



# The Federal Democratic Republic of Nepal

## Joint Submission to the UN Universal Periodic Review



THE  
LUTHERAN  
WORLD  
FEDERATION

37<sup>th</sup> Session of the UPR Working Group  
2–13 November 2020

# Joint Submission By:<sup>1</sup>

The Lutheran World Federation (LWF), Finish Evangelical Lutheran Mission (Felm), Finn Church Aid (FCA), Samari Utthan Sewa (SUS), Rastriya Mukta Haliya Samaj Federation

Nepal (RMHSF-N), Campaign for Human Rights and Social Transformation (CAHURAST), and the Lutheran Community Welfare Society (LCWS).

## I. Context

This civil society Universal Periodic Review (UPR) report is based on primary data collected through consultations, focus group discussion and one to one semi-structured interviews with key community members and representative organizations. The data was collected from July to December 2019. Altogether 3,841 respondents (2,395 women and 1,445 men) were consulted. 120 representatives from local governments, government officials, school teachers, and officials from health institutions were also consulted. The report is supported by secondary data gathered from government agencies and ministries, and from other relevant stakeholders as well as data gleaned from human rights programmatic priority areas of work of the submitting members of the civil society coalition on the UPR in the Federal Democratic Republic of Nepal.

The submission addresses minority issues as priority human rights concerns in relation to access to economic, social and cultural rights in Nepal, specifically the rights of Santhal, freed Haliyas, Kamaiyas, Kamlaris and people with disabilities. Right to education, timely and just access to rehabilitation packages, right to equality and non-discrimination, right to birth registration and citizenship and right to land constitute the main issues addressed in this submission.

Santhals are tribal and indigenous community from the plain areas of Nepal specifically living in Jhapa, Morang and Sunsari districts. These communities are among the most marginalized communities in Nepal<sup>2</sup>. According to the census of 2011 conducted by the National Population and Housing Census (NPHC), the population of these groups is adjudged around 51,735 people. They rely mainly on agriculture and labor work force for their livelihood. During rainy season in Nepal, these groups rely on subsistence farming and provide services in the surrounding farmland of their residency, while they migrate to urban areas or to India for labor during other seasons.

Meanwhile Kamaiya system is a form of agrarian bonded labor system in western plain areas of Nepal. This system was developed from a customary practice of obtaining a “helping hand for family business,” that was gradually replaced by a “patron-client” relationship with one person becoming landlord and another as Kamaiya bonded by indebtedness

to the landowner. The Government of Nepal abolished this system in the year 2000.

Similarly, Haliya is another system of bonded labour in the agriculture sector prevailing in western hilly areas of Nepal. Haliyas worked for landlords to repay the debts taken by their forefathers. The Government of Nepal equally abolished the Haliya system in 2008, and with it setting free all the Haliya families from debt and bondage. 97% of freed-Haliyas are from the Dalit group—the so-called lower caste and untouchable group, while the rest are from other marginalized ethnic groups.

Kamlaris were part of the Kamaiya system in the past. These are mainly girls working as domestic servants of landlords. The system has transformed into a different form of labor relations with members of the former landlord families migrating into urban areas, while the former Kamaiyas continue sending their daughters to work with the former masters. The Government of Nepal, likewise, formally abolished the Kamlaris system in 2013.

According to the Central Bureau of Statistics of the Government of Nepal, Nepal has around 2% of people with disabilities (PwDs). The Government classifies PwDs into four different categories based on severity of the impairments. However, the estimation of the Government of Nepal limiting the total number of PwDs to 2% of the overall population has been questioned by different organizations working on disability issues. World Health Organization estimates that around 15% of the population are persons living with disability while the study done by Eide, Neupane and Hem (2016) shows that there are around 3.1% of population with disabilities. The variation in estimation of PwDs in Nepal is largely dictated by differences in the definition of disability by these institutions and studies.

**Socio-political context of Nepal:** The social and political environment in Nepal has changed significantly during in the last four years. Nepal has gone through state restructuring with the establishment of seven provinces, 753 local municipalities, and a central federal government. Elections for the membership of the local municipal councils were held in May, June

<sup>1</sup> Annexes I, and II contain full information on the background of all the submitting organizations, as well as their respective contact details and logos.

<sup>2</sup> Population monograph of Nepal, Volume 2, National Planning Commission, Government of Nepal, 2014

and September 2017, while elections at the provincial and federal levels were held in November and December 2017. During 2017, the UML and the Maoist party came together to oppose the results of this election, and in 2018, as the main political bloc, they eventually formed the Government. The two parties subsequently merged to become the Communist Party of Nepal (CPN), which then achieved significant political dominance at both national and local (provincial) levels of Governments. Since their formation, the Governments at the different levels have come up with periodic plans, policies and programs for marginalized and vulnerable groups of Nepal. In addition, the Constitution of Nepal empowers the Government at the provincial and local levels to make laws, make an annual budget, make decisions, and formulate and implement policies and plans on any matters related to their jurisdiction.

