hydropower).

#### **Climate induced disasters:**

- Trends in flooding is closely related to glacier melting due to increase in temperature.
- More than a million of people are susceptible to climate-induced disaster – floods, landslides and drought every year.
- Rising temperatures have caused glaciers to melt and retreat faster. Receding glaciers, attached with glacial lakes are helping to expand the existing glacial lake area, increasing the risk of the sudden flooding causing glacial lake outbursts.
- Himalayan glaciers are receding faster than in other parts of the world. Nepal's 20 glacial lakes at the risk bursting, six of them identified as critical.<sup>clxviii</sup>

### **9.17 Recommendations**

**Recommendations for climate change adaptability and building resilience in general:** People who are socially, economically, culturally, politically, institutionally or otherwise marginalised are especially vulnerable to climate change. Nepal should try to eliminate this marginalisation. Reducing poverty can go a long way in reducing marginalisation and building resilience to climate change. Reducing poverty in the changing climate will mean doing development better and faster. This will also mean mainstreaming climate change responses into existing policies, processes, programmes and institutions. Following steps are crucial in this regard, which needs comprehensive actions by different departments/ministries of Nepal government:

- Internalise the serious risk posed by climate change
- Prioritise the needs of poor as part of climate change adaptation
- Promote effective decentralization
- Mainstream responses to climate variability and impacts
- Promote and disseminate research and best adaptation practices
- Strengthen social safety nets

**Specific weather based agro-advisories to farmers:** Nepal has to make a robust early warning system and adopt early warning information system for managing climate change risks in agriculture and food and nutrition security. A typical Agromet Advisory with focus on following things enables farmers to reap benefits of benevolent weather and minimize or mitigate the impacts of adverse weather:

- Provision should be made to generate area specific weather forecast like rainfall, cloudiness, temperature, wind speed and direction, humidity and forewarning of hazardous weather events (hailstorm, heat/cold waves, drought and flood etc), which are likely to cause stress on standing crop and suggestions to protect the crop from them.
- Weather forecast based information on soil moisture status and guidance for application of irrigation, fertilizer and herbicides etc.
- Advisories on dates of sowing/planting and suitability of carrying out intercultural operations covering the entire crop spectrum from pre-sowing to post harvest to guide farmer in his day-to-day cultural operations.
- Weather forecast based forewarning system for major pests and diseases of principal crops and advises on plant protection measures.
- Propagation of techniques for manipulation of crop's microclimate e.g. shading, mulching, other surface modification, shelterbelt, frost protection etc. to protect crops under stressed conditions.
- Reducing contribution of agricultural production system to global warming and environment degradation through judicious management of land, water and farm inputs, particularly pesticides, herbicides and fertilizers.

**Advisory for livestock on health, shelter and nutrition<sup>clxix</sup>:** An effective mechanism for on-time dissemination of these agro-met advisory services to farmers should be in place.

**Promotion of climate resistant indigenous seed varieties:** Nepal has to conduct research on stress tolerant varieties and breeds of crops, livestock and fish for the development of climate resilient agriculture that are at the same time higher in yield. Experiences of India shows that generally indigenous seed varieties are more climate resistant than hybrid seed varieties available in the market.

**Building resilience in soil:** Focus should be on building resilience of soil by building farmer's knowledge, skills and capacities on sustainable soil management practices. We have to adopt sustainable soil management practices that increase agricultural productivity and do not degrade the soil.

**Building safety net for communities:** Relief and crop insurance for extreme weather events have to follow the recommendations similar to the ones needed for financial safety nets in the form of crop insurance, relief and compensation to farmers, as elaborated upon in the previous part of this report.

**Disaster relief and rehabilitation:** Mainstreaming DRR in sectoral development, effective implementation of disaster risk reduction, relief and rehabilitation policies, implementation of land use and settlement planning, changing mindset of the people, development and strengthening of effective institutions on DRR are some pressing issues in disaster management of <sup>clxx</sup> Nepal, which needs to be taken care on urgent basis.

**Need for effective institutional mechanism for implementation:** Climate change related policies in Nepal are still in the initial stages. The policies in general seem to be relatively people centric, participatory, and inclusive, bottom-up planning and implementation<sup>clxxi</sup>.

## 9. NATURAL RESOURCE MANAGEMENT

While more than 3000 edible plant species are known to humanity, less than 30 species of crop plants contribute to more than 90% of the world calorie intake, out of which rural populations around the world utilise many wild plants and they contribute substantially to household food security. Such food forms an integral part of the daily diets of many poor rural households. Manandhar (2002) in his book 'Plants and People of Nepal' has compiled the information gathered over 30 years of field visits, and documents 651 food plants utilised by 14 different ethnic groups of Nepal including the Chepang. Pant et al. (2005) identified 83 species of wild edible plants utilised by the indigenous communities in Darchula district of Nepal. These communities rely largely on wild edible plants during food scarcity or famine. Bhattarai et al. (2009) reports that wild plants play an important role in both daily nutrition, and survival during times of famine for the indigenous people living in the mountainous Manang district of Nepal. Many wild foods, fruits, vegetables, medicinal plants for own consumption, and commercial forest products for sale<sup>clxxii</sup>.

