



RIGHT TO FOOD IN NEPAL

ANALYSIS OF THE RIGHT TO FOOD AND FOOD SOVEREIGNTY ACT
2018

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First published in 2019
by Amnesty International Ltd
Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Index: ASA 31/0130/2019
Original language: English
amnesty.org



Cover photo: Birgunj, Nepal - February 17, 2013: A woman in a blue sari is processing mustard seeds in a village near Birgunj.
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1. INTRODUCTION

Amnesty International welcomes the Right to Food and Food Sovereignty Act, 2018 which has been enacted to implement Article 36 of the Constitution of Nepal (2015) that guarantees “rights relating to food”. With the endorsement by the President of Nepal, the Act came into force from 18 September 2018.

Nepal is a country where the national household food security is only 48.2%¹, 21.6% of its population live in poverty, nearly 41% of the population does not have access to minimum calorie intake and almost two million people are considered undernourished. Stunting amongst children under five is 36% and about 53% of children under five are anaemic (6% mildly, 26% moderately, and 1% severely).² The Government of Nepal has promised to come out of the stated problems of hunger, malnutrition and food insecurity.³

Amnesty International recognizes that the true enjoyment of the constitutional guarantees, including under Article 36, lies in a robust legislative framework and an effective implementation of that framework. In view of the constitutional framework on the right to food and Nepal’s international legal obligations including under the International Covenant on Economic, Social and Cultural Rights (ICESCR), Amnesty International has assessed the Right to Food and Food Sovereignty Act and offers the following comments and recommendations to assist the Government of Nepal in its efforts towards strengthening the legal framework and prompting the implementation of affirmative provisions that the Act contains.

Amnesty International’s comments also draw on the outcome of an initiative by civil society organizations in Nepal to identify strengths and weaknesses of the Act and strategize civil society engagement for prompt implementation of the affirmative provisions.⁴

Amnesty International calls on the Government of Nepal to address a number of substantive issues in the Act (for example, definition, accountability for starvation-related human rights violations, an inclusion of an implementing mechanism) in order to ensure the full realization of the right to adequate food by all, including groups who are marginalized and vulnerable to violations of the right to food.

1 See, Ministry of Agriculture, Land Management and Cooperatives, Status Report on Food and Nutrition, 2018. Available at: http://moad.gov.np/public/uploads/1749913226-St%20Rep_%20Food%20and%20Nutrition%20Secu.pdf

2 See, Government of Nepal, National Planning Commission, Towards Zero Hunger in Nepal: A Strategic Review of Food Security and Nutrition, 2018. Available at: <https://reliefweb.int/report/nepal/towards-zero-hunger-nepal-strategic-review-food-security-and-nutrition-2018>

3 For example, Nepal’s commitment to the Sustainable Development Goals (for example, Goal 2: end hunger, achieve food security, improved nutrition and promote sustainable agriculture).

4 On 11 December 2018, a group of civil society organizations submitted a memorandum containing their concerns and suggestions on recently enacted laws (Right to Food and Food Sovereignty Act, Right to Housing Act and Land (Seventh Amendment) Act) to the Minister for Law, Justice and Parliamentary Affairs, Honourable Baburam Dhakal, following an Interactive Workshop dated 1 November 2018 and an Expert Review Workshop on “Fundamental Rights Implementation Laws” dated 12-13 October 2018 jointly organized by Justice and Rights Institute (JuRI-Nepal), Community Self-Reliance Centre (CSRC), National Network on ESCR and Right to Food Network-Nepal.

2. APPLICABLE INTERNATIONAL HUMAN RIGHTS STANDARDS

Nepal has committed itself to respect, protect and fulfil a wide range of human rights by ratifying most of the core international human rights treaties including the ICESCR.

According to Article 11.1 of the ICESCR, “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

Further, Article 11.2 lays down, “The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

The Committee on Economic, Social and Cultural Rights (CESCR) has clarified the normative elements of the right to adequate food and the corresponding state obligations.⁵

To comply with obligations related to the right to adequate food, states must immediately tackle hunger and progressively ensure that “every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement”.⁶

Obligations to realize the right to food require the state to ensure:

- Availability: possibilities either for feeding oneself directly from productive land or other natural resources, or from well-functioning distribution, processing and market systems. This includes obligations of the state when acting internationally to ensure respect for the

⁵ CESCR, General Comment 12, The Right to adequate food, UN Doc. E/C.12/1999/5. Other relevant General Comments include General Comment 15 on The Right to water, UN Doc. E/C.12/2002/11.

