



ESCR

YEARBOOK 2021

Situation of Economic, Social and Cultural Rights of Freed Haliyas in Sudurpaschim Province of Nepal

Felm¹⁸⁵⁹



This project is funded by the European Union.





Situation of Economic, Social and Cultural Rights of Freed Haliyas in Sudurpaschim Province of Nepal ESCR Yearbook 2021



**Campaign for Human Rights and Social Transformation
(CAHURAST), Nepal**

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Cover page photo caption: Gautami Sarki (left) and Dharma Sarki (right) are building their literacy skills in Bhramadev village of Kanchanpur District in Nepal during the Transformative Education Program organized by Enhancing Dignified Life of freed Haliyas through Collective Advocacy and Human Rights Campaign for Democratic Political Participation in Nepal-ADHICAR project, funded by the European Union.

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¹ 'The Member States of the European Union have decided to link together their know-how, resources and destinies. Together, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders'.

माननीय शशी श्रेष्ठ
मन्त्री

भूमि व्यवस्था, सहकारी तथा गरिबी निवारण मन्त्रालय
सिंहदरवार, काठमाडौं ।



नेपाल सरकार
Government of Nepal



Hon. Shashi Shrestha
Minister

Ministry of Land Management, Cooperatives
and Poverty Alleviation,
Singhadurbar, Kathmandu

प.सं. :

च.नं. :

शुभकामना सन्देश

नेपाल सरकारले २०६५ भाद्र २१ गते पश्चिम नेपालमा बाँधाश्रम तथा दासप्रथाको अवशेषको रूपमा रहेको हलिया प्रथाको अन्त्य घोषणा गरेको भण्डै एकदशक भन्दा बढि समय बितिसकेको छ। हलिया मुक्तिको घोषणा पश्चात सरकारले मुक्त हलियाहरुको तथ्यांक संकलन, प्रमाणीकरण, वर्गीकरण र पुनःस्थापनको कार्यक्रम अघि बढाएको सबैलाई जगजाहेर नै छ। पुनःस्थापनाको समयावधि लम्बिदै जाँदा मुक्त हलियाहरुको व्यवस्थापन, शिक्षा, स्वास्थ्य, रोजगारी, आयआर्जन, दिगो जिविकोपार्जन, सामाजिक सशक्तिकरण र समावेशीकरण सम्बन्धी मुद्दाहरु समाधानका क्रममा देखा परेका जटिलताहरुका बावजुद पनि नेपाल सरकारले निरन्तर प्रयास गर्दै आइरहेको छ। समाजमा सबैभन्दा पछाडि पारिएको मुक्त हलिया समुदायको सामाजिक न्याय सहितको दिगो पुनःस्थापना, गरिबी र अभावबाट मुक्त गरी राज्यको मूलधारमा ल्याउन सके मात्र गणतान्त्रिक नेपालले सार्थकता र पूर्णता पाउने देखिन्छ।

यी सबै तथ्यलाई मध्यनजर गरी यस मन्त्रालयले मुक्त हलियाहरुको समस्या समाधानका लागि हालै अध्ययन समिति गठन गरेर कार्य प्रक्रिया अघि बढाएको छ। अध्ययन समितिको प्रतिवेदनका आधारमा मन्त्रालयले पुनःस्थापना लगायत शिक्षा, स्वास्थ्य, रोजगारी, आयआर्जन, दिगोजिविकोपार्जन, सामाजिक सशक्तिकरण र समावेशीकरणका मुद्दाहरु सम्बोधन गर्न मन्त्रालय प्रतिबद्ध रहेको छ।

अन्तमा, मुक्त हलियाहरुका सम्पूर्ण गतिविधिहरु समेटेर मुक्त हलियाको क्षेत्रमा भए गरेका कार्यहरुलाई व्यवस्थित दस्तावेजीकरण गर्ने उद्देश्य लिई सुदूरपश्चिम प्रदेशका मुक्त हलियाहरु र अपाङ्गता भएका व्यक्तिहरुको आर्थिक, सामाजिक तथा सांस्कृतिक अधिकारको अवस्था नामक वार्षिक पुस्तिका प्रकाशन गर्न लागेको जानकारी पाउँदा मलाई खुशी लागेको छ, जुन काम आफैमा रचनात्मक र प्रशंसनीय छ। यस किसिमका रचनात्मक कार्यहरुमा मन्त्रालयको सदा साथ सहयोग रहने प्रतिबद्धता व्यक्त गर्दै प्रकाशक संस्थाहरुलाई हार्दिक धन्यवाद व्यक्त गर्दै उत्तरोत्तर प्रगतिको कामना व्यक्त गर्दछु।