Forest occupies a total of 5.96 million ha which is 40.36% of the total area of the country. Other Wooded Land (OWL) covers 0.65 million ha (4.38%). Forest and Other Wooded Land (OWL) together represent 44.74% of the total area of the country. Out of the total area of Forest, 82.68% (4.93 million ha) lies outside Protected Areas and 17.32% (1.03 million ha) inside Protected Areas. Within the Protected Areas, Core Areas and Buffer Zone contain 0.79 and 0.24 million ha of Forest, respectively. Out of the total area of Forest, 37.80% lies in middle mountains physiographic region, 32.25% in High Mountains and High Himal, 23.04% in Churia and 6.90% in Terai. In case of OWL, Terai, Churia, Middle Mountains, and High Mountains and High Himal physiographic regions share 1.47%, 3.50%, 9.61% and 85.42%, respectively<sup>clxxiii</sup>.

The total aboveground air-dried biomass in the Forest of Nepal is 1,159.65 million tonnes (194.51 t/ha). The total carbon stock in Nepal's Forest has been estimated as 1,054.97 million tonnes (176.95 t/ha). Out of this total, tree component (live, dead standing, dead wood and belowground biomass), forest soils, and litter and debris constitutes 61.53%, 37.80 %, and 0.67%, respectively. Among all physiographic regions, Churia was observed to have the highest occurrence of forest disturbance particularly grazing, forest fire, landslide and bush cutting. According to a report (MFSC/NFA 2008), forestry contributes 9.5% to GDP in 2008 with direct products and 27.5% considering environmental services. The official record of GON shows that there are 18,960 community forest users groups (CFUGs) in Nepal who are managing 17, 98,733 hectare of forestland where more than 23, 92,755 households are befitting<sup>clxxiv</sup>.

Nepal is successful in collaborative forest, conservation forest etc.

Due to increasing population, there is a heavy pressure on the forest of Nepal for material needed for subsistence, such as fuel wood and fodder, as well as land use changes. Increase in the population, together with illegal felling and forest encroachment is the main reason for forest degradation. If this trend continues, the condition of the forests in the country and species diversity of valuable tree species will be adversely affected<sup>clxxv</sup>.

Constitution of Nepal, 2072 is recently promulgated by containing rights and entitlements related to food security, right to food and food sovereignty of all people in the country. The constitution has clearly mentioned the policy provisions in Article 51.6 for sustainable conservation, management and utilisation of natural resources i.e. forest, water, soil, and wildlife; DRR and Climate resilience by conserving environmental degradation.

The Ministry of Forest and Soil Conservation (MFSC), which is the lead institution for creating an enabling environment for forest resource management, has implemented policies related to Community

Forestry and the Leasehold Forestry Policy, that have helped the government of Nepal to achieve significant success in forest conservation.

FECOFUN, HIMAWANTI, ACOFUN, DANAR, NRP, BZUC, FEDWASUN, National Forum for Advocacy, Nepal (NAFAN), Forest Environment Workers Union Nepal (FEWUN), Private Forest Stakeholders Network (fEPFOS), Democratic NGO Federation, NEFUG etc. are some of the networks working in sector of natural resource (forest, water, wildlife and soil etc. ) management, use rights and policy advocacy for people friendly policy formulation. There are more than 18,000 community forest user' group in Nepal for management of natural resources. The current policy provisions related to NRM are more inclusive, democratic. However, there is not sufficient institutional capacity, lesser participation of target groups such as women, poor, Dalits and marginalised people, as well as weak financial governance of users groups.

Increased temperature and rainfall variability have resulted into shifts in agro ecological zones, prolonged dry spells and higher incidences of pests and diseases. Studies shows that new alien and invasive species are emerging and their habitat is spreading at a fast rate. Extreme climatic conditions have led to increased incidence of fire in recent years (affecting more than 50,000 people in Nepal) and loss of large areas of productive forestland. These changes lead to species and habitat loss. Communities have also observed that they are experiencing seasonal changes observed in terms of early sprouting, flowering and fruiting, which is leading to loss in some cases and benefit in other cases<sup>clxxvi</sup>. REDD+ has been designed to become a mechanism for mitigating deforestation and forest degradation worldwide. Nepal has many opportunity of benefitting from it. Community based forest management which is considered very successful, is supportive for the REDD process.

### **10.1 Gaps and Challenges**

To date, more than 18,300 Community Forest User Groups (CFUGs) are managing more than 1/3rd of the total forests of the country. Similarly, around 23% of the total area of the country is under the protected area system. However, the REDD+ implementation is more complex than envisioned and there are various challenges. One of the most important challenges is weak governance in forestry. Illegal logging, trans-boundary leakage and forest encroachment are few of the public allegations that forest administration is currently facing. There is uncertainty to invest in REDD+ activities due to inadequate capacity to enforce regulatory actions.

The other challenge is the capacity gaps. The safeguard standards suggested in REDD+ accounting element are highly technical, and the existing public and community institution do not have that required level of expertise to deal with these element conflicting cross sector policy is another challenge. Forest act and bylaws are contradicting with other sectoral acts and regulations, the major ones being the mining act and the local governance act. This conflict has aggravated activities leading forest degradation and deforestation. Prevailing data associated with emission and activity are not consistent and comparable due to differing methodologies adopted by different national forests inventories. This inconsistency has made it difficult to establish Reference Emission Level and to develop Monitoring, Reporting and Verification system. High transaction cost in monitoring and verification for the fragmented forests such as community and leasehold may reduce incentive to participate in the REDD+ activities.