With a high and ambitious goal, the National Planning Commission released the 15th Periodic Plan in the year 2019 pledging to make Nepal a middle-income country by 2030, and to ensure Nepal qualifies for going beyond the status of one of the Least Developed Countries (LDC). The 15th plan has significance of its own as it is the first periodic plan of its kind that was being implemented by the Federal Government with a view to realize the slogan of the Government that states a “Prosperous Nepal, Happy Nepali.”

With regards to geographic factors, Nepal is considered as one of the most vulnerable countries to the diverse effects of climate change. Mountainous regions of Nepal are warming faster than the global average and more than one third of the ice volume might be lost by the end of the century. The poor and marginalized communities face the worse impacts of the climate change.<sup>3</sup>

## II. Minority Issues at Stake

### Rights to education

#### a. Progress made in previous cycles

##### Previous Recommendations:

During the second cycle of the UPR of Nepal, the Government of Nepal supported recommendations to ensure free and compulsory access to basic education to all and to improve the quality of education (2<sup>nd</sup> Cycle/122.20/United Arab Emirates<sup>4</sup>, 2<sup>nd</sup> Cycle/122.98/China, 2<sup>nd</sup> Cycle/122.99/Lao People’s Democratic Republic, 2<sup>nd</sup> Cycle/122.100/Israel, 2<sup>nd</sup> Cycle/122.102/Namibia, 2<sup>nd</sup> Cycle/122.103/Indonesia, 2<sup>nd</sup> Cycle/122.108/Maldives, 2<sup>nd</sup> Cycle/122.96/Qatar, 2<sup>nd</sup> Cycle/122.97/Sri Lanka, and 2<sup>nd</sup> Cycle/122.104/Finland). Meanwhile the Government of Nepal noted a recommendation for free and compulsory education during the first cycle of the UPR (1<sup>st</sup> Cycle/108.33/ Turkey).

The Government of Nepal also supported recommendation to increase school enrolment in the second UPR cycle (2<sup>nd</sup> Cycle/122.105/ Singapore), and to make education inclusive with special focus on most marginalized and vulnerable groups including children with disabilities (2<sup>nd</sup> Cycle/122.107/ Norway, 1<sup>st</sup> Cycle/108.34/ Slovakia, and 1<sup>st</sup> Cycle/108.35/Finland).

##### State Effort:

The Government of Nepal enacted a law – “The Act Relating to Compulsory and Free Education, 2018.” According to this Act, the Government is required to:

- Provide compulsory and free education in public schools until grade 8.
- Penalize parents who do not send their children (from 4 years to 13 years) to school by not providing any local services provided by the government.
- Establish more than one public schools within 2km in Areas with high density of population and difficult geographic terrain.
- Provide alternative, informal, and open education in the cases where there are no available formal school.
- Provide free secondary education to all.
- Provide free books and educational materials.
- Provide scholarship and daytime snacks for children with low human development index or from poor families, and children with disabilities.
- Provide free high-level education for Dalits, people with disabilities and the poor.
- Provide special education to the children with disabilities.

The Government also established a High-Level Education Commission in 2018 to advice the Federal Government on making quality education more accessible and affordable.

<sup>3</sup> P. Wester, A. Mishra, A. Mukherji, A. B. Shrestha (eds) (2019) The Hindu Kush Himalaya Assessment—Mountains, Climate Change, Sustainability and People Springer Nature Switzerland AG, Cham

<sup>4</sup> Identification of each recommendation is given as - UPR cycle/Paragraph number/Recommending Country

In this vein, the Government rolled out a New Education Policy in 2019.

### Challenges:

Interviews with the members of the High-Level Education Commission revealed that despite the advances made with these policies and legal frameworks on access to free education, parents still have to pay for dresses, books, stationaries, exam fees and for salaries of the teachers. Moreover, children from the most vulnerable and marginalized groups such as Santhal and freed bonded laborers remain unable to cover such cost due to limited income in their households.

As such, access to affordable and quality education, especially for the most marginalized and vulnerable communities has remained far from reach. Provisions in the Education Act have therefore not been well implemented. The High-Level Education Commission recommended to the Government to declare the education system and all schools, public and private, as not for profit institutions. However, the government did not adopt this recommendation. Instead, the Government drafted a new education policy, promoting privatization and commercialization of education. Moreover, quality of education in public school has also been questioned by education specialists mainly because of politicization in recruitment of the teachers. Most of the time, people who are politically active are recruited as teachers based on the recommendations provided by politicians rather than qualification and experience. This has contributed to a low quality of education in the public schools. This means that on the one hand, parents from poor, vulnerable and marginalized groups cannot afford education in private schools, and on the other hand, the quality of education in the public schools is very low. As a result, children from these families remain less educated and unable to secure professional jobs upon reaching adulthood.