⁶ CESCR General Comment 12, The Right to adequate food, para. 6

right to food in other countries, to protect that right, to facilitate access to food, and to provide the necessary aid when required.⁷

- Accessibility: both economic accessibility (through economic activity, appropriate subsidies or aid) and physical accessibility (in particular for vulnerable groups). People who are socially vulnerable or otherwise disadvantaged may need attention through special programmes. They include victims of natural disasters and people living in disaster-prone areas.
- Acceptability: “The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.”⁸

Nepal as a state party is thus required to respect, protect and fulfil the right to adequate food: a) by refraining from taking measures that prevent access to adequate food; b) by ensuring that the third (non-state) parties do not deprive people of their access to adequate food; and c) by taking proactive steps to facilitate access to food, strengthen food security and provide minimum essential foods to those who are not in a position to feed themselves due to emergencies and other situations.⁹

As emphasized by the CESCR, some core minimum elements¹⁰ (for example, freedom from hunger, guarantee of non-discrimination, access to safe drinking water)¹¹ of the right must be regarded as seeking immediate effect. Even where the available resources are demonstrably inadequate, the obligation remains for a state party to strive to ensure the widest possible enjoyment of the core minimum elements of the right.¹²

The right to adequate food is also a part of other binding treaties ratified by Nepal. The right to life guaranteed under Article 6 of the International Covenant on Civil and Political Rights (ICCPR) has been interpreted by the UN Human Rights Committee as requiring the state parties to take positive steps “to reduce infant mortality and to increase life expectancy especially by adopting measures to eliminate malnutrition and epidemics”.¹³

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) establishes the right of women to adequate nutrition during pregnancy and lactation¹⁴ and the right of rural women to have “access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes”.¹⁵

The Convention on Rights of the Child (CRC) recognizes the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development¹⁶ and obligates the state party to combat disease and malnutrition including through “the provision of adequate nutritious foods and clean drinking-water”.¹⁷

Similarly, International Labour Organization (ILO) Convention No. 169 contains a number of provisions supportive for ensuring that Indigenous peoples fully enjoy their right to food. Relevant articles include: Article 2 (full realization of social and economic rights of Indigenous and tribal

7 CESCR General Comment 12, para. 36

8 CESCR General Comment 12, para. 8

9 CESCR General Comment 12, para. 15

10 CESCR General Comment 12, para 14 and 17. According to the CESCR, the notion of the “minimum core” of fundamental rights expresses the idea that the state must give priority to the most urgent needs of individuals.

11 CESCR, General Comment 15, The Right to water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), para. 37.f

12 CESCR, General Comment 3, The Nature of states parties’ obligations (Fifth session, 1990), UN Doc. E/1991/23

13 Human Rights Committee, General Comment 6 on The Right to life, para. 5

14 Article 12

15 Article 14(2)

16 Article 27(1)

17 Article 24(2)(c) reads: “To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”.

peoples with respect to their social and cultural identity, their customs and traditions, and their institutions), Articles 2 and 6 (participation and consultation), Article 7 (right to determine priorities and exercise control over economic, social and cultural development), Article 15 (right to control of resources), Articles 13 to 17 (protection of Indigenous peoples' right to land) and Article 24 (social security). The right to food is also protected under international humanitarian law.¹⁸

As a member of the UN Food and Agriculture Organization (FAO), Nepal has agreed to adoption of the FAO's Voluntary guidelines to support the progressive realization of the right to food in the context of national food security.¹⁹

18 The 1949 Geneva Conventions and the Related Protocols, applicable to Nepal, prohibit the starvation of civilians as a means of combat and the destruction of objects indispensable for the civilian population, such as foodstuffs, agricultural areas for food production, crops, and livestock, drinking water installations, drinking water supplies and irrigation works. See, Article 54 of the Protocol Additional to the Geneva Conventions Relating to International Armed Conflicts, and Articles 69 and 70 of the Protocol Additional to the Geneva Conventions Relating to Non-International Armed Conflicts.

19 The Voluntary Guidelines, Available at: www.fao.org/3/a-y7937e.pdf

3. CONSTITUTIONAL PROMISES

The Interim Constitution of Nepal, 2007 had introduced the right to food sovereignty as a fundamental right: “every citizen shall have the right to food sovereignty as provided for in the law.”²⁰ However, this could not be operationalized due to the failure of the government at the time to enact necessary legislation.

The Constitution of Nepal (2015) not only inherits the right to food sovereignty from the Interim Constitution but also protects the right to food and freedom from hunger more comprehensively. Guarantees under Article 36 of the 2015 Constitution include: (1) Every citizen shall have the right to food; (2) Every citizen shall have the right to be protected 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. As part of the right to health care, Article 35(4) guarantees the right to have access to clean drinking water and sanitation, which is recognized as essential to the realization of all human rights including the right to food.²¹

There are other fundamental guarantees impacting the right to adequate food. The fundamental right to live with dignity²² is of particular importance given that the Supreme Court of Nepal has recognized the connection between the right to food and the right to live with dignity in a number of cases.²³ In order to enable a number of groups including women, Dalits, Madhesi, Indigenous peoples including Tharu and farmers to live a life with dignity on an equitable basis, the equality clause under Article 18 of the Constitution requires the state to make special arrangement by legislation.²⁴