धन्यवाद।

शशी श्रेष्ठ

मन्त्री

१४ चैत्र, २०७८

JOINT STATEMENT

Situation of Economic, Social and Cultural Rights of Freed Haliyas in Sudurpaschim Province of Nepal

We are very pleased to come together as the consortium partners of the European Union (EU) and Ministry for Foreign Affairs of Finland co-funded 'Freed Haliya Empowerment Project' in making this joint statement. This Human Rights Yearbook 2021 is among the most significant milestones of this project, as it provides empirically rigorous understanding how the Economic, Social, and Cultural Rights (ESCR) of Haliyas are realized in Sudurpaschim Provinces.

The investigation did become possible by the active participation of right holders in Haliya communities during the data collection. That data gathered via innovative mobile app was the key to construct fact-based policy recommendations to ensure that all Haliyas have their rights to development respected in health, education, work and housing - as stipulated in national and international human rights instruments.

The ESCR year book of 2021 builds on knowledge obtained in the previous yearbooks and the diverse relationships to both Haliyas as rights-holders and duty-bearing authorities in different scales on governance. Here, we would like to express our gratitude to the positive responses and the support that we have received, especially, coordinating and collaborating closely with relevant Rural Municipalities, Municipalities, and district level authorities.

At the federal level, we were excited to learn that a national level Task Force has been formed to investigate the human rights situation of Haliyas living in all the corners of Nepal. It was our honor to host the national level Task Force in their fact-finding mission to our working areas. In the future, we hope to strengthen our relationship with such national, federal, and provincial initiatives and work jointly towards sustaining local level projects and programs to enhance the life of Haliyas, especially, women, people with disability and Dalits, among them.

Finally, we would like to express our utmost gratitude to the European Union co-funding the 'Freed Haliya Empowerment Project' and to the Delegation of the European Union to Nepal for its support. We hope to be able to collaborate with the EU in many more such meaningful initiatives. We would also like to thank each and every individual who has given their valuable time and shared their personal experiences to assist us in collecting rigorous data to be able to draw conclusions about the human rights situation of diverse Haliya communities in Sudurpaschim and Karnali Provinces.

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FOREWORD

It is well recognized that human rights cannot be fully respected before the economic, social and cultural (ESC) rights of individuals and communities are guaranteed. Thus, also Nepal Human Rights Commission (NHRC) has given priority to protect and promote ESC rights particularly of the marginalized and vulnerable social and cultural groups of the society. As subsequent measure, indicators for monitoring ESC rights in Nepal have been developed.



With the intention to protect and promote ESC rights of freed *Haliyas*, who are ex-bonded laborers and one of the most marginalized communities of Nepal, Campaign for Human Rights and Social Transformation (CAHURAST Nepal) has partnered with Felm Nepal, Lutheran World Federation and Rastriya Mukta Haliya Samaj Federation through the Freed Haliya Empowerment Project (ADHICAR) that is co-funded by the European Union and Ministry for Foreign Affairs of Finland.

It is an immense pleasure for an organization to share the ESCR Yearbook 2021 that includes evidence-based results of ESC rights monitoring conducted by the community monitors of Sudurpaschim Province of Nepal. ESCR Yearbook 2021 presents the situation of freed Haliyas with a special focus set on women and Person with Disabilities (PwDs) within Haliyas of 15 Municipals of five districts of Sudurpaschim Province under four major ESC thematic rights – right to education, right to health, right to decent work and right to housing/rehabilitation service.

The yearbook is based on the ESC rights documentation of 2021 and application of experience and lessons learnt from previous years. The continuity of this publication series has been possible with intense efforts of all members of ESCR team of projects including the data enumerators and data providers.