Assessment made by partners shows that literacy rate of Santhal is only 35% while it is 57% in freed Haliya, 44% in freed Kamaiyas, 65% in freed Kamlaris and 20% in People with Disabilities compared to the national average of 67.9%<sup>5</sup>

The field survey made in three districts with high population of freed Haliyas and Santhal shows that primary schools are located within thirty minutes from their clusters whereas they have to walk for an hour or more to reach secondary schools. As freed Kamaiyas and Kamlaris live in plain areas, they have to walk around 20 to 30 minutes to reach primary schools and around 45 minutes for secondary schools. In 2016, UNICEF found that 30.6 % of children with disabilities, ages 5 to 12 did not attend school. A research done by the Human Rights Watch in September 2018 in 13 schools shows that out of all the schools, including two that were recently constructed after the earthquake in 2015, only one school was accessible for the children who use wheelchairs. However, this school only had

accessibility for PwDs entrance, but no internal ramp, accessible toilet and flat playground, which may allow children using wheelchairs to move freely. Furthermore, girl pupils and those in their puberty are often discriminated against and stigmatized when they have their menstrual cycles.

One of the members of High-Level Education Commission stated that during their field visit, they found that children from very poor family background go to school without having had a meal and due to which they are often unable to stay in school for full school hours.

“The Act Relating to Rights of Persons with Disabilities, 2017,” requires the Government to provide education to persons with disabilities through different means, including brail or alternative scripts, sign language, information technology and peer learning. However, research conducted by Human Rights Watch shows that very few public schools enroll children with disabilities. Out of more than 30,000 schools in Nepal, just 380 have “resource classes” where children with a particular disability are hosted with their peers. Yet, the children in the resource classes with whom the Human Rights Watch research team met ranged in age from 7-17, with some even in their 20s. This violates the provisions of the Act on access to education for persons with disabilities. In addition, Nepal has no academic curriculum for children with intellectual disabilities.

## Timely and just access to rehabilitation packages

### a. Progress made in previous cycles

#### Previous Recommendations:

Nepal supported a recommendation by Finland in the second cycle to ensure that freed bonded laborers have access to fertile land and other human rights (2<sup>nd</sup> Cycle/122.82/Finland). Nepal also accepted similar recommendations related to improving the living standard of vulnerable groups and developing programs and strategies for providing employment and assistance to these groups (2<sup>nd</sup> Cycle/122.79/Bolivarian Republic of Venezuela, 1<sup>st</sup> Cycle/108.31/Malaysia, 2<sup>nd</sup> Cycle/122.84/China, 2<sup>nd</sup> Cycle/121.32/Yemen). Morocco made a recommendation to Nepal to pursue effort to provide access to housing for marginalized and low-income groups, which was accepted (2<sup>nd</sup> Cycle/122.89/Morocco).

#### State Effort:

Article 51 j (6) of Directive Principles, Policies and Responsibilities of the State of the Constitution of Nepal states that: “The state shall pursue rehabilitation of bonded laborers – Kamaiyas, Kamlaris, Haruwa, Charuwa, Haliya, the landless

<sup>5</sup> <http://uis.unesco.org/en/country/np?theme=education-and-literacy>

and the squatters by identifying them, and making arrangements of housing, or providing small plot of land or house, employment, or arable land for their livelihoods.”

The Government of Nepal promulgated “Local Government Operation Act, 2017.” This Act stated that the local government shall collect data of the local inhabitants including those of the most marginalized groups, shall uplift the socio-economic condition of socially and economically marginalized groups and shall eliminate the Haliya system.

Nepal Government also enacted “Labor Act, 2017,” with the provision of prohibiting any form of bonded labor.

The Government issued Freed Haliya Rehabilitation Action Plan, 2017/2018 to ensure rehabilitation of freed Haliyas within two years.

In 2018/2019, the Federal Government allocated 3 Billion Nepalese Rupees for the rehabilitation of Haliya, Kamaiya and Kamlaris.

Sudurpaschim Province and some local Governments also provisioned several programs targeting freed bonded laborers.

### Challenges:

According to government policy and plan, freed Haliyas with Category A that is those possessing no land and no house shall be provided NRS, 525,000 in rehabilitation packages; Category B possessing a house but no land shall be provided with NRS 200,000; Category C possessing a piece of land but no house shall be provided with NRS 325,000; and the Category D possessing both land and house shall be provided with NRS 125,000. Although the government declared these different programs and policies for rehabilitation of freed Haliyas and Kamaiyas after being freed from bonded labor, rehabilitation of all the freed bonded laborers is yet to be fully implemented as it increasingly receives less priority of the government.

### b. New developments and issues not addressed during previous review

According to the National Freed Haliyas Society Foundation in Nepal, there is discrepancy regarding the total number of freed Haliyas registered by the Government. The government has registered only 19,059 while overlooking an additional 25,000 more freed Haliyas who are not registered by the government and are therefore excluded from receiving government rehabilitation packages. Moreover, up to 20% of Freed Haliyas are affected by unfair distribution of rehabilitation packages due to incorrect categorization.

In the fiscal year 2019/20 the Federal Government of Nepal announced that the government will provide employment generation opportunities to the freed Haliyas, Kamaiyas and Kamlaris through Prime-Minister Employment Program. But this programme is yet to be implemented.