As an essential element of social justice, Article 42 of the Constitution has recognized that the indigent citizens and the “communities on the verge of extinction” have the right to get “special opportunities and benefits” including in the context of food. It also states that every peasant has the right to have access to lands for agricultural activities. The right to “select and protect local seeds and agro species which have been used and pursued traditionally” is also protected. As a separate guarantee for women, Article 38(2) provides for “the right to safe motherhood and reproductive health” for every woman. Article 39 on the rights of children guarantees the right to “special protection and facilities from the state”²⁵ to children who are orphaned, children with

20 Article 18

21 UN General Assembly, Resolution A/RES/64/292; CESCR, General Comment 15, The Right to water

22 Constitution of Nepal, Article 16(1).

23 For example, recognizing the link between the right to live with dignity and the right to food sovereignty the Supreme Court in Prakash Mani Sharma and other for Pro Public v. Government of Nepal (Writ No. 2065-w0-149) stated that the no one can live without food and unless the scarcity of food is addressed immediately, irreparable loss is eminent, and the later the remedy the more it will be like availing the doctor after death of the patient. For details, see, UN FAO, Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal, 2014, pp. 99-108, www.fao.org/right-to-food/resources/resources-detail/en/c/253864/

24 Proviso of Article 18(3)

25 Article 39(9), Constitution of Nepal, 2015

disabilities, child victims of conflict, children who have been displaced and children who are particularly victims of human rights violations. Under Article 41, senior citizens are accorded with the right to special protection and social security.

A significant number of commitments have also been made under the Directive Principles (Article 50 and 51) and the policies of the state. Many of them have a direct link to the right to food and food sovereignty.²⁶

26 To build an exploitation-free society by abolishing economic inequality through equitable distribution of the gains; to guarantee the overall human security system; to make scientific land reforms having regard to the interest of farmers; to enhance agricultural product and productivity while protecting and promoting the rights and interests of the farmers; to provide farmers with access to agricultural inputs, agro-products at fair price and market; to develop reliable and sustainable irrigation; to increase average life expectancy by reducing maternal and infant mortality rate; to provide 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 agriculture; and to ensure planned supply system by according special priority to the remote and backward regions, while ensuring equal access of all citizens to basic goods and services.

4. COMMENTS ON THE ACT

The Right to Food and Food Sovereignty Act (hereinafter “the Act”) in Nepal is a comprehensive piece of legislation covering the right to food and food sovereignty. The Act contains a number of affirmative provisions aimed at creating a conducive environment for enjoyment of the right to adequate food and thereby seeking to achieve the Sustainable Development Goals (for example, Goal 2: end hunger, achieve food security, improved nutrition and promote sustainable agriculture) committed to by Nepal.

Some of the key positive aspects of the Act that civil society groups in Nepal have also recognized mostly relate to the identification of food-insecure households (Section 5 and 6); distribution of food to priority households (Section 7); protection of farmers’ rights (Section 12 to 19); requirement to create a food plan (Section 20); creation of a public food supply and distribution system (Section 25 to 30); and criminalization of certain elements impairing access to minimum essential foods (Section 39).

Amnesty International encourages the Government of Nepal to take immediate measures including raising awareness on the provisions of the Act and prompt enactment of necessary rules and regulations in consultation with stakeholders (for example, communities vulnerable to right to food violations, civil society organizations including those that represent groups that are at risk of right to food violations, national human rights institutions and concerned entities of the provincial and local governments) so as to pave the way for effective implementation of these provisions.

At the same time, Amnesty International echoes the concerns raised by civil society organizations in relation to certain aspects of the Act that require further strengthening and clarity, either through amendment or judicial interpretation. In the context of the above-mentioned constitutional promises and the international legal obligations, the following are the key comments and concerns of Amnesty International in relation to the Act.

4.1. SCOPE OF LEGAL PROTECTION

It is noticeable that the preamble and Section 3 of the Act have narrowed the scope of the legal protection to citizens. In the context of the right to food, international law does not allow a margin of discretion to make distinctions between nationals and non-nationals.²⁷ As articulated by the CESCR, that freedom from hunger is part of the minimum core and should therefore not be

²⁷ Statement by the CESCR, Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/2017/1, paras 8 and 9

restricted on the basis of nationality or legal status, Amnesty International calls on the Government of Nepal to amend the scope of the Act to ensure that all persons within its jurisdiction have access to the core minimum content of the right to food.

Recommendation:

- *Expand the scope of the legal protection to non-citizens as well especially in the context of ensuring the core minimum elements of the right to adequate food.*

4.2. DEFINITION OF TERMS

Clear and appropriate definitions of the terms used in the Act are key to guarantee its uniform application and effective implementation. Amnesty International believes that some of the definitions do not correspond to internationally accepted definitions and some of the key terms used in the Act are not defined.

Section 2(b) defines “peasant” to include “those who maintain their livelihood based on agriculture, agricultural labourers who spend 6 months annually in the agricultural sector or an individual who manufactures traditional agricultural tools and the family members dependent on them.” The requirement for spending six months annually engaged in agriculture is problematic as this may not be the case for those who do not have access to land for cultivation. For instance, those peasants who do not have access to land often work as farm labourers in crop plantation and harvesting seasons, and at other times may be engaged in construction work. As per the current definition, such labourers would be at risk of being excluded from the protections available to peasants under the Act.

