
**JOINT SUBMISSION ON NEPAL FOR THE UPR REVIEW AT THE
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Joint submission prepared by:

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HELVETAS Swiss Intercooperation is an international development organization, that has been operating in Nepal under an agreement with the Government of Nepal since 1956. In Nepal, Helvetas implements its programs and projects throughout the country, cooperating with many technical and social organisations. Through its work at both local and national levels, Helvetas Nepal supports activities leading to sustainable development and poverty reduction. It aims at creating environments in which people have new choices and become equipped with new skills and abilities to improve their livelihoods.

Helvetas Nepal partners with local and national non-governmental organisations, private sector entities, and local and national government bodies. It promotes the principles of decentralization and subsidiarity in decision making, implementation and accountability for development.

Federation of Drinking Water and Sanitation Users Nepal (FEDWASUN) was established in 2004 as a representative umbrella organization for drinking water and sanitation user's organizations of Nepal. It has its presence in 58 districts out of 77 districts in Nepal and have 4100 water and users' committees registered under its network.

Methodology

This submission is prepared based on participatory consultations internally within Helvetas Nepal and with CSOs working on the thematic of WASH. Firstly, consultation was done with FEDWASUN¹ to identify current thematic issues and secondly, a one-day workshop was organized in Surkhet, Nepal on February 3, 2020 for in-depth consultation over the issues identified. The workshop participants included representatives of selected CSOs² from Helvetas working area in Karnali province. This submission has been largely benefitted from the experiences of Helvetas Nepal on the WASH thematic through its current and past projects.

¹ Consultation meeting done between Helvetas Nepal and FEDWASUN on December 24, 2019.

² HRDC: **Hilly Region Development Campaign** is an NGO registered in Jajarkot district and operating in areas of good governance, WASH, food and nutrition since 1998. <http://hrdcjajarkot.org/>

RUDEC: **Rural Development Centre** is an NGO established in Achham district in 1998. It works in areas of renewable energy, WASH, good governance, health, education and livelihood in Karnali and Sudur Paschim provinces. No website.

HURENDEC: **Human Rights and Environmental Development Centre** is an NGO working in areas of good governance, education, WASH, renewable energy, enterprise development and human rights. Established in 1997, it is registered in Kalikot district. <http://hurendec.org.np/>

SAC Nepal: **Social Awareness Centre** was established in 1995 in Surkhet district. It works in areas of education, health, good governance, WASH, and disaster management. <http://sacnepal.org.np/>

Summary (Right to Water and Sanitation)

Since the last UPR Review, the Government of Nepal (GoN) has adopted, encouraging legal and policy frameworks and has made a notable progress in facilitating basic access to water, sanitation and hygiene (WASH). The GoN has also put in considerable efforts in improving sanitation in the country by enforcing number of policies, plans, more particularly Sanitation and Hygiene Master (2011-2017). The enforcement of nation-wide campaigns on these, have resulted in declaring Nepal as the first country in South Asia to be Open Defecation Free (ODF) on September 2019.

Yet, a considerable proportion of population in Nepal remain unreached or poorly reached on the issue of right to water and sanitation. **Poor people, menstruating women, dalits and people with disabilities are specifically left out from the progressive realization of right to water and sanitation in Nepal.** Simultaneously, when right to water and sanitation is put through the parameters of– availability, quality, accessibility, and affordability – there is a huge gap in what is on the paper and in practice. Access to quality water services in Nepal is also gendered, caste and cultural challenge.

Women's role in governance and management of local committees for water supply service is inadequate. The key positions of these local committees such as chairperson and secretary are still largely occupied by men.

On right to sanitation - the improved sanitation facilities are poorly accessed as they do not take into account the cultural practices of the communities. The use of the toilet is severely challenged by the socio-cultural norms and behaviour aspects. There has been little investment in terms of educating people on removing cultural taboos on hygiene and sanitation.

During the last UPR review, GoN Supported recommendation on right to water in the context of poor people. Four years, since the last UPR, there is no significant progress in poor people's right to access to water and sanitation. For the upcoming UPR Review, we urge the Office of the High Commissioner for Human Rights to include following recommendations on right to water and sanitation in stakeholder's report and urge the UPR Working Group to add and amend following recommendations:

1. Amend the existing recommendation 122.87 on right to water and include poor people's access to water and sanitation with focus on women, dalits and people with disabilities.
2. Amend the existing recommendation 122.87 on right to water and include – parameters of availability, quality, accessibility, and affordability- whilst determining the implementation of government plans and policies.
3. Make a new recommendation on right to sanitation especially with regard to socio-cultural norms and behaviour aspects of community

Since, right to water and sanitation is not a standalone human right. For its full realization, it should be addressed in the context of other human rights. Therefore –

4. Amend existing recommendations on the issues of non-discrimination (area 8), right to adequate standard of living (area 22.1), right to adequate housing (area 22.3), right to health (area 24), discrimination against women (area 29.1) and right to development (area 37) and include right to water and sanitation in the specific contexts as described in the main submission and address them within these rights.