### **10.2 Major issues of the theme identified**

- Poor participation of poor, Dalits, female, indigenous and minority people (Even though Nepal probably has the best community forestry management in South Asia)
- Lesser improvement of livelihood and food security of Poor, Vulnerable and Social Excluded people

- Lack of proper utilisation of allocated 35% fund of Community Forest Users' Groups (CFUGs)
- Lack of institutional document (renewal of operational plan and constitution)
- Lack of access and equitable distribution of forest products and benefits
- Public hearing and public auditing of programmes related to natural resource management
- Issues related to community Forest land allocation for income generation
- Lack of participation of female in buffer zone user's committee
- Issues related to livelihood improvement through leasehold forest
- Issues related to Common Property Resource (CPR) like Forest Right Act of India

### **10.3 Recommendations**

- Climate change adaptation in forests require the managers of these natural resources, who often are communities, to be aware of climate change effects and an understanding of the long term nature of degradation of forest. All the related management programmes need to be planned and implemented on urgent basis to safeguard resources that if lost are difficult if not impossible to restore, as recognized by the NAPA of Nepal.
- Climate change adaptation should focus on sustainable forest management, improved governance and capacity at the local level and supporting the adaptation priorities of the most vulnerable through improved access and equitable benefit sharing, as recognised by the NAPA of Nepal.
- Instead of monocultures and plantations of exotic species on forestlands, Nepal must promote regeneration of native species and especially those native species, which have products of significant food values such as tubers, fruits, vegetables, bamboo shoots, edible ferns etc.
- The governments should document the indigenous knowledge of the local forest dependent communities and prepare biodiversity registers describing forest plant species with food values, their silvicultural requirements, nutritional values and Ethno-botany. Such plant and tree species should be conserved and promoted for use by indigenous communities.
- In addition to enhancing availability of food from forests, forest-livestock-farm interconnected systems and their linkages should be strengthened by incentivizing cultivation of species with better CC resilience and food productivity.
- Modern food processing of forest/farm foods and value addition should be promoted to prolong life of food articles as well as enhancing incomes (which will further enhance CC resilience) to local communities through these products.
- Practices like Apiculture, Aquaculture etc. should be promoted to diversify food choices from forest and other ecosystems.

## 10. SUMMARY OF RECOMMENDATIONS

### 11.1 Right to Food

- The Right to Equality, granted by the Constitution in Article 18, does not fully guarantee the right to substantive equality, but only empowers the state to make special legal arrangement for specified groups. Legal provisions should explicitly recognise the obligation of the state to ensure substantive equality between persons and groups. The provision fails to recognise the caste-based discrimination in terms of wages, which should be recognised through laws.
- Again, Article 43 (Right to Social Security) states “the indigent citizens, incapacitated and helpless citizens, helpless single women, citizens with disabilities, children, citizens who cannot take care themselves and citizens belonging to the tribes on the verge of extinction shall have the right to social security, in accordance with law”. This is in contrast with the ICESCR (of which Nepal is a signatory), which asks state parties to recognise the “right of everyone to social security, including social insurance”. There should be mechanisms in place that ensure that technicalities are not used as an administrative excuse to not include individuals within the beneficiary categories, which needs to be made inclusive as possible.
- Another legal loophole, which the citizens must be protected against, is that the scope of many of the economic, social and cultural rights, including the right to food sovereignty recognised in the Constitution. It is limited by references to the existing rights to the extent that they are provided for ‘by law’, such as the Right to Employment (Article 33: a right granted, “As provided for in the federal law” and the Right to Food itself, (Article 36 (3): “Every citizen shall have the right to food sovereignty in accordance with law”.
- While it may appear as if they are guarantees without loopholes, these provisions indicate significant potential limitations on the rights as existing and future laws can restrict them. 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. These were problems with Nepal’s Interim Constitution and they have been carried over in the new one.
- While making a frame work law for Right to Food, or even in guarantee of rights through sectoral laws, these loopholes must be safeguarded against.
- Again, though Article 36 (2) of the Constitution guarantees “the right to be safe from the state of being in danger of life from the scarcity of food” (emphasis added). It does not explicitly state that the freedom from hunger is an enforceable fundamental right, and again, sectoral laws and eventually a framework legislation on the Right to Food must incorporate elimination of hunger, even when not immediately endangering life itself, as a crucial goal.
- Instead of such unqualified references to existing/future laws, the rights need to be stated in their full form in the Constitution. If they aren’t (as is the case with some Articles in the present Constitution), these loopholes must be filled, by giving serious consideration including ESC rights consistent with the ICESCR, of which Nepal is a signatory.
- 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 law needs to be amended to enable the Corporation to launch a programme of its own targeting the needy population who are unable to pay for safe drinking water. The affordable access to drinking water by local communities, indigenous people, and the most disadvantaged and marginalized groups of society must be ensured consistent with the state’s obligations under ICESCR.
- 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. The Water Resources Act needs to be amended to incorporate customary rights of water use explicitly as guaranteed under the Country Code.

- The above laws are also flawed as they fail to recognise 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. These laws need to be rectified and suitably amended.
- Several landmark of the Supreme Court judgements have shown the inefficient implementation of multiple sectoral laws in Nepal in relation to the Right to Food. Therein are several orders by the apex court to the Government of Nepal, to provide specific benefits through laws and policies. However, there is no accountability or monitoring to check if these are actually followed through. There needs to be a body established whose objective it should be to monitor the implementation of these government obligations vis-a-vis the right to food and related rights.