Amnesty International therefore calls for the amendment of the definition of “peasant” in line with international standards. The definition of “peasant” can therefore be strengthened by including the following: “A person engaging alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market” and “special dependency on and attachment to the land” as recognized internationally.²⁸

Though it includes a separate definition of the right to food sovereignty and food security, the Act does not incorporate any stand-alone definition of the right to food.²⁹ The Act does not contain definitions of other important terms such as “hunger”,³⁰ “starvation”,³¹ “malnutrition”,³² and

28 As defined by Article 1 of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas adopted by the UN General Assembly on 18 December 2018, “peasant” is “any person who engages or who seeks to engage alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetized ways of organizing labour, and who has a special dependency on and attachment to the land.” See, <http://undocs.org/en/A/C.3/73/L.30>

29 As defined by the CESCR, “The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement” (General Comment 12, para. 6). As defined by the Special Rapporteur, the right to food is understood as “the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.” See, Report of the Special Rapporteur on the right to food, Jean Ziegler, UN Doc. A/HRC/7/5, para. 17.

30 No internationally recognized legal definition of hunger exists. However, it is today widely accepted that it goes beyond a minimum calorific package sufficient to prevent death by starvation. The concept of hunger is commonly used for situations of serious food deprivation as well as for different forms of undernutrition, including a shortfall in access to sufficient food or in essential components of nutritionally necessary food making an impact on the normal physical or mental capacity of the person, or group of persons. See, FAO, Glossary on right to food, www.fao.org/right-to-food/resources/glossary/en/

31 The term “starvation” refers to the most extreme form of hunger; death by starvation is the end result of a chronic, long-lasting and severe period of hunger; it is ultimate evidence of protracted right to food violation. See, FAO, Glossary on right to food, www.fao.org/right-to-food/resources/glossary/en/

32 Definition: Malnutrition essentially means “bad nourishment”. It encompasses overnutrition as well as undernutrition. It concerns not only the quantity and quality of food (not having enough food, having too much food or the wrong types of

“vulnerability”,³³ which have been used in the Act. As stated above, the absence of definitions of “hunger” and “vulnerability” would complicate the process of determining what the right to be free from hunger would entail and what should be the basis for identifying those vulnerable to hunger under Section 3 of the Act.

Recommendation:

- *Define the right to food as well as other key terms including peasant, hunger, starvation, malnutrition and vulnerability in line with internationally recognized definitions.*

4.3. STATUTORY GUARANTEES

Unpacking Article 36 of the Constitution, Section 3 of the Act codifies a number of guarantees and declares that all three tiers of government are obligated to respect, protect and fulfil such guarantees. The guarantees enumerated under this Article, among other things, include:

the access to adequate, nutritious and quality food without discrimination; the right to be free from hunger and to remain safe from a situation where life is threatened due to lack of food; and the right of the individuals or families vulnerable to hunger or food insecurity to have sustainable access to food and nutritional support, access to cultivable land by a peasant, and protection against forceful eviction of a peasant from agricultural occupation.

On a positive note, the Act incorporates a commitment to expand access to cultivable land for women peasants and landless households³⁴ and protection against forced eviction from agricultural land.³⁵

However, the Act does not clarify what forms of access (for example, use rights, control rights and transfer rights)³⁶ to cultivable land will be provided by the state, and how such access would be operationalized in the context of peasants and landless agricultural workers. There is also an absence of any statutory guidance to prioritize access to cultivable land for peasants belonging to Dalit or other marginalized groups and land-dependent Indigenous peoples including Tharu.

The “respect” and “protect” elements of state obligations have not been adequately reflected under Section 3. This could have been done by prohibiting public authorities from interfering with peoples’ efforts to feed themselves and their families (for example, imposing arbitrary restriction on gathering foods and medicines, restriction on cultivating unused public land that is appropriate for agricultural purpose) and requiring them to adopt necessary measures to protect individuals or groups of people from conduct that would threaten peoples’ access to food and their food security by third-party actors such as corporations.

Recommendation:

food), but also the body’s response to a wide range of infections that result in malabsorption of nutrients or the inability to use nutrients properly to maintain health. People are malnourished if they are unable to utilize fully the food they eat, for example due to diarrhoea or other illnesses (secondary malnutrition); if they consume too many calories (overnutrition); or if their diet does not provide adequate calories and protein for growth and maintenance (undernutrition or protein-energy malnutrition). Malnutrition in all its forms increases the risk of disease and early death. See, FAO, Glossary on right to food, www.fao.org/right-to-food/resources/glossary/en/

33 Vulnerability is understood as probability of diminished or no access to minimum food needs due to environmental, economic or social risks

34 Section 12(1)(i)

35 Section 3(3)(k)

36 As elaborated by FAO, access to land is generally understood as use rights (the right to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc); control rights (the right to make decisions on how the land should be used and to benefit financially from the sale of crops, etc); and transfer rights (the right to sell or mortgage the land, to convey the land to others through intra-community reallocations or to heirs, and to reallocate use and control rights). See, FAO, “What is access to land?”, www.fao.org/docrep/005/Y4308E/y4308e04.htm