The freed bonded laborers have also said that rehabilitation packages are not comprehensive enough to sustain their basic needs and livelihoods. The rehabilitation packages that the Government has declared consist of support only

to purchase land and/or build a house. There is less or no effort from the Government to provide support in livelihood opportunities. The families of the freed bonded laborers often suffer from unemployment due to lack of skills and low education level. In such condition, when they do not get support from the Government for their livelihood, they are unable to afford quality education, health and uplift standard of their living due to very limited income.

Although the Government has banned bonded labor in Nepal and has declared rehabilitation programs for freed bonded laborers, there are still a large number of Haliya families, predominantly found in the geographically isolated far-western region, who do not benefit from the program and are at risk of returning to bondage for survival. A survey conducted by LWF Nepal and its partners in 1,560 freed Haliya households show that still 1% are working as bonded laborers for the landlords in order to repay loan taken by their forefathers even after promulgation of law to abolish bonded labor.

## Right to equality and non-discrimination

### a. Progress made in previous cycles

#### Previous Recommendations:

During the previous UPR cycles, Nepal accepted recommendations to take appropriate measures to eliminate discrimination based on gender, caste, ethnicity, disabilities, and age (2<sup>nd</sup> Cycle/122.40/Germany, 2<sup>nd</sup> Cycle/121.18/Japan, 1<sup>st</sup> Cycle/108.10/UK, 1<sup>st</sup> Cycle/108.11/Norway, and 1<sup>st</sup> Cycle/108.14/Chile). Similarly, Nepal accepted recommendations to ensure full and effective implementation of the existing laws and policies to eliminate all forms of discrimination (2<sup>nd</sup> Cycle/122.36/ Switzerland, 2<sup>nd</sup> Cycle/122.33/Paraguay, 2<sup>nd</sup> Cycle/121.17/Thailand, 2<sup>nd</sup> Cycle/122.35/Denmark, 2<sup>nd</sup> Cycle/122.39/Czech Republic, and 2<sup>nd</sup> Cycle/122.41/Namibia). Nepal also accepted recommendations to guarantee that any cases of caste based discrimination are reported, investigated and perpetrators are punished (2<sup>nd</sup> Cycle/122.55/Argentina, and 1<sup>st</sup> Cycle/108.12/Czech Republic). Moreover, the Government of the Federal Democratic Republic of Nepal accepted recommendations to take appropriate measures to ensure that there is no legal or any other kind of barriers towards PwDs (2<sup>nd</sup> Cycle/122.109/Panama, and 2<sup>nd</sup> Cycle/122.38/ Ukraine).

#### State Effort:

The Constitution of Nepal ensures equality and prohibits any kind of discrimination.

Chapter 10 of the “Criminal Code, 2018” criminalizes offenses related to any kind of discrimination and other inhuman treatment. Any person who practices such offences shall be held accountable before the law as per the Act.

“Labor Act, 2017” also prohibits any kind of discrimination towards laborers.

“The Act Relating to the “Rights of Person with Disabilities, 2017” requires the Government to make appropriate provisions and processes to ensure that voting is accessible to PwDs and materials related are easily accessible and understandable. However, National Federation of Disabled – Nepal has argued that only 12% PwDs participated in the elections process due to inaccessibility to elections polling stations all over Nepal.

### Challenges:

According to a study carried out by LWF Nepal and the Nepal National Dalit Society Welfare Organization, freed Haliyas comprised 5% of the total population of Dalits, which is 13% of the total population of Nepal.

The survey shows that freed Haliyas face discrimination across all spheres of the society. They are being subjected to a wide range of human rights abuses including severe beatings, forced starvation, water deprivation and various forms of humiliation as punishment.

The survey also shows that a total of 36.3% freed Haliyas reported experience of verbal or psychological abuses, whereas 17% face discrimination while accessing public services from local Government offices, tax office, agriculture office. 84.5% of freed Haliyas are not allowed to enter into private houses. They are forced to sing and dance during local festivals by the landlords. They are subjected to severe physical violence when they enter into inter-caste marriage with other so-called higher caste people.

A similar survey conducted by partners with the Dalits shows that 14.6% of people from freed Haliya community face discriminatory behaviour in the health service facilities. They either face negligence in treatment, or get less priority for treatment, or need to wait longer than other members of the society.

The survey indicates that 89% of Haliyas and 72% of Santhals face discrimination at public water points. They are often required to wait for longer time to fetch water than other people in the community when community members are using same water point.

Record maintained by National Freed Haliyas Society Federation – Nepal from 2016 to 2019 shows that 37 cases on the caste based discrimination against freed Haliyas were identified in the mid and far western areas of Nepal, out of which only 22 cases were reported to police and 15 cases were resolved informally at community level. Out of total cases reported to police, only perpetrators of six cases were punished, 16 cases were resolved informally by police and one case is still unresolved. Despite the prevailing laws which require perpetrators to be punished for practicing any kind of discrimination, only 16% of perpetrators were punished.