## 11.2 State Food Provisioning

- Nepal is a signatory to the International Covenant on Economic, Social and Cultural Rights, and the committee on ICESCR, evaluating Nepal's performance, provided several recommendations that must be implemented with regard to state food provisioning.
- The Government needs to provide annual data, disaggregated by caste, ethnicity, and gender to enable monitoring and evaluate progressive realisation of economic, social and cultural rights. No such system and practice as such is currently in place to generate disaggregated data, particularly on the prohibited grounds of discrimination.
- The Central Bureau of Statistics (CBS), responsible for collecting and analysing such data and information, conducts population census every 10 years and carries out National Living Standard Survey periodically. However, the disaggregation of data of such survey is chiefly limited to geographical location (districts and region) and based on gender and certain caste and ethnicity. Such broad categories do not allow for more detailed identification of the poor and vulnerable groups in society, particularly in terms of assessing the enjoyment of human rights, including the right to adequate food by these groups.
- Targeted and comprehensive measures have to be taken to ensure food security and access to water for all; particularly those who belong to the most disadvantaged and marginalised groups. It is to be highlighted that in 2008, the Supreme Court of Nepal issued in response to public interest litigation an interim order for the Government to immediately supply foodstuff in 12 remote hilly districts of Mid and Far-Western Regions where mass starvation was reported and particularly Dalits, lactating mothers, elderly and children among those mostly affected. However, the Court declined to constitute or order the Government to constitute an inquiry committee to assess the extent of the starvation and provide adequate compensation to the affected individuals and families as well as hold the responsible accountable. These need to be looked into.
- The ICESCR Committee also asked the Government to provide in its third periodic report detailed information about the extent of food insecurity, the groups most vulnerable to it, and the concrete measures envisaged to address it. The Government of Nepal, however, failed to do so. No adequate and updated information is available in the state report submitted to the Committee with regard to the extent of food insecurity and the population that suffered. This needs to be rectified and the Committee's recommendations have to be followed.
- While the Nepal Food Security Monitoring System (NeKSAP) is an improvement, since it collects, analyses and presents information on household food security, emerging crises,

markets and nutrition from across Nepal, its indicators are not compliant with human rights indicators and leave out crucial marginalisation indices, which should be included.

- Dalits in Nepal have often been denied access to public water sources and have faced severe discrimination. The Committee on ICESCR asked that access to public wells be closely monitored by the District Development Committees or by another appropriate local body, which was followed by the government enacting the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011. However, the law is yet to be fully implemented, and there is need to regulate administration and implementation under this Act, in order to prohibit fully any kind of caste-based discrimination, especially with regard to access to food and water, to vulnerable groups like the Dalit communities.
- Under the Universal Periodic Review, Malaysia suggested to Nepal, the need for Stepping up efforts to achieve the effective realisation of economic, social and cultural rights for the marginalised and vulnerable groups by ensuring that they are provided with adequate access to food, health, education and fair employment, which has not been implemented and should be done.
- Under the same UPR, Hungary recommended specific targeting of specific vulnerabilities, and improving food safety of vulnerable groups, particularly indigenous people, former bonded labourers, Dalits, Muslims, persons with disabilities and those who are infected with HIV/AIDs, which has also not been implemented.
- Unlike other South Asian countries like India and Bangladesh, which have feeding programmes for adolescent girls, Nepal has no such programme, and this should be incorporated into government policies.

### **11.3 State Social Protection**

- Even though the right to employment is enshrined within the Constitution, there is no comprehensive policy for social security to the unemployed. Nepal needs legislation to address inadequate allowances, low level of public awareness regarding allowance schemes, limited capacity of the institutions to ensure smooth and effective distribution of the allowances coupled with corruption and irregularities.
- Moreover, existing legal provisions surrounding social security have been mainly developed with a welfare-based approach and lack a human rights-based focus; meaning, they fail to enable the citizens to claim their right in case of denial and violation of the right in question and to hold the authorities concerned accountable .
- There is still improvement needed, in particular with regard to the right to food of the HIV/Aids infected women. The National HIV/AIDS Strategy (2006-2011) does not have any specific references to the sexual and reproductive health and HIV prevention service needs of girls and young women. There are limited plans on addressing the infected and affected women's issue of livelihood opportunities and social security schemes and ensuring their nutrition requirement for effective treatment.
- In 2012, the Nepal Planning Commission conducted a survey in the remote districts, trying to assess the implementation mechanism of the Social Security projects in Nepal, which are described above. According to the survey, a number of gaps came up.
- A few VDC secretaries observed that some clauses of the social security manual were either unclear or confusing.
- Some rules relating to the classification of disabilities and definition of Dalits need more clarity. Annex 8 and 10 in the Procedure Rulebook are unclear in many respects. The Working Procedure is silent with the issue of "migrant household". These issues have to be rectified.
- Political Pandering: Quite a few officials admitted that they honour recommendations from the political parties to register eligible beneficiaries.