- *Insert an explicit provision to clarify nature and forms of access to cultivable land (use rights, control rights, transfer rights, tenancies and communal holdings).*
- *Prioritize providing access to cultivable land to peasants and women peasants from Dalit communities and land-dependent Indigenous peoples such as Tharu.*
- *Insert a provision prohibiting public authorities from interfering with peoples' efforts to feed themselves (for example, gathering of foods and medicines from forest, cultivating unused public land that is appropriate for agricultural purpose, traditional fishing and honey hunting) and their families and require them to adopt necessary measures that will protect people from abuses of the right to food by third parties.*

4.4. PREVENTION OF STARVATION

It is noteworthy that Section 4 of the Act provides for prevention and control of starvation. The Act obligates the authorities to identify and keep, on regular basis, a record of those found at the risk of starvation. In order to cope with the situation of starvation, the authorities are obligated to keep a stock of food and establish food distribution systems. However, the Act does not specify the actions that need to be taken by the government to protect persons, households, groups or communities living in starvation or at risk of starvation. In addition to stocking of food and establishing a food distribution system, the Act should have stipulate concrete measures (for example, meals two times a day, free of charge) that need to be adopted in order to immediately protect such persons from starvation.

Amnesty International highlights that the notion of “controlling starvation” incorporated in the Act is flawed as the state has an absolute duty to prevent starvation and thereby guarantee freedom from hunger.³⁷

The Act fails to provide for an inquiry into deaths resulting from the starvation with the aim to hold those authorities responsible for preventing starvation to account. In line with the Supreme Court of Nepal’s jurisprudence,³⁸ the state must take a responsibility for each death that occurred due to starvation, and therefore the Act should have included an explicit accountability provision.

Recommendation:

- *Insert a provision to immediately provide food and nutritional support (for example, meals two times a day, free of charge) to protect those found starving or at the risk of starvation.*
- *Amend Section 4 to require an inquiry into any deaths resulting from starvation and to guarantee accountability (criminal as well as non-criminal) against breach of duty to prevent starvation.*

4.5. FOOD ASSISTANCE TO PRIORITY HOUSEHOLDS

Section 5 of the Act obligates the Government of Nepal to identify households vulnerable to food insecurity “caused by rural or urban poverty, geographical remoteness, calamities or any other reasons”. As provided under Section 7, food assistance is to be provided at a subsidized price to priority households, and “free of cost food assistance” is to be provided to the households belonging to special categories.

37 ICESCR, Article 11 and CESCR General Comment 12

38 Prakash Mani Sharma for Pro Public v. Government of Nepal (Writ No. 2065-w0-149)

However, the Act fails to provide a clear set of criteria for identification of such households eligible for the “free of cost assistance”. It also does not clarify the form and amount of food to be provided as assistance. Although it says that the respective local government will be in charge of distribution, the responsibility of each level of the government in terms of providing such assistance is also absent in the Act.

Section 7(2) creates an ambiguity by making the distribution of the food assistance subject to emergency situation. Even if no food emergency is declared due to any disaster, there may be food insecurity situations where an individual, household or community need to be supported with food and nutrition. The Supreme Court of Nepal has already established that there is a duty of the government to feed and shelter individuals who are destitute.³⁹

The definition of emergencies under Section 9(1) and Section 10(1) also remains problematic as it confines food-related emergency to calamities such as earthquakes, floods, landslides, snowfall, cold waves or fires. The Act is silent about human-created emergencies such as those created from forced evictions, extreme and sudden price rises, a corruption in and disruption of food distributions systems, etc.

The Act also fails to streamline several pre-existing schemes in terms of food and nutritional support. Many such schemes mostly include provision of a midday meal,⁴⁰ subsidized supply of food⁴¹ and Golden 1,000 Days nutrition programme.⁴²

Recommendation:

- *Insert a clear set of criteria for identification of households eligible for the “free of cost food assistance”.*
- *Provide clear legislative guidance on forms and amounts of the food assistance provided to the priority households.*
- *Insert a provision requiring the authorities to provide food assistance to those facing food-insecure situations leading to hunger or starvation irrespective of the reasons.*
- *Redefine the food-related emergency situations to include human-created situations.*
- *Bring a number of pre-existing food assistance schemes under the umbrella of the Act and harmonize them with the provisions of the Act.*

4.6. WOMEN’S EMPOWERMENT

The Act contains a number of provisions towards empowering women in terms of access to food, which is a welcome inclusion. For example, the Act provides for issuance the “priority household identity card” to the adult female member of the household except in the absence of such a female member in the household. However, the Act fails to provide for other measures including direct nutritional support to pregnant and lactating women. While operating the food distribution system, priority must be given to women’s groups or agricultural co-operatives to run Fair Price Shops or public food distribution centres. However, the Act does not provide any legislative guidance for mainstreaming gender in terms of designing and implementing any strategy and programmes under this Act.