Women from marginalized groups, such as freed Haliyas and Santhals often bear a heavy brunt of multiple discrimination in comparison to the other social categories in these groups. Multiple layers of aggravated discrimination against women from freed Haliyas and Santhals are at once related to the broader discrimination instituted by the caste-based system but also gender-based discrimination, and sexual and gender-based violence. Women from these groups are downgraded to the lower level of the society for being not only a freed Haliya or Santhal, but also for being a woman. Moreover, women from freed Haliyas and Santhals suffer additional layer of aggravated discrimination when they live with disabilities of any form. In short, discrimination against women from these groups range from physical and sexual assault and violence to verbal abuse and stigmatization to being subjected to hard and manual labor.

Finally, the right to equality and non-discrimination of marginalized groups has been further aggravated by the global outbreak of the Covid19 pandemic, which has exacerbated the suffering of the Haliyas and Santhals with far-reaching health and economic consequences. According to a survey study conducted by RMHSF at least 72% of freed Haliyas, for example, are daily wage workers.<sup>6</sup> Women are further affected by Covid19 related increase in sexual and gender-based violence and domestic violence according to another study.<sup>7</sup>

## Right to birth registration and citizenship

### a. Progress made in previous cycles

#### Previous Recommendations:

In the previous UPR cycle, Nepal accepted recommendation to ensure that children of internally displaced people enjoy birth registration without any discrimination (1<sup>st</sup> Cycle/108.36/Thailand).

#### State Effort:

The Constitution of Nepal reads:

- The following person who has his or her permanent domicile in Nepal at the time of commencement of this Constitution shall be the citizen of Nepal by descent: (a) a person who has obtained the citizenship of Nepal by descent prior to the commencement of this Constitution, (b) a person whose father or mother was a citizen of Nepal at his or her birth [Article 11 (2)]
- No citizen of Nepal may be deprived of the right to obtain citizenship [Article 10 (1)]

<sup>6</sup> RMHSF is a national organization, whose full name and details are found in the annex of this report.

<sup>7</sup> This study is carried out by the Ministry of Agriculture and Livestock Development in collaboration with the World Food Programme and Australian Aid, which is accessible here: <https://www.wfp.org/publications/covid-19-impact-households-nepal-mvam-survey>

- A child of a citizen having obtained the citizenship of Nepal by birth prior to the commencement of Nepal shall, upon attaining majority, acquire the citizenship of Nepal by descent if the child's father and mother both are citizens of Nepal. [Article 11 (3)]

Nepal Citizenship Act, 2006 provisioned that any person born before 13 April 1990 within the territory of Nepal and having domiciled permanently in Nepal shall be deemed a citizen of Nepal by birth. As per the Act, such person was required to apply for the citizenship either before holding of the election for Constituent Assembly or within two years from the commencement of this Act.

### Challenges:

According to the study conducted by Forum for Women, Law, and Development (FWLD) in December 2015<sup>8</sup>, approximately 23.65% of the total population aged 16 and above<sup>9</sup> lacked citizenship certificates. Reasons for being refused citizenship certificate vary for different groups.

Out of total Santhal population, only 32% of the Santhals have citizenship certificate with the rest remaining stateless. Most of those with citizenship acquired the status by birth, and after the enactment of the Nepal Citizenship Act, 2006.

However, the majority of the Santhals are unable to acquire citizenship mainly because they are not recognized as the citizens of Nepal even though they have lived in Nepal for decades. Moreover, there is conflicting clauses in the Constitution and the Citizenship Act in providing citizenship – The Constitution ensure citizenship for all the citizens of Nepal while the Citizenship Act, 2006 provisioned that citizenship by birth shall be obtained within two years of enactment of the Act. This Act is still under consideration for amendment at the parliament. Due to this, local authorities deny eligible children of Santhals the right to citizenship and birth registration citing the lack of legal provision to this effect. Meanwhile up to 37% of Kamlaris identified by the government are yet to receive identity card.

### b. New developments and issues not addressed during previous review

Since most of Santhals do not have citizenship certificates, they are deprived from basic services provided by the state. Citizenship certificate is considered as the most important formal document, and is often required in order to obtain other identity documents in Nepal. Without citizenship certificates, individuals cannot register on the voters' list, register marriages or births, buy or sell land, appear in professional exams, open bank accounts, apply for government jobs, or have access to credit for example. The citizenship certificate

allows a citizen to exercise his/her rights and claim State protection and social benefits. Recommendations advocating for this, and for equal rights to men and women to pass on citizenship to their children have not been made to the Government of Nepal in the previous UPR cycles.

## Right to land

### a. Progress made in previous cycles

#### Previous Recommendations:

In the previous cycles, the Government of Nepal accepted recommendations to prepare specific plan to ensure that the Nepal Land Act will in practice promote equality, and ensure the freed bonded laborers' access to fertile land and their equal enjoyment of human rights, including the right to work and right to property (1st Cycle/108.3/Finland, and 2<sup>nd</sup> Cycle/122.82/Finland).