- Irregularity in Update of Data: Little less than half (45%) of the surveyed VDCs and one-third of the municipalities observed that the beneficiaries' list was updated once a year while another one-third (32.6%) admitted that they did so once in six months.
- The physical verification of the ID card in many surveyed VDCs revealed that it was not renewed regularly as claimed by many VDCs
- Lack of Transparency: 31 VDCs claimed that they had been publishing the list of beneficiaries. Survey results, however, did not support this claim. All officials of the surveyed institutions observed that they receive adequate amount for distribution and payment is confirmed through thumbprint. Sizeable VDCs have followed a public and social audit system to keep the distribution transparent. The list of beneficiaries is on the notice board of the VDC office. The Planning Commission could not verify this claim.
- On the Problems in Updating Records, some of the reasons listed by Nepal's Planning Commission include:
  - Lack of support staff and non-registration of the deaths of the beneficiaries were the most commonly cited problems in updating the records.
  - Some other less common problems reported were: too old to visit the office, difficulties in identifying those receiving government pension, tendency to misreport age (reporting higher than actual), none reporting from migrant households and lack of timely contact by the beneficiaries.
  - The field survey team found that the list of beneficiaries is not updated as the list also included those beneficiaries who have already died. Altogether 92 cases of deaths were traced during the survey across eight sampled districts. This accounts for 1.78% of the total sampled beneficiaries
- Recommendation on Payment through Banks: According to the NPC's 2012 survey, majority of the VDCs (61%) and municipalities (83%) were of the view that payment through banks is not feasible. Non-availability or limited availability of banking services in the rural areas has been the most common reason cited for considering payment "not feasible" through banks. Overall, there has been mixed reaction about this new arrangement. If there are problems in the current structure, that needs to be looked into.
- The Operation Manual clearly states that a committee must be formed in all the surveyed DDCs and municipalities/VDCs. However, this has not been done, and should be followed up on.

#### **11.4 Land Rights Laws:**

- Equitable access to land and land-based resources with well-defined tenure security attention must be ensured to the marginalised sections, especially the indigenous communities, while making reforms vis-a-vis land rights.
- Empowering people (about rights, and responsibilities) and enable, them to participate in decision making and implementation.
- Although there is a rehabilitation programme as described above, the freed bonded labourers, particularly Kamaiyas and Haliyas, continue to live in the margins of society in terms of enjoying their basic human rights, including the right to adequate food. In particular, the abject living condition of 10093 former Haliyas.
- Moreover, the land provided by the Government in most instances is infertile to grow crops or subject to flood and inundation, and erosion. This has compelled many former Kamaiyas to return to their former property owners simply to subsist. For example, according to the Freed Kamaiya Development Forum, the government rehabilitated 90 freed Kamaiya families at Ramnagar in Sorahawa of Bardiya district six years ago, providing each family five kattha

(approx 18225 sq. ft.) of land. However, out of them, 40 families have returned to their formal property owners saying that the land provided is uncultivable and insufficient to grow crops, and therefore to sustain their life.

- Land is also becoming an increasingly scarce resource because of population growth and rapid urbanisation. The Constitution requires the government to pursue a policy of implementing “scientific land reform” in its directive policies, but nothing has been done on the same as of now.
- Around 37 percent of the land is in the hands of 5 percent of wealthy people who themselves are not engaged in cultivation. This means that over 5.5 million Nepalese people are landless. Having no land of their own, the landless and land poor are left at the mercy of big farmers and landlords, and are often forced to sell their labour for a negligible wage which eventually leads to a state of bondage.
- To address food insecurity, the Land Act (in Section 40) provides for a compulsory deposit of food grains by every property owner and tenant, which is quite a positive provision. Unfortunately, this remains unimplemented and the Act is not clear with regard to the use of the deposited food.
- The Land Act also sets out the concept of cooperative farming land zoning and plotting (Sec 51 (e), agriculture saving credit (Sec 40), and farmers’ cooperative institutions (Sec 60). These provisions mostly remain non-implemented. Political will must be collectively garnered in order to push for these reforms.
- Lack of effective Monitoring and evaluation, and a lack of political commitment are serious problems in the sector of land reforms in Nepal. The government needs to develop a Land Policy that includes provisions for recording and recognizing informal settlers. It should also harmonize contradictory policies and ensure that the land policy formulated is an integrated one.
- The sectors of Disaster Risk Reduction and Land Reforms need to be smoothly linked. The Land Use Policy should incorporate hazard and risk mapping and should made a clear demarcation on residential and agricultural land. The government should also improve the mechanism to investigate the claims of earthquake victims and identify the genuinely affected people for compensation due.
- Mapping and recording the uses and claims of land in order to protect community rights-e.g. practicing the community land rights in Bhajani municipality of Kailali
- Comprehensive land mapping and land digitalization-Land Statistics is one of the major debatable issues. E.g., Current CBS data does not give true picture of land ownership and landlessness. Digitizing land records and make land information accessible,
- Fixing ceilings for land ownership and acquisition, Decentralization of land governance including management, administration and conflict resolution,
- Land Court and Farmers Court; and Comprehensive Land Policy to ensure right to food objectives as per the concept of decentralization and the land court and implementation of land use act
- Land issues in newly introduced federal state’s structure should be addressed in line with inclusive provisions of newly promulgated constitution of Nepal.
- Strengthen governance of land tenure, land use planning and land zoning to (i) prevent further loss of productive agricultural lands, forests, wetland and grasslands, (ii) promote soil conservation and enrichment and protection from erosion and (iii) land consolidation, land

leasing and cooperative farming to capture the benefits economy of scale in specific crop and livestock enterprises. It should follow the concept of Common Property Resource (CPR).