Recommendation:

39 Raju Prasad Chapagai for JuRI-Nepal v. Government of Nepal, Writ Petition no 071-wo-0257, Decision: 8 June 2016

40 This aims at attracting students to school education and discourage dropout

41 This aims at supplying foodstuffs to the food-insecure districts

42 This aims at addressing maternal and child mortality through improved health and nutrition of pregnant and lactating women as well as infants

- *Insert provisions towards providing direct nutritional support to pregnant and lactating women.*
- *Insert a provision for prioritizing gender and social inclusion as one of the overarching principles in taking a decision, designing and implementing any programme or creating any mechanism under this Act.*

4.7. PEASANTS' RIGHTS

Section 12 and 13 of the Act provide for the protection of agricultural occupations and the promotion of livelihoods of peasants. The Act stipulates a significant number of measures for enhancing the living standards and dignity of peasants. Many such measures include enhancing access to agricultural markets; access to measures required for organic farming; providing protection from the adverse effect of genetically modified organism (GMO); developing early-warning system on drought; promoting sustainable agricultural systems; expanding access for female peasant and landless households dependent on agriculture to cultivable land and agricultural inputs, and making arrangements to provide compensation to peasants against loss of agricultural production as specified under the regulation.

The Act also provides for identification and classification of a peasant. The local government is mandated to issue an identity card. The Act itself does not classify peasants but empowers the Government of Nepal to classify them for subsidy, concessions and assistance. However, the Act does not provide any guidance for giving priority to smallholders, female peasants, ex-bonded labourers in terms of providing subsidies, concessions and assistance. The lack of support for such groups has, in some cases, forced ex-Kamaiyas and ex-Kamalaris back into bonded labour-like situations.

The Act obligates the central, provincial and local governments to develop and implement targeted agricultural development programmes for the protection and well-being of Dalits, and Indigenous peoples that are on “the verge of extinction”. However, there is no specific requirement to ensure their informed participation in terms of development and implementation of such programmes. Furthermore, the criterion of being “on the verge of extinction” in order to qualify for such targeted programmes sets the bar too high. It is noteworthy that such participation is an integral element of food sovereignty that has been recognized in the Act.

Further, the Act does not contain specific provisions to address the problems (for example, restrictive provisions under the laws and regulations relating to forest, national parks and forest reserves and water resources) of hunters, gatherers and other groups of people who extract food from forest and water resources. It should be noted here that Indigenous peoples must not be displaced or excluded from national parks or other protected areas established on their lands, without their free, prior and informed consent, and that this can result in loss of livelihoods and food insecurity.⁴³

Recommendation:

- *Insert a provision to give a priority to smallholders, female peasants, ex-bonded labourers in terms of providing subsidies, concessions, access to resources such as water for irrigation, fertilizers, and other assistance.*

43 UN, Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, UN Doc A/71/229, paras 28, 51. Also, see a BuzzFeed News investigation report that reveals the fact about how Indigenous peoples living in the buffer-zone areas in Chitwan were deprived of their human rights, www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death

- *Amend the Act to require the development and implementation of targeted agricultural development programmes for the protection and well-being of Dalits, and Indigenous peoples, in order to eliminate inequalities in levels of development, well-being and dignity.*
- *Amend the Act to guarantee informed participation of peasants including from marginalized and vulnerable groups in terms of development and implementation of programmes impacting them.*
- *Amend the Act to recognize the rights of hunters, gatherers and other groups of people who extract food from forest and design special programmes to respond to their needs in terms of their right to food and food security.*
- *Include a provision to guarantee the rights of Indigenous peoples to free, prior and informed consent regarding national parks and other protected areas proposed on their lands, and to restitution or compensation in cases where displacement has previously occurred as a result of such initiatives.*

4.8. SUSTAINABLE USE OF CULTIVABLE LAND

Section 15 requires all three levels of government to promote the sustainable cultivation of land by arranging maximum utilization of productive land that has remained barren, by promoting co-operative farming, lease farming, contract farming or collective farming.

However, in terms of according the facilities related to lease farming, co-operative farming, contract farming and collective farming, the Act fails to prioritize the landless, homeless households, Dalits, Indigenous peoples and marginalized households dependent on agriculture.

Amnesty International calls on the government to prioritize the landless, Dalits, Indigenous peoples and women-headed households dependent on agriculture for their livelihood when promoting co-operative, collective and other forms of sustainable use of land.

Recommendation:

- *Insert a provision that prioritizes the landless, homeless households, Dalits, Indigenous peoples and marginalized households including women-headed households dependent on agriculture in terms of facilities provided under Section 14.*

4.9. NATIONAL FOOD PLAN

Amnesty International welcomes provisions in the Act which articulate a planned approach to dealing with right to food and right to food sovereignty issues. Section 21 of the Act requires the government to formulate a national plan on food in consultation with governmental and non-governmental stakeholders including the private sector. The Act also requires that the government's periodic development plans should include the right to food, food and nutritional security, and right to food sovereignty issues.