#### State Effort:

The Constitution of Nepal has the following key points of reference on land rights:

- Every citizen shall have right to proper housing [Article 37(1)]
- No citizen will be evicted from or encroached on the housing, except in accordance with law [Article 37(2)]
- Abolish dual ownership and implementing scientific land reform [Article 51.e(1)]
- The state shall pursue rehabilitation of bonded laborers – Kamaiyas, Kamlaris, Haruwa, Charuwa, Haliya, the landless and the squatters by identifying them, and making arrangements of housing, or providing small plot of land or house, employment, or arable land for their livelihoods [Article 51 j (6)]

As per the "Local Government Operation Act, 2017," local governments are required to identify and keep data of landless people and to provide them with the housing and livelihood support.

### b. New developments and issues not addressed during previous review

Santhal started to settle their township in eastern part of Nepal, especially in Morang and Jhapa districts decades ago by turning forest into farmland. As they were from the marginalized community and literacy rate was very low, they were unaware about the Land Act which requires land to be registered at the government office. Due to lack of informa-

<sup>8</sup> Acquisition of citizenship certificate in Nepal, Estimation and Projection, 2015, Forum for Women Legal Development

<sup>9</sup> According to law in Nepal, people aged 16 and above can acquire citizenship

tion, the land they were living were either registered by other people or government declared those land as public land, thus, making Santhal landless. Currently, most of Santhal are either living in the public land or in the landlords' land that they are leasing or share farming. Only 31% of Santhals have land registration certificate of the land they are living in.

Santhals are predominantly agrarian and depend upon land for their livelihood. Even though very few percentages of them have land of their own. Most of them either do not have sufficient land to fulfill their livelihood needs or their land is not good enough to cultivate. Nearly 86% of the households with land certificate have barren land, and 14% of the households have land without any farming facilities such as irrigation.

The survey conducted by LWF Nepal and partners shows that around 86% of Santhals are living nearby riverbanks either in public land or private land owned by landlords, which makes them vulnerable to flooding. Every year they have to move from place to place to escape floods. Due to climate change rapid melting of the Glaciers in the Himalayas, floods are anticipated to increase.

Those living in public land or private land owned by landlords regularly face eviction threats from the landlord or the government to leave the land.

The land owners fear that if they keep providing leasing or share farming for longer period of time, they will have to share land with the tenants as there was the case in the past where government made regulation to provide half of the land to the tenants. Hence, landlords keep changing tenants time and again due to which Santhal are frequently forced to search for new land.

Santhals also face abuses from the landlords as landlords make them work without any legal binding documents when they lease land or share crops. They are asked to work longer hours, are required to produce crops as per the interest of landlords.

The government has announced subsidies as a relief for the most marginalized communities through Poverty Alleviation Fund. However, only 8% of Santhal have received such subsidies.

### III. Recommendations to the Government of the Federal Democratic Republic of Nepal:

Based on the above analysis, we call upon the Government of Nepal to consider the following recommendations:

#### Right to Education

- Ensure Provincial and Local Governments implement existing laws on compulsory and equitable access to free and quality education for all, including ethnic minorities, and the most marginalized and vulnerable groups such as freed-bonded laborers, Santhals and children with disabilities.
- Enact a law that ensures private and public school shall be registered as not for profit organizations to minimize privatization and commercialization of education.
- Ensure teachers are recruited based on merits, qualifications and experience irrespective of political ideology and provide teachers with commensurate remuneration and adequate salary.
- Build more schools to enhance access to education for the children of ethnic minorities, and promote child friendly and inclusive education methods.
- Introduce free meals in schools or livelihood support programs to ensure parents are able to provide food to their children in order to prevent and mitigate the high drop out of children from schools, particularly the most marginalized children belonging to ethnic minorities, and freed bonded laborers.

- Ascertain that schools have basic infrastructure, which are accessible to all children, including those with disability, girls have separate toilets and are not discriminated against during their menstrual periods.

#### Access to just and timely rehabilitation packages

- Conduct a national survey to ensure all freed Haliyas in Nepal are registered and facilitate their access to land and adequate housing in areas where they have resided for the last ten years.
- Establish an investigative body to interrogate and expedite access of all freed bonded laborers to adequate rehabilitation packages in a just and timely manner, and prosecute landlords and those still practicing bonded labor.
- Bring one household, one employment policy for the freed bonded laborers to safeguard their livelihood and access to work under favorable conditions.
- Take immediate steps to provide vocational trainings and employment to freed Kamlaris.

#### Right to equality and non-discrimination

- Empower and equip law enforcement agencies to take immediate action in investigating caste-based discrimina-



tion cases and prosecute those implicated in caste-based discrimination.