### 11.5 Labour Rights

- Kamaiya Workers and Rights: It is useful to note some landmark judgements, where the Supreme Court has held the Government accountable for the wellbeing and basic human rights of Kamaiya workers, stating that simply “freeing” them from bonded labour by a legislation does not ensure rights for them, unless rehabilitation programmes are properly implemented . The implementation of government rehabilitation programmes are still poor and need to be rectified.
- Child Labour: A joint report of the Government and ILO reveals that as of 2014, 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. 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. But the law prohibits the engagement of children below 14 in any kind of employment.
- It needs to be amended to make 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. Therefore, a significant number of children are engaged in hazardous work.
- Regularising the 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.
- Effective implementation of minimum wages: Surveys suggest that though the update of the minimum wage based on the consumer index has been a provision of the Labour Act since the beginning, considering implementation of it is a relatively recent phenomenon. There should be a monitoring agency that is responsible for ensure regular updates of minimum wage limits.
- The law should also be amended to ensure that employers are penalised for failure to pay the minimum wage and for committing wage discrimination on prohibited grounds, including gender, disability and caste
- Labour Court and Labour Offices: The Labour Act provides for the establishment of a Labour Court for legal settlements of disputes. However, it not accessible to most workers as there is only one located in the capital.
- The appellate courts can be given the power to adjudicate appeals so that workers in remote areas can also have access to redressal mechanisms like these.
- The first instance case hearing authority (Labour Offices) are also too few- there are only 10 of them in Nepal. There should be more Labour Offices (this will also improve the monitoring of compliance with labour rights) and the local bodies can be empowered to deal with complaints related to the minimum wage at local level.

### 11.6 Small Farmers' Promotion and Protection

- State procurement, MSP programs and guarantees: Minimum support prices for crops and procurement by state is not effective in Nepal. Farmers have to suffer losses because of non-effective minimum support prices for crops and procurement by state. State procurement of crops (wheat, rice) takes place only a few places. Sometimes, the minimum support prices determined for a crop is even lower than the last year's price. Government should protect

farmers by giving appropriate price support and procurement for their crops. There should be an appropriate pricing and procurement policy keeping in mind the ground reality of different crops in different regions

- Farmer income protection strategies: There are different fluctuations in prices due to market and natural calamities. Small and marginal farmers should be provided adequate support by government to ensure at least some minimum income in the event of any fluctuation. Farmers should be given assurances for the good prices of their crops and all the arrangements should be done appropriately for the procurement of farmers produce by the state. Farmers should not be left on market's mercy, intermediaries often exploit the farmers. Farmers should be given minimum wages at the time of unemployment. Provisions of providing guaranteed minimum employment for 100 days a year to at least one member of poor family have been made under National Agricultural Policy (2004) in Nepal and in 2012, Nepal government brought employment guarantee act in this regard. This is in line with India's Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA). This needs to be implemented effectively for below poverty line families across all regions of Nepal.
- Financial safety nets in the form of crop insurance, relief and compensation to farmers: Farmers should be protected by making provisions of appropriate safety nets like crop insurance etc in the event of their crop losses. Nepal formally announced Crops and Livestock Insurance program from January 2013 after issuance of "Crop and Livestock/Poultry Insurance Directive 2013". Non-insurance organization used to provide insurance service occasionally for Livestock and Crop in limited areas up to 2012. Nepal government provide 75% of premium subsidy to farmers but still small and marginal farmers find it difficult to afford the premium, therefore premium to be paid by farmer should be made affordable for farmers. The crop insurance coverage should be increased to larger number of crops in such a manner so that it does not discourage crop diversification and biodiversity or new cropping practices.
- Procedures related to crop insurance, especially claim process should be made easy and farmer friendly and should be able to adequately compensate the losses suffered by farmers. A robust system should be built for correct assessment of crop losses and any moral hazards should be prevented. Usage of innovative technologies like remote sensing, GPS enabled mobile phone, drones, digitization of land records etc might also be promoted. An effective grievance redress system should be made for addressing farmers concerns. A proper monitoring of the actual implementation of the scheme and periodical review of scheme is must for the effective implementation of the scheme. Issues related to lack of reinsurance, public awareness, and presence of adequate technical labour, infrastructural issues, availability of information related to input cost of crops should be addressed to make the crop insurance popular and effective in Nepal. In addition to crop insurance support, the government should also provide other supports and adequate relief to farmers in the event of crop loss due to various reasons including natural calamities.
- Market support and linkages: As of now farmers, especially small and marginal farmers do not have appropriate market access and linkages. There are policies like Agribusiness promotion Policy (2006), which promotes the market linkages for farmers. In addition to this, there are specific provisions made for providing market related support to farmers under ADS (2015-2035) under "Profitable Commercialization" theme. However, actual implementation and effectiveness of these policies is a serious concern. Small and marginal farmer's accessibility to market requires special attention. Farmers should be informed about market related updates like crop prices in different regional markets etc. For this purpose, Apps can be developed for farmers and regular usable information can be provided to them on their mobile phones. A reliable toll free helpline can also be provided to farmers to give them the opportunity to interact with agriculture experts, market experts etc.