Main submission

Context – Right to water and sanitation

1. The rights to water and sanitation are guaranteed as implicit components of the right to an adequate standard of living (Article 11) and right to health (Article 12) under the International Covenant on Economic, social and Cultural Rights.
2. Access to water and sanitation is required for the realisation of other human rights, including the right to adequate housing, the right to the highest attainable standard of health, and the right to life (CESCR, General Comment No. 15: The right to water (E/C.12/2002/11), para. 3 and CESCR, Statement on the right to sanitation (E/C.12/2010/1)).
3. The key components of rights to water and sanitation require that these are available, accessible, safe, acceptable and affordable for all without discrimination.
4. The rights to water and sanitation further require an explicit focus on the most disadvantaged and marginalized, as well as an emphasis on participation, empowerment, accountability and transparency.

This joint submission examines the recent practice of the Government of Nepal (GoN) on right to water and sanitation specifically in the context of the key components described in para 3 and para 4 described above.

Background

5. During the second cycle of UPR Review of Nepal in 2015, the GoN received following recommendation on right to water.

*122.87. Persevere in its efforts to combat poverty and facilitate access to water for rural populations (Morocco); **Source of position:** A/HRC/31/9 - Para. 122 & A/HRC/31/9/Add.1 - Para. 6*

The context of this recommendation also related specifically to the person living in rural areas and persons living in property.

The second cycle of UPR Review of Nepal in 2015, did not consider any recommendations on right to sanitation.

Progress made in the implementation of recommendation

6. The Constitution of Nepal (2015) recognizes citizen's rights to "access to clean drinking water and sanitation" as provisioned in Article 35 (4) and Article 30 recognizes that "every person shall have the right to live in a healthy and clean environment". Since the adoption of this new constitution, the sanitation sector has been going through reform, reorganization and decentralization and the functions have been vested in all three spheres of governments. Schedule 7 of the constitution grants concurrent power to the

federal and provincial government for water supply and sanitation, whereas “basic health and sanitation” falls under the exclusive rights of the local government, ensured by Schedule 8 of the Constitution.

7. The Ministry of Water Supply (MoWS) is the lead executing agency and the Department of Water Supply and Sewerage Management (DWSSM) is the chief implementing agency, with responsibility of planning, implementation, operation, repair and maintenance of water supply and sanitation systems. At the provincial level, the Ministry of Social Development and the Ministry of Physical Infrastructure and Development are the line ministries that support sanitation and water supply. The Local Government Operation Act (LGOA), 2074 assigns exclusive powers for “basic health and sanitation” to the municipalities and extends powers to local government for implementation, monitoring, and formulation of policies, strategies and standards. The municipalities are the responsible units with water user or WASH Committees at the ward levels.
8. The GoN has put in considerable efforts in improving sanitation in the country by enforcing number of policies, plans, more particularly Sanitation and Hygiene Master (2011-2017) and enforcement of nation-wide campaigns, which has resulted in declaring Nepal as the first country in South Asia to be Open Defecation Free (ODF) on September 2019.

Actions that remain to be taken for full implementation

9. Despite encouraging legal and policy frameworks and having made a notable progress in facilitating basic access to water, sanitation and hygiene (WASH), yet a considerable proportion of population remain unreached or poorly reached. Poor people, menstruating women, Dalits and people with disabilities are specifically left out from the progressive realization of right to water and sanitation. The supply from the water systems is scarce and inadequate as majority of the schemes are poorly functioning and cannot supply as needed.
10. The consultations carried out have also revealed that there still is a huge gap with regard to poor households’ (particularly in Province 2) access to improved sanitation facilities, that is also culturally appropriate.
11. The access to quality water services is also a gendered, caste and cultural challenge. Menstruating women, particularly in western Nepal where chaupadi¹ is prevalent, women are not allowed to access water directly from the water sources, particularly public taps and springs. During the days when they are menstruating, their access to water is limited and many of their sanitation needs unfulfilled.
12. Similarly, Dalits, who are considered a low caste group also face difficulties in accessing water, as they are considered polluting by the so-called upper caste group. Irrespective of constitutional provisions that ensures equal rights for all, the disparity between gender and caste still lingers when accessing water services.
13. While examining the implementation of right to water and sanitation on the key components of access, quantity, quality and regularity- following evidences emerged from the consultations.