However, the Act fails to spell out the issues that need to be addressed by the national food plan. Several aspects (for example, prevention of starvation and malnutrition, access to food and nutrition, promotion of agriculture, access of peasants to agricultural inputs, gender and social inclusion in the context of food production system, seed conservation, impact of climate change in agriculture) are critical to the successful formulation and implementation of the plan and should be given priority during its formulation.

The Act also envisions an adoption of a set of indicators for monitoring of the right to food in consultation with the Food Council and the concerned authorities. However, it fails to widen the list of stakeholders to include the NHRC especially since the NHRC has already tried to develop a set of indicators to provide a basis for tracking progress in terms of realization of the right to food.⁴⁴

Recommendation:

- *Provide a list of priority issues that need to be addressed by the national food plan.*
- *Ensure consultation with National Human Rights Institutions (NHRIs), civil society and research institutes in setting or reviewing indicators in terms of tracking the progress towards implementation of the right to food.*

4.10. CO-ORDINATION BETWEEN THREE TIERS OF GOVERNMENT

The Act in many Sections (Section 7, 9, 12, 13, 18 and 30) refers to “mutual coordination” between central, provincial and local government to take a number of measures including in terms of curbing the situation of food insecurity. As a matter of guiding principle, the reference to mutual collaboration and co-ordination between three tiers of government is understandable.⁴⁵ But, when it comes to obligations to tackle the food insecurity situation including through the provision of food assistance, there needs to be a clear-cut statutory provision that sets clear obligations for each level of government.

Recommendation:

- *The Act should be amended to clarify the roles and responsibilities of each tier of government for implementing the Act.*

4.11. RESEARCH AND DEVELOPMENT OF SCIENTIFIC TECHNOLOGY

Section 25 of the Act provides for conducting necessary research and development of scientific technology in the food sector. All three levels of government are empowered to arrange study, research and development of scientific technology for sustainable development of agriculture, growth of food production, or promotion of food and nutrition security. This opens an avenue for collaboration by the government with civil society organizations, academia and other stakeholders.

As the Statutory provision is complete, each level of government can be straightforward in terms of allocating budget, outsourcing or carrying out any study to fulfil the objective of this Act.

Recommendation:

- *While considering research and study under Section 25, priority should be given to assessment of food insecurity situations of landless, ex-Kamaiyas and ex-Kamalaris, Haliyas, Dalits, Indigenous peoples, women, children, people with disabilities, people with HIV, rural and urban poor and the impact of laws and policies on them.*

44 OHCHR-Nepal, NHRC, Indicators for monitoring economic, social and cultural rights in Nepal: A user's guide, <http://nepal.ohchr.org/en/resources/publications/2011/Indicators%20for%20Monitoring%20ESCR%20in%20Nepal-%20A%20User's%20Guide.pdf>

45 The Constitution of Nepal, Article 56

4.12. PRICE STABILITY

It is noticeable that Section 29 of the Act entrusts the Government of Nepal with the responsibility to maintain stability of price for the basic staple foods. This provision deserves to be promptly put into practice in order to ensure access to food at an affordable price. However, the Act does not contain any provision to guide the government on the process/procedures (for example, determination of price, review of price, monitoring with respect to price) of maintaining stability of price. The Act doesn't create a specialized government agency responsible to carry out this function. Also, it does not indicate any role for the provincial and local government in this regard.

Recommendation:

- *Detail the procedures in the forthcoming Regulation under the Act in relation to maintaining stability of price and role of the provincial and local government in this regard either by amending the Act or providing in the regulation.*

4.13. NODAL MECHANISMS

Recognition of rights under the Constitution and in law is the first step towards the realization of the rights. In the context of the right to food and food sovereignty, a powerful nodal agency such as an independent council is indispensable for the effective implementation of framework legislation on the right to food. Though the Act (Section 32, 34 and 36) provides for the creation of such mechanism (food council at national and provincial level and a food co-ordination committee at local level) its formation and mandate are not provided under the Act. These matters are completely left to the discretion of respective governments.

Both the Special Rapporteur on the right to food and the CESCR have also underscored the importance of an independent and powerful mechanism to oversee the implementation of the Act.⁴⁶

Recommendation:

- *Amend the Act to provide for formation of the national and provincial food councils and local food co-ordination committees clarifying their functions, powers and responsibilities.*

4.14. CRIME AND PUNISHMENT

46 As emphasized by the Special Rapporteur on right to food, it is important to institutionalize a coherent and integrated approach, through the creation of an independent council formed by relevant government ministries and institutions, members of civil society, associations of food producers and the private sector, which will provide advice to the government on matters related to food and nutrition security. See UN Special Rapporteur on the right to food, *Mission to Malawi*, UN Doc. A/HRC/25/57/Add.1. See also, CESCR, General Comment 12, The Right to adequate food (Article 11) UN Doc. E/C.12/1999/5.

Section 40 of the law criminalizes certain acts⁴⁷ that may impair access to food and thereby result in violations of the right to food. Section 44 empowers the government to appoint or designate the inspection officers, who are supposed to carry out investigations into the acts prohibited under this law. This provision fails to require that these inspection officers have adequate training and capacity to conduct the proper investigations compliant with the due process and fair trial guarantees.