Bishnu Pukar Shrestha
Chairman, CAHURAST Nepal

ACRONYMS AND ABBREVIATIONS

CAHURAST	Campaign for Human Rights and Social Transformation
CEDAW	Committee on Elimination of All Forms of Discrimination against Women
ESC	Economic, Social and Cultural
Felm	Finnish Evangelical Lutheran Mission
GBV	Gender Based Violence
HHs	Households
HQ	Headquarter
ICESCR	Covenant on Economic, Social and Cultural Rights
ID	Identity Card
LWF	Lutheran World Federation
NGO	Non-Governmental Organization
NHRC	National Human Rights Commission
NLSS	Nepal Living Standards Survey
OHCHR	Office of the High Commissioner for Human Rights
OPMCM	Office of the Prime Minister and Council of Ministers
PIL	Public Interest Litigation
PwDs	People with disabilities
RMHSFN	Rashtriya Mukta Haliya Samaj Federation Nepal
SDG	Sustainable Development Goal
SPSS	Statistical Package for Social Sciences
UNDP	United Nations Development Program
UPR	Universal Periodic Report

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SUMMARY

Study Background

The Haliya system (agrarian bonded labor) had reminded as modern slavery till 2003, despite the government abolished slavery system in 1925. The system was built upon and upheld by-the informal caste-based discrimination that prevails in Nepalese society. Almost 95% Haliyas are Dalits who are perceived as “those without caste” in the caste based social category in traditional Hinduism. Dalits are the most disadvantaged in the economic, social, educational, political and religious spheres of society, and are deprived of human dignity and social justice’. Thus, cultural and social discrimination has entwined in a vicious way to economic injustice that Haliya have faced in Nepal.

The Government of Nepal (GoN) has ratified the covenant on ESC rights, and has guaranteed ESC as fundamental rights of the people in the 2015 constitution. The Constitution recognizes a range of ESC rights as legally enforceable human rights, and laws and policies are provisioned aligning with ESC rights. Despite policies and provisions on ESC rights, enforcement reminded weak including ESC rights monitoring and documentation of the violations of ESC rights. The most disadvantages and marginalized people like Haliyas are far from realizing these rights and entitlements. Though issues were reflected in UPR recommendations, they were not taken seriously, which clearly shows a need for evidence-based documentation and advocacy at local, provincial, national and international level.

The “ESCR Yearbook” has been taken as a tool to monitor and document the implementing situation of the ESC rights through empirical study generating evidences from the field. The study focuses on the ESC rights of the Freed Haliyas in general and intersectional analysis of Haliyas women and People with Disability within Haliyas in specific. Among other under ESC rights, Right to Education, Right to Health, Right to Decent Work and Right to Rehabilitation found pertinent and were focused in the study. Besides, cases were collected as testimony substantiating the data gathered.

ESCR Yearbook 2021 is based on the data and evidences collected through ESCR Mobile App in five districts of Sudurpaschim province of Nepal. The survey was conducted representing 2,567 households through purposive random sampling methods. Similarly, the monitoring mechanism was set in the field for understanding implementation situation of ESC rights, and violation of rights. Key informant interview was also conducted with the Haliyas leaders, political leaders, and other key stakeholders during various consultations. The analysis and interpretation of the empirical data gathered from the field was done through critical review of the primary data and secondary data/information. Meetings were conducted with different key stakeholders including Freed Haliya and districts chapters, GoN, and other stakeholders

were conducted verifying the information for drawing key findings, and recommendations.

Key Findings

Right to Health: Despite GoN's commitments to provide free basic health services to every citizen, 53% Haliyas are still do not have access to health services. Lack of information following few cases of discrimination is the main reasons for inaccessibility. 91% of Haliya women reported that they did not receive health related information during the pandemic and following one sixth of Haliya face discrimination in health services. Therefore, access to health care services is one of the major issues where GoN should give attention in the future.

Right to Education: Unlike health services, education found accessible to majority of the Haliyas children (90%). The GoN has provisioned free and compulsory education up to basic level & secondary level to every citizen. The PwD found challenges in accessing the education, while no any discrimination found in terms of sex. Tiny but worrisome is 15% Haliyas still feels discrimination in accessing education by their children. Despite GoN's commitment to free and quality education, about 50% Haliyas believes education is not free at all and economic is the main bottle neck accessing higher education. The distant education during COVID 19 is not an option as only one percent of the respondent reported accessible. Therefore, though access to primary education is satisfactory but there is till to do on the free education for higher level.