Access to quality water services

14. Data of DWSSM (2018/19) shows that 87.88 percent of total population have access to basic water supply facility. There is a disparity in the facility among the provinces, with Karnali province with the lowest coverage of 84.18 percent and Gandaki province with the highest 89.89 percent. Still, 666721 households lack access to basic water services. These figures are estimated based on the data collected and recorded over the period, after the completion of each water supply facilities ever made. Hence, these figures are not the actual reflection, as the coverage may be well below, as many water supply facilities are dysfunctional by now. The whereabouts of the remaining 12.12 percent who are devoid of basic water supply facility is unknown and untracked. They are potentially the poor and marginalized, the ones living in difficult terrains in the rural areas, the urban poor, including slum and squatter dwellers. The unavailability to track these unreached population has also made the progress stagnant for a long period of time.
15. Figures show that the sources of basic water supply are piped system (51.69%), deep tube well (33.38 percent), other safe sources (2.7 percent) and rainwater (0.11 percent). The piped water connection to households is more common in urban households and with well-off households. Poor households are less likely to have private piped connection at home and rely upon other sources. Hence, there is a disparity in access to piped water between urban and rural, rich and poor households.
16. The access to quality water services is also a gendered, caste and cultural challenge. Menstruating women, particularly in western Nepal where *chaupadi* is prevalent, women are not allowed to access water directly from the water sources, particularly public taps and springs. During the days when they are menstruating, their access to water is limited and many of their sanitation needs unfulfilled. Similarly, Dalits, who are considered a low caste group also face difficulties in accessing water, as they are considered polluting by the so-called upper caste group. Irrespective of constitutional provisions that ensures equal rights for all, the disparity between gender and caste still lingers when accessing water services.
17. Four parameters² are taken into consideration when determining access to basic water supply. They include; quantity, access, regularity, and quality of water. Some parameters and its specifications seem insufficient in defining what constitute safe and quality water. The quantity, which is 45 liters per capita per day is insufficient in meeting the water needs of a person. Further, the specification of the quality aspect is highly problematic where safe and clean water is defined based on the observation through naked eyes, without any chemical or lab tests for mineral, chemical or bacterial contents.
18. The lack of laboratory or water quality test services are yet another challenge in accessing quality drinking water. The water quality testing services are not easily available even in the urban areas, let alone the rural areas. For instance, there is not a single water quality testing lab set up by the government that people from Karnali province can access. They have to rely on the one from another province, which itself has remained dysfunctional for a long time.

Functionality of drinking water schemes

19. There are currently 42,039 water schemes in Nepal. Not all water supply systems constructed over the period are functioning to supply water throughout the year. In fact, only 28.13 percent of water supply schemes are functioning well. 38.07 percent need minor repairs and 10 percent need major repairs, 15.85 percent of schemes need rehabilitation and 7.93 percent are beyond repair and hence need reconstruction.
20. Only the schemes in the first two categories are supplying water while the others are out of operation. This shows very poor functionality of the existing drinking water supply schemes in the country. This has affected access to reliable, sufficient and safe water, which has direct impact on health, as well as hygiene behavior of people.
21. The key challenges behind the poor functionality are faulty technical planning, lack of developing Water Use Master Plan (WUMP), lack of coordination among the spheres of government and clarity in roles, lack of transparency in the project implementation process, lack of ownership of local people, use of poor construction materials, weak local institution and absence of proper operation and maintenance mechanism.

Governance and Management

22. The only model of ongoing water supply service management is community-based management- through water users committees, applied to small rural water systems as well the small-town systems. The water users committee consists of representatives from the local community, that are benefitted from the scheme.
23. There are several challenges related to governance and management of these schemes. It is seen that the committees are often unable to operate the schemes sustainably for various reasons. They struggle to collect enough money for the maintenance of the schemes through tariff and neither do they have technical capacity to carry out the breakdowns themselves. More severely, in case of landslides, earthquake or other disasters, there is no money to rehabilitate the scheme. The government is also not proactive in this matter and there is no systematic monitoring mechanism in place. The scheme remains in need for rehabilitation for years.
24. Many people remain unwilling to pay the fee or their contribution for schemes that take too long for construction and is unreliable. For others, such as the poorer households and marginalized communities like Dalits, they fail to pay their contribution and even get excluded from the services.
25. Irrespective of encouraging legal and policy provisions for women's role in governance and management at the local level, their participation in general is unsatisfactory. Although majority of schemes have women's representation in the Users committees, but their meaningful participation is still a challenge. The key position such as that of chairperson and secretary is largely occupied by men.
26. The schemes are constructed on ad hoc basis without a proper planning. Without the Water Use Master Plan, there is often duplication of work, with two schemes in the same catchment area, neither it is done in a participatory and transparent way.
27. The local government is yet to develop WASH related acts and regulations. It is also realized that there is a lack of ownership among many local governments on the WASH issue.