- Promotion of agro-ecological and other sustainable farming practices and less dependency on market for farming inputs: Currently the focus seems to be on increasing the agriculture productivity using chemical fertilizers and pesticides etc. Agro-ecological farming practices should be promoted to make the farming climate resistant, less input cost intensive and profitable for small and marginal farmers. Practices like zero budget farming etc should be promoted. Dependency of farmers on market for the farming input like seeds, fertilizers etc should be discouraged, farmers should be motivated to have full control over their farming inputs by using indigenous seeds, and finding organic ways for combating weeds, insects, pests, diseases, nutrient management etc. Intercropping systems, conservation tillage, organic farming, dried and arid organic agricultural technologies and Agroforestry etc should also be promoted.
- Extension services for sustainable agriculture technologies and cropping patterns: Nepal has a well-established organizational structure of agriculture extension services. There are District Agriculture Development Offices (DADOs) and District Livestock Services Offices (DLSOs) in all 75 districts of the country respectively for agriculture and livestock related extension services to the agricultural producers. Currently, a number of projects (HIMALI, RISMFP, HVAP, OVOP, KUBK, UNNATI, MSFP; NCCSP etc.) have been undergone in partnership of Ministry of Agriculture Development, Department of Agriculture, Ministry of Forest and Soil Conservation and other funding partners. The main agenda of such projects is to disseminate the low cost modern agriculture technologies up to the farmers and other stakeholders in the agriculture system. Apart from these programs, many small projects are also implementing in different parts of the country such as indigenous practices, CSO initiatives (RtF, RFSGP, Hariyo Ban Project, CARITAS Project, CBNRM, ICCA, Climate change and Rural Institutions, LIFT, ICIMOD, LIBIRD etc. However, despite not all these provisions farmers are able to get the required support from government. Inadequate technical expertise of professionals and low literacy of farmers; Blanket recommendation (one size fits all) of technologies, and lack of need based technology generation and transfer; Minimum budget flow to the disadvantaged groups/ farmers have been identified as some of the major concerns in extension services run by government for farmers. Establishment of community Agricultural Extension Service Centres in each village should be promoted and capacity of existing agricultural service centres has to be strengthened.
- Credit support to small and medium farmers: In general, there is no easy access to agricultural credit in Nepal. Nepal government through Rashtria Banijya Bank etc provides institutional credit to grower farmers etc. However, current provisions made by the government are hugely insufficient and highly inadequate. To fill the credit gap, farmers raise their own group welfare funds and mobilize credit for agricultural and social purposes. Such kind of farmer groups and saving and credit cooperatives should be promoted and supported by government. Small and medium farmers should be given special support in this regard.

### **11.7 Resilience Building (CCA and DRR)**

Recommendations for climate change adaptability and building resilience in general: People who are socially, economically, culturally, politically, institutionally or otherwise marginalised are especially vulnerable to climate change. Nepal should try to eliminate this marginalisation. Reducing poverty can go a long way in reducing marginalisation and building resilience to climate change. Reducing poverty in the changing climate will mean doing development better and faster. This will also mean mainstreaming climate change responses into existing policies, processes, programmes and institutions. Following steps are crucial in this regard, which need comprehensive actions by different departments/ministries of Nepal government:

- Internalise the serious risk posed by climate change

- Prioritise the needs of poor as part of climate change adaptation
- Promote effective decentralization
- Mainstream responses to climate variability and impacts
- Promote and disseminate research and best adaptation practices
- Strengthen social safety nets

Specific weather based agro-advisories to farmers: Nepal has to make a robust early warning system and adopt early warning information system for managing climate change risks in agriculture and food and nutrition security. A typical Agromet Advisory with focus on following things can enables farmers to reap benefits of benevolent weather and minimize or mitigate the impacts of adverse weather:

- Provision should be made to generate area specific weather forecast like rainfall, cloudiness, temperature, wind speed and direction, humidity and forewarning of hazardous weather events (hailstorm, heat/cold waves, drought and flood etc), which are likely to cause stress on standing crop and suggestions to protect the crop from them.
- Weather forecast based information on soil moisture status and guidance for application of irrigation, fertilizer and herbicides etc.
- Advisories on dates of sowing/planting and suitability of carrying out intercultural operations covering the entire crop spectrum from pre-sowing to post harvest to guide farmer in his day-to-day cultural operations.
- Weather forecast based forewarning system for major pests and diseases of principal crops and advises on plant protection measures.
- Propagation of techniques for manipulation of crop's microclimate e.g. shading, mulching, other surface modification, shelterbelt, frost protection etc. to protect crops under stressed conditions.
- Reducing contribution of agricultural production system to global warming and environment degradation through judicious management of land, water and farm inputs, particularly pesticides, herbicides and fertilizers.

### **11.8 Advisory for livestock on health, shelter and nutrition**

An effective mechanism for on-time dissemination of these agro-met advisory services to farmers should be in place. Further, agro-advisories issued to farmers should be in such a form and language, which can be understood by farmers and can be used effectively to take timely decision to protect their crops against any adverse weather conditions. Promotion of climate resistant indigenous seed varieties: Nepal has to conduct research on stress tolerant varieties and breeds of crops, livestock and fish for the development of climate resilient agriculture that are at the same time higher in yield. Experiences in India shows that generally indigenous seed varieties are more climate resistant than hybrid seed varieties available in the market. Such indigenous crop varieties which are heat resistant, drought resistant and flood resistant need to be identified and promoted by the government through community engagements. There are some ecological farming practices in India and across south Asia, which claims to get more yield using indigenous seed varieties, these are more climate resistant and require less input e.g. Subhash Palekar zero budget natural farming method.

Building resilience in soil: Focus should be on building resilience in soil by building farmer's knowledge, skills and capacities on sustainable soil management practices. We have to adopt sustainable soil management practices that increase agricultural productivity and do not degrade the soil. This will reduce the vulnerability of farmers in changing climate. Soil and Watershed Conservation Act, 2039 of Nepal need to be utilised effectively. Appropriate soil conservation measures should be taken in the event of natural disasters. Building safety net for communities: Relief and crop insurance for extreme weather events have to follow the recommendations similar to the ones needed for financial safety nets

in the form of crop insurance, relief and compensation to farmers, as elaborated upon in the previous part of this report.