Right to decent work: The GoN has provisioned decent work condition for all workers with protective measures if violated through Labor Act and Civil Offence Act 2017. It also defined working hours of 8 hours a day. However, the Haliyas are still living in a harsh situation of survival economy and about 80% works for their survival fulfilling their basic needs. Forty percent of them have to work more than 8 hours a day fulfilling their basic needs who often experienced violence in the work place which is more prominent in case women. Therefore, the issues of decent work are central to Haliyas and need immediate attention of the duty bearers.

Right to rehabilitation: Freed Haliya Rehabilitation Plan and Policy 2075/76 clearly mentioned the economic upliftment of the Haliyas, access to land, renovation, and settlement of houses where they are currently living. However, only 26% of the Haliya have received identity card among which is 20% in case of women headed Haliya household. The card is identity to ensure their rights and entitlement i.e. rehabilitation package. Only 15% of those persons considered that the package was sufficient in meeting their needs. Some of the freed Haliyas were still found continuation of the Haliyas for their survival. This indicates that the rehabilitation of Haliyas is not adequately done and needs much effort from the duty bearers.

The research concludes that the ESC rights of Haliyas are far from being realized. Instead, these unmet rights and entitlements have gradually impacting to vicious cycle of violation. Therefore, the study came up with various recommendations to duty bearers and other stakeholders for immediate attentions. Some of the key recommendations are:

Local Government Level

Right to Education:

- Eradicate all forms of discrimination in education sector fostering safe, inclusive and welcoming school environment.

Right to Rehabilitation Package:

- Task Force for survey of the freed Haliyas identification and provide ID cards
- Mobilization of task Force extensively to interrogate and expedite access to adequate rehabilitation package in a just and timely manner.

Right to Decent Work

- Provide employment to freed Haliyas “*One household - One employment opportunity program*”
- Provision of vocational/skill based training to freed Haliyas including tools and equipment to freed Haliyas
- Promotion of Haliyas led inclusive cooperatives including women and PwDs. Provision of loan to Haliyas with a very low percent interest.
- Fair and equal wage for freed Haliyas for similar nature of work.

Right to Health:

- Provide information and easy access on free health services to freed Haliyas

Provincial Level Government:

- Empower and equip law enforcement agencies to take immediate action in investigating all forms of discrimination cases (especially caste-based discrimination, gender based discrimination and discrimination on disability) and prosecute those implicated in such discriminations.

Federal Level Government:

- Devise a Federal land policy to safeguard legal acquisition and ownership of land to landless people as provisioned in the Constitution of Nepal.
- Government should update the laws and provisions set for the Haliyas respecting their ESC rights prioritizing marginalized group within them - women and PwDs who goes through multiple discrimination within their own community.

1. INTRODUCTION

The abolition of slavery systems in Nepal is dated back to 1925. Even though the Government of Nepal outlawed the slavery system in 1925 officially during Rana regime, an exploitative system of agrarian bonded labor called Haliya and Kamaiya system prevailed as a form of modern slavery in Nepal until 2008, particularly in the far and mid-western parts of Nepal. Haliya used to serve landlords to till the land and undertake heavy manual labor without much respect for their human rights.

Such exploitative system was built upon - and upheld by - the informal caste-based discrimination that prevails in Nepalese society.¹ Indeed, almost all of Haliyas are Dalits who are perceived as the lowest social category in traditional Hinduism, those without a caste. According to National Dalit Commission (NDC) Dalits are considered as communities that ‘by virtue of atrocities of caste-based discrimination and untouchability, are the most disadvantaged in the social, economic, educational, political and religious fields of society, and are deprived of human dignity and social justice’.² Thus, cultural and social discrimination has entwined in a vicious fashion to economic injustice that Haliya have faced in Nepal. The long existence of the bonded labor systems began eroding in the wake of the new millennium through a series of legislative initiatives (Figure 1).³