- Take concrete measures to discourage law enforcement agencies from facilitating informal settlement of caste-based discrimination cases outside the state legal procedures and criminal justice system.
- Engage in civic education and awareness raising campaigns to educate the citizenry on prevailing laws against discrimination by disseminating information through capacity trainings, and mainstream and social media outlets.
- Eradicate any forms of discrimination or violence against inter-caste marriages.
- Ensure that PwDs have easy access and participation in the political processes in Nepal including voting in general elections.
- Provide adequate resources to the National Human Rights Commission and the National Dalit Commission and ensure that they are mandated to enhance their independence, credibility and effectiveness.
- Hold accountable the perpetrators of sexual and gender-based violence and all forms of discrimination against women, including freed Haliya and Santhals.

## Right to birth registration and citizenship

- Guarantee the right of citizenship to all ethnic minorities, including the right to citizenship of the overwhelming majority of the stateless Santhals
- Immediately amend the Nepal Citizenship Act to ensure that children of parents who do not have citizenship by birth but are born in Nepal are entitled to citizenship and enjoy all fundamental human rights, services, and privileges as citizens of Nepal.
- Establish a law to ensure that all children born in Nepal receive birth registration.
- Form investigation committees at local level to investigate and ensure the distribution of identity card to all Kamlaris.

## Right to Land

- Immediately distribute land to all the Santhals as provided for in the Constitution of Nepal.
- Devise a federal land policy to safeguard legal acquisition and ownership of land to landless people as per the Constitution.
- Amend the Land Act with special provision on land reform to grant access to land to the landless, tenants and marginalized groups.
- Provide alternative livelihood option that is climate smart and strengthen the resilience of landless and marginalized people adaptable to climate change.<sup>10</sup>

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<sup>10</sup> CIAT; World Bank; CCAFS and LI-BIRD 2017. Climate-Smart Agriculture in Nepal. CSA Country Profiles for Asia Series. International Center for Tropical Agriculture (CIAT); The World Bank; CGIAR Research Program on Climate Change, Agriculture and Food Security (CCAFS); Local Initiatives for Biodiversity Research and Development (LI-BIRD). Washington, D.C. 26 p.

# Annex I: Brief Introduction of Alliance Partners for the Submission

## The Lutheran World Federation (LWF)

LWF is a global communion of 148 churches in the Lutheran tradition, representing over 75.5 million Christians in 99 countries. LWF has consultative status with ECOSOC since 1952. The Lutheran World Federation Nepal (LWF Nepal), a country program of LWF-Department for World Service (DWS), has been working with marginalized and disadvantaged communities for over 30 years in the areas of assistance for refugees, disaster risk reduction, emergency preparedness and response, sustainable livelihoods, and community-led actions for governance and justice.

## Felm

Felm is an internationally active organization established in 1859 and one of the largest Finnish civil society organizations working in global development. Felm's work aims to promote human dignity and justice around the world. Felm currently works in 12 countries in Asia, Africa and Latin America and with over 30 partner organizations. Felm strives for positive and permanent change, aiming to help build a world where everyone's voice is heard, through the realization of human rights. Felm has been working in Nepal since 1977 and affiliated with the SWC as Felm-Nepal in 2009. The largest back donor for Felm is the Ministry for Foreign Affairs of Finland, other funding sources are business companies, trust funds, individual donors and the EU. Felm's global networks include various international development forums, such as ACT alliance, numerous international non-governmental organisations and academic institutions world-wide.

Felm promotes the rights of people who face discrimination, advances social and economic justice and builds peace and reconciliation. Through development cooperation Felm targets at empowerment, enhanced livelihoods, quality education, food security for marginalized groups such as women and girls, persons with disability and ethnic minorities and indigenous people by impacting discriminatory structures. Climate change mitigation and adaptation, capacity building in disaster preparedness are main areas of collaboration in building resilient communities. Through the existing partner network Felm also coordinates and gives humanitarian assistance in case of an emergency.

## Fin Church Aid (FCA)

FCA is Finland's largest international development organization. It operates in 14 countries in Asia, Africa and the Middle East. FCA specializes in three thematic priority areas: Right to Peace, Right to Livelihood, and Right to Quality Education. The work is done with the poorest people, regardless of their religious beliefs, ethnic background or political convictions. As a civil society actor, FCA realizes its mission and vision through development cooperation, humanitarian assistance, and advocacy work.

FCA's vision is a world comprised of resilient and just societies where everyone's right to peace, quality education and sustainable livelihood has been fulfilled. FCA is committed to the rights-based approach, and its work is guided by international human rights standards and principles. Empowerment and participation is key in all FCA's interventions. Equality, non-discrimination and accountability are at the core of all actions.

FCA contributes to positive change by supporting people in the most vulnerable situations within fragile and disaster-affected areas. The main funding sources are from private persons and companies, the Government of Finland, and global institutional donors such as various UN agencies, bilateral donor agencies and the EU. FCA enjoys Core Humanitarian Standards certification and is a member of the ACT Alliance.

With a commitment to bring about positive development through collaboration, FCA has been supporting work in Nepal since the 1980s and have had an in-country presence since 2013. FCA's core components for the work in Nepal have always been livelihood and education, both as long-term development projects and disaster response and recover programs. The current Nepal program focuses on work in Provinces 2, 3, and 7 with the key strategy to promote marginalised women and youth's socio-economic empowerment so they can enjoy a decent living.

## Samari Utthan Sewa (SUS)

SUS is a non-government, not-for-profit social development organisation. It was founded in 2008 by a group of committed youths from Dalit community. It is registered with the District Administration Office in Chitawan district and affiliated with Social Welfare Council (SWC), Kathmandu, Nepal. Since its inception in 2008, SUS has been working with the Dalit, poor,

vulnerable and other socially excluded segments of the society focusing on their basic needs and improving livelihoods, while also contributing in the process empowering them to raise their voices for the cause of human rights, particularly Dalit and women human rights.

### Rastriya Mukta Haliya Samaj Federation Nepal (RMHSF-N)

RMHSF-N is a national organization representing all freed Haliyas of 12 districts in Nepal. The organization, in collaboration with LWF, has been implementing projects targeting freed haliyas for their rehabilitation, empowerment and access to government services and resources. It is an umbrella organization of different district based haliyas organizations. It is continuously lobbying and advocacy for contributing in improving the socio-economic status of freed haliyas. It collaborates directly with federal, provincial and local governments for formulating new laws and policies in favor of freed haliyas.

### Campaign for Human Rights and Social Transformation (CAHURAST)

CAHURAST has its district networks in 67 districts to advocate for rights of the marginalized and excluded communities. Currently, it is working in seven districts of Nepal including Doti, Sarlahi, Morang, Dhading, Sindhupalchowk, Kavre and Bara on ESC rights of the people. CAHURAST has been engaged in CSOs' CEDAW shadow report and of UPR process since the establishment of CAHURAST. It has good linkages








and coordination with Constitutional Commissions like Indigenous Commission, Dalit Commission, Women Commission and, also with National Human Rights Institutions.

### Lutheran Community Welfare Society (LCWS)

LCWS was established in the activeness of pastors and leaders of Nepal Evangelical Lutheran Church, Morang on 10 Feb, 2010. LCWS is non-profitable and social welfare based non-governmental organization. Despite challenges to make a positive effect of the non-government organization to public people and sensitization of need to address empowering political, financial, social and cultural issues of the marginalized community; LCWS has been working among Santhal & Musahar communities.

The Lutheran Community Welfare Society is working on various projects in partnership with Lutheran World Federation Nepal, with the aim of empowering and strengthening the Santhal/Musahar people and the marginalized community in Jhapa and Morang. In this regard, 'Improving the Resilience of Rural Livelihood Options for Santhal and Musahar Communities in Nepal' (SABAL) project is currently being implemented in Jhapa and Morang districts, and 'Nepal Development Program' (NDP) project and 'Voice for Rights' (L2G) project running in the Morang district. The overall scope of the projects is: Disaster Risk Reduction and Preparatory Response, Sustainable Livelihood & WASH Promotion, Community-led Actions for Government and Justice / Organizational Development & Effectiveness. Through which, 1893 community households have been directly benefited.

# Annex – II: List of submitting organizations and their contacts

Organizations	Contact Details of Focal Points	Organizational Logo
LWF	Bal Krishna Chaudhary Provincial Program Coordinator <a href="mailto:bal.chaudhary@lutheranworld.org">bal.chaudhary@lutheranworld.org</a>	
Felm	Roosa Rantala Manager, Development Cooperation <a href="mailto:roosa.rantala@felm.org">roosa.rantala@felm.org</a>	
FCA	Sofia Olsson Country Director Nepal <a href="mailto:sofia.olsson@kua.fi">sofia.olsson@kua.fi</a>	
LCWS	Joseph Soren Chairperson <a href="mailto:sorenjosephnepal@gmail.com">sorenjosephnepal@gmail.com</a>	
CAHURAST	Bishnu Pukar Shrestha Chairperson <a href="mailto:Himal2005@gmail.com">Himal2005@gmail.com</a>	
RMHSF	Ishwar Sunar Chairperson <a href="mailto:Ishwar.sunar40@gmail.com">Ishwar.sunar40@gmail.com</a>	
SUS	Bimala Gayak Executive Director <a href="mailto:bimala@samariutthan.org.np">bimala@samariutthan.org.np</a>	

## Contact persons:

Mr Bal Krishna Chaudhary  
Position: Provincial Program Coordinator  
Organization: The Lutheran World Federation—Nepal  
Email: [bal.chaudhary@lutheranworld.org](mailto:bal.chaudhary@lutheranworld.org)  
Website: <https://nepal.lutheranworld.org/>

Dr Emmanuel Gore  
Position: Advocacy Officer for Human Rights  
Organization: The Lutheran World Federation—Geneva  
Address: 150 Route de Ferney, 1211, Geneva  
Tel: +41-22 791 63 65 | Skype: emmanuelgore  
Email: [emmanuel.gore@lutheranworld.org](mailto:emmanuel.gore@lutheranworld.org)  
Website: [www.lutheranworld.org](http://www.lutheranworld.org)