Disaster relief and rehabilitation: Mainstreaming DRR in sectoral development, effective implementation of disaster risk reduction, relief and rehabilitation policies, implementation of land use and settlement planning, changing mindset of the people, development and strengthening of effective institutions on DRR are some pressing issues in disaster management of Nepal, which need to be taken care on urgent basis. Further adaptation to drought resulting from reduced winter rainfall, and floods and landslides resulting from erratic summer rainfall need to be addressed through sustainable water management practices and other appropriate measures suited to particular regions. More effort should be made to emphasise a decentralised implementation approach that meets local needs by involving community at every stage. Adequate resources, commitment, cooperation and collaboration are required to achieve the desired result by effectively implementing these policies and programme.

### **11.9 Natural Resource Management**

- Climate change adaptation in forests require the managers of these natural resources, who often are communities, to be aware of climate change effects and an understanding of the long term nature of degradation of forest. All the related management programmes need to be planned and implemented on urgent basis to safeguard resources that if lost are difficult if not impossible to restore, as recognized by the NAPA of Nepal.
- Climate change adaptation should focus on sustainable forest management, improved governance and capacity at the local level and supporting the adaptation priorities of the most vulnerable through improved access and equitable benefit sharing, as recognized by the NAPA of Nepal.
- Instead of monocultures and plantations of exotic species on forestlands, Nepal must promote regeneration of native species and especially those native species, which have products of significant food values such as tubers, fruits, vegetables, bamboo shoots, edible ferns etc.
- The governments should document the indigenous knowledge of the local forest dependent communities and prepare biodiversity registers describing forest plant species with food values, their silvicultural requirements, nutritional values and Ethno-botany. Such plant and tree species should be conserved and promoted for use by indigenous communities.
- In addition to enhancing availability of food from forests, forest-livestock-farm interconnected systems and their linkages should be strengthened by incentivizing cultivation of species with better CC resilience and food productivity.
- Modern food processing of forest/farm foods and value addition should be promoted to prolong life of food articles as well as enhancing incomes (which will further enhance CC resilience) to local communities through these products.

## ENDNOTES AND REFERENCES

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- <sup>xii</sup>(ibid)
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- <sup>xiv</sup>Ibid., pg 14
- <sup>xv</sup> For example, in Colombia, the constitution recognises that children have the Right to Food (Article 44) (Knuth & Vidar, 2011, p. 16)
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- <sup>xvii</sup>(The Constitution of Nepal 2015, Pg 27)
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- <sup>xxiii</sup>Note: for the purposes of this Report, the date of authentication of all the laws are according to the Roman calendar year, with the date of the Nepalese Calendar mentioned in parenthesis.
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- <sup>xxv</sup>(Essential Commodities Control (Authorization) Act,1961 (2017) 1961)
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- <sup>xxviii</sup>(Nepal Water Supply Corporation Act, 1989 (2046) 1989)
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- <sup>xxxvii</sup>(Bajuddin Minhya and Others v GoN, Prime Minister and the Council of Ministers, (destruction of crops by wild animals from Koshi Tappu Wildlife Reserve) 2009)
- <sup>xxxviii</sup>(Chapagai 2014, 102)
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- <sup>xl</sup>(Chapagai 2014, 104)
- <sup>xli</sup>(Court Prakash Mani Sharma and Others v. Prime Minister and Council of Ministers and Others, , decision dated 2064/6/15 (BS).)
- <sup>xlii</sup>(Chapagai 2014)
- <sup>xliii</sup>Ibid 105
- <sup>xliiv</sup>( Raju Prasad Chapagai and Others representing Pro-Public v. HMG, Ministry of Health et al., . 5 November 2004)
- <sup>xliv</sup>(Chapagai 2014)
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<sup>xlix</sup> Article 18 (3) identifies them – “ women, Dalit, indigenous people, indigenous nationalities, Madhesi, Tharu, Muslim, oppressed class, Pichhadaclass, minorities, the marginalized, farmers, labours, youths, children, senior citizens, gender and sexual minorities, persons with disabilities, persons in pregnancy, incapacitated or helpless, backward region and indigent Khas Arya” (The Constitution of Nepal 2015)

<sup>l</sup> . Explanation: For the purposes of this Part and Part 4, "indigent" means a person who earns income less than that specified by the Federal law

<sup>li</sup> (Jha 2015)

<sup>lii</sup> (Chapagai, 2014)

<sup>liiii</sup> (Chapagai 2014)

<sup>liv</sup> (The Constitution of Nepal 2015, 22)

<sup>lv</sup> Ibid, 24

<sup>lvi</sup> (Chapagai 2014)

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<sup>lix</sup> (UN 2013)

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<sup>lxi</sup> (Chapagai 2014, 117)

<sup>lxii</sup> (Chapagai 2014, 14)

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<sup>lxiv</sup> (Chapagai 2014, 12)

<sup>lxv</sup> (Parulkar and Mander 2015, 19)

<sup>lxvi</sup> Ibid.

<sup>lxvii</sup> (GAFSP 2013, 8)

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<sup>xcvii</sup> (FIAN 2014)

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<sup>xcix</sup> (Ahmad 1991, 117)

<sup>c</sup> (Assessment of Social Security Allowance Program in Nepal 2012)

- <sup>ci</sup> Ibid.
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