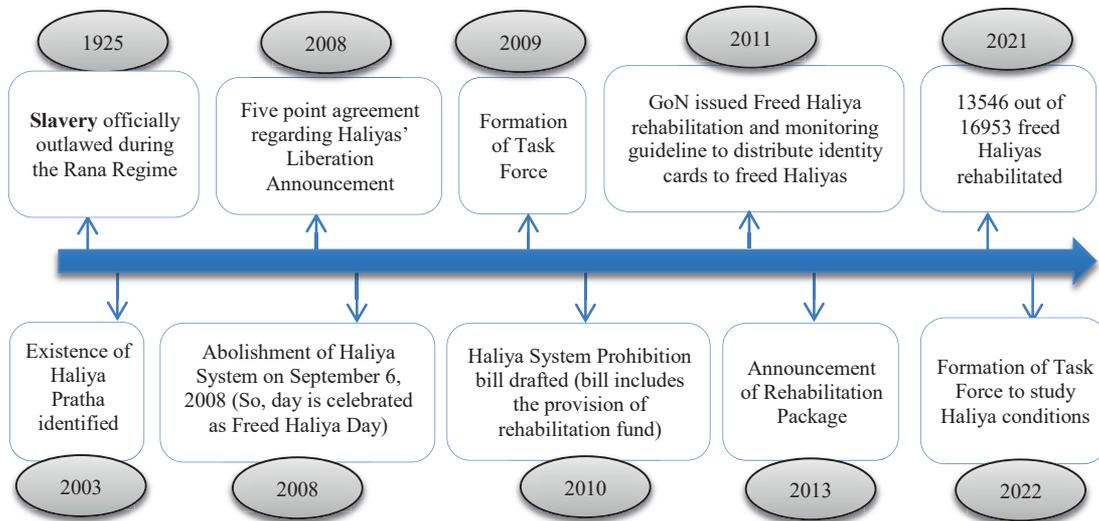


Figure 1: Milestones for respecting the human rights of Haliya

¹ Bishwakarma, M. 2017. Democratic politics in Nepal: Dalit political inequality and representation, *Asian Journal of Comparative Politics*, 2(3), pp. 261–272. doi: 10.1177/2057891116660633.

² Retrieved from <https://dwo.org.np/v1/dalit.php>

³ Please see Bonded Labor Prohibition Act 2002, Caste Based Discrimination and Untouchability Act 2011, Local Government Operational Act 2017, Human Rights for Persons with Disability Act 2017, Domestic Violence (Offence and Punishment) Act 2009 and Rules 2010 that all positive initiatives undertaken by the Government to protect the economic, social and cultural rights of marginalized communities

Despite the legislative progress, the freed Haliyas (from onwards Haliya) are not able to enjoy their rights and entitlements because of lack of information, government responses and discrimination deeply rooted within the Nepalese society⁴. Such discrimination leads in the lack of enjoyment of ESC rights hindering the democratization in Nepal.

This report is impartial evidence-based documentation that works as a tool through which to advocate for the urgent need to respect the issues of the economic, cultural, and social human rights of Haliyas. In addition to the actual mechanism of discrimination, there is a challenge of amassing credible data of those violations. It is estimated that Nepal has had thousands of bonded laborers under Haliya and Kamaiya system, but much of the earlier research on bonded labor has been about Kamaiya.⁵ The understanding about the human rights challenges faced by Haliya in their everyday lives remains weak.

The importance of the research is highlighted by the fact that the human rights situation has likely worsened during the COVID-19 pandemic and has negatively affected the poor and disadvantaged members of society.⁶ Furthermore, based on the findings of the previous Yearbooks and the investigations on the multiple discrimination within the Haliyas in Nepal⁷, the report examines whether women and persons with disabilities among Haliya face additional challenges for their rights to be respected.⁸

This report is based on unique data gathered from 2,567 individual Haliya through a questionnaire about their human rights situation in between October 2021 to December 2021, twelve qualitative entries through referral help desk mechanism in five districts of Sudurpaschim Province of Nepal, and continuous consultations with Haliya community leaders. The report focuses on the right to education, right to health, right to decent work and right to the housing/rehabilitation packages as those are deemed among the most salient human rights challenges faced by Haliya⁹.

⁴ Mainali, R., Jafarey, S., Montes-Rojas, G. 2017. Earnings and Caste: An Evaluation of Caste Wage Differentials in the Nepalese Labor Market, *The Journal of Development Studies*, 53:3, 396-421, DOI: 10.1080/00220388.2016.1189535

⁵ The exception being: Nepali, P.B., Pyakuryal, K.N., 2011. Livelihood options for landless and marginalized communities in agrarian societies: a case study from western Nepal. *Pakistan Journal of Agricultural studies*, 48(1), pp 1-10.

⁶ Luna, C.K., 2020. How COVID-19 Worsens Gender Inequality in Nepal, <https://thediplomat.com/2020/06/how-covid-19-worsens-gender-inequality-in-nepal/>

⁷ UNESCO