Section 41(2) does provide for 35 days statute of limitation to prosecute someone who commits any crime under Section 40. This does not correspond to the seriousness of the crimes and the current socioeconomic reality of Nepal (for example, geographical remoteness, gender and ethnic disparity in education and lack of legal awareness).

Recommendation:

- *Amend the Act to ensure that the inspection officers have adequate training and capacity to conduct the proper investigations in line with due process and fair trial guarantees.*
- *Amend the Act to provide for statute of limitation commensurate with seriousness of crime and the socioeconomic and geographical context in Nepal.*

4.15. COMPENSATION

Section 20 provides for compensation against crop failure. This is a welcome provision and in line with the Supreme Court's ruling.⁴⁸ However, it does not specify the mechanism responsible to inquire into the complaints, evaluate the damage and award adequate compensation.

Section 43 also provides for compensating the victims for suffering any damages caused by the offences under this Act. However, the statute does not detail the criteria or standards of the compensation; rather it is left to the discretionary powers of the government.

Recommendation:

- *Amend the Act to specify the mechanism responsible for inquiring into and assessing damage resulting from crop failure as well as for awarding compensation.*
- *Amend the Act to clarify the criteria applicable in determining the compensation.*
- *Integrate other forms of collective and individualized reparations (for example, priority to the respective household or community in terms of subsidy, soft loan, micro-credits and other support measures) for the affected household or communities into the Act.*

4.16. MECHANISM TO HANDLE GRIEVANCES

47 Acts amounting to offences under the Act include "preventing anyone from accessing essential food and thereby causing serious impact or creating a situation of starvation; taking into control or destroying or misusing the food stocked for the purpose of assistance in emergency situation; obstructing distribution of food assistance in emergency situation; creating obstacle in an organized or unorganized way to transportation, supply, distribution and marketing of basic food items; making anyone homeless and thereby depriving him/her of a basic livelihood; denial of providing food to the targeted group and underprivileged groups."

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

Except for the mechanism to investigate and prosecute crimes, the Act does not provide for any mechanism to handle grievances where rights-holders or stakeholders feel that duties are not carried out or entitlements are not provided in accordance with the law. This could be an independent administrative complaints mechanism, which provides quick remedies to the complainants and should be exhausted before one seeks judicial remedies. Such grievance redressal officers should be appointed through a transparent process. There could be a quasi-judicial mechanism with the possibility of entrusting the NHRC to monitor the implementation of the law and providing recommendations to the government at all levels.

Recommendation:

- *Amend the Act to create a separate administrative or quasi-judicial mechanism responsible to handle grievances where rights-holders or stakeholders feel that duties are not carried out or entitlements are not provided, or application of legal provision is discriminatory.*

5. CONCLUSION

The enactment of the Rights to Food and Food Sovereignty Act, 2018 is an important step forward towards making the right to food a reality. The Act contains several affirmative provisions such as the provisions that require identification of food-insecure households, protect farmers' rights, formulate food plans and take steps to penalise actions that may impair access to minimum essential food. Implementation of such provisions should be given a high priority including by raising public awareness, formulating necessary rules/regulations and a national food plan in consultation with the stakeholders.

When assessing the provisions in the Act, in the context of provisions in Nepal's Constitution and international human rights obligations, Amnesty International finds a number of gaps in terms of definition, entitlements and implementation mechanism in the Act that should be addressed through an amendment. Many of these gaps may also be bridged by adopting a comprehensive regulation. The legislative framework would be strengthened if a) key terms including "right to food", "peasant", "hunger", "starvation", "malnutrition" and "vulnerability" are defined in line with internationally recognized definitions, b) immediate food/nutritional support to protect those starving is specified, c) an inquiry into any deaths resulting from starvation is made mandatory, d) forms and amounts of the food assistance for priority households is specified, e) a clear guidance to prioritize providing access to cultivable land to peasants and women peasants from Dalit communities and land-dependent Indigenous peoples such as Tharu, and nature and forms of such access is inserted, f) a specialized nodal agency empowered to advise the government on standard setting, implementation and monitoring of the Act is created g) participation of Indigenous communities in the development of plans and programmes for guaranteeing access to food is required.

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RIGHT TO FOOD IN NEPAL

ANALYSIS OF THE RIGHT TO FOOD AND FOOD SOVEREIGNTY ACT 2018

Amnesty International has assessed the Right to Food and Food Sovereignty Act 2018 in view of the constitutional framework on the right to food and Nepal's international legal obligations including under the International Covenant on Economic, Social and Cultural Rights (ICESCR). The analysis offers a set of concrete recommendations towards strengthening the legal framework and prompting the implementation of affirmative provisions that the Act contains. Amnesty International calls on the Government of Nepal to address a number of substantive issues in the Act in order to ensure the full realization of the right to adequate food by all, including groups who are marginalized and vulnerable to violations of the right to food.