Access to improved sanitation facilities

28. Nepal has made significant progress towards ending Open Defecation and improving sanitation across the country. The country was declared as open defecation free (ODF) on 30 September 2019. This means that all population has access to toilets either private, public or shared. They use toilets and do not defecate in open.
29. It is noteworthy that the status of ODF has been achieved, but there still are many challenges, particularly relating to its access, use, maintenance and sustainability. In terms of access, it remains a challenge for people with disability, who because of the lack of disabled friendly structure cannot use sanitation facility, such as toilet. Even the public toilets lack this structure. The use of the toilet is severely challenged by the socio-cultural norms and behavioral aspects. There has been very little investment in terms of educating people on hygiene and sanitation, hence there still is lack of awareness and hesitation to change toilet using behavior.
30. In case of hills, particularly in Karnali and Sudur Paschim provinces, women and girls may not be allowed to use the toilets as other members in the family. In case of plains, more particularly in Province 2, where open defecation is more in practice, it still continues. In many cases, the father-in law and daughter-in law do not share the same toilet, associated with the rigid social norms. For poor households with marginal land, the toilet constructed close to their house has resulted in not using it at all to control the smell and dirt entering their households. Hence in many cases, the toilets are forcefully constructed and rushed without considering the socio-economic and cultural aspects of the communities.
31. The toilet infrastructures are also poorly constructed, particularly by poor households and the lack of water supply has further deteriorated the condition of the facility.
32. At the local level, there is absence of sanitation and hygiene related acts, regulations and work procedures. Also, at the national level, there is delay in finalization of water and sanitation bill, which has been pending for a while now in the parliament.

Recommendations

33. **Amend the existing recommendation 122.87** on right to water and include poor people's access to water and sanitation with focus on women, dalits and people with disabilities.
34. Amend the existing recommendation 122.87 on right to water and include – parameters of availability, quality, accessibility, and affordability - whilst determining the implementation of government plans and policies.
35. **Make a new recommendation on right to sanitation** especially with regard to socio-cultural norms and behavior aspects of community

Since, right to water and sanitation is not a standalone human right. For its full realization, it should be addressed in the context of other human rights. Therefore amend existing recommendations on the issues of non-discrimination (area 8), right to adequate standard of

living (area 22.1), right to adequate housing (area 22.3), right to health (area 24), discrimination against women (area 29.1) and right to development (area 37) and include following specific recommendations in the context within these rights.

36. Address the existing disparity in access to water, through tracking of unreachd population by scientific means. **(Right to development (area 37))**.
37. Ensure access of women, poor and marginalized groups, including disabled to water supply and sanitation services. **(Non-discrimination, (area 8))**.
38. Design and implement awareness and educational initiatives against the discriminatory practices of chhaupadi and caste-based discrimination that impedes their access to water and sanitation facilities. **(Non-discrimination, (area 8), right to health (area 24) and discrimination against women (area 29.1))**.
39. The four parameters adopted to define the basic drinking water services is not adequate and hence need to revise. **(Right to water, amendment to 122.87)**.
40. Take measures to build capacity of community-based users committee in governance and management of schemes. **(Right to development (area 37))**.
41. Ensure meaningful participation and decision making of women in Water Users Committee through their roles in management and governance of the scheme. **(Right to water, amendment to 122.87 and Non-discrimination, (area 8))**.
42. Enact new acts and regulations concerning WASH at the local level. **(Right to water, amendment to 122.87)**.
43. Expedite the process of drafting new legislations and bills on WASH sector aligning with the new constitution, in wide consultations among the governments and other WASH actors, clearly defining the roles and responsibilities. **(Right to water, amendment to 122.87)**.
44. Take measures to improve coordination between all spheres of government. **(Right to water, amendment to 122.87)**.
45. Follow-up on the Open Defecation Free status take necessary measures to increase its use and sustainability affected by financial and cultural issues. Meanwhile, accelerate initiatives to campaign on total sanitation movement in a comprehensive way. **(Make a new recommendation on right to sanitation and right to health (area 24))**.

¹ Chhaupadi is a menstrual taboo that prohibits Hindu women and girls from participating in normal family activities while menstruating, as they are considered "impure". They live separately from the house in sheds, caves and outbuildings. Chhaupadi is practiced primarily in the western part of Nepal. However, the concept of pollution and impurity during menstruation is observed in other parts of the country as well, with lesser restrictions.

² Quantity: 45 liters per capita per day to meet all the water needs. In case of areas that are dry and rely on rainwater, access to 20 liters of water per person is considered; Access: A household is considered to have access to basic water supply if water can be filled and brought to the household within 30 minutes. The time includes walking, waiting time, collecting time and walking back to the household from public taps, tube well, or from other safe sources; Regularity: If water is available in the sources (taps, springs, tube well, well etc.) even if it is for an hour in a day and throughout the year, the household is considered to have access to basic water services; Quality: The water should not be harmful to human health and should look clean when seen with naked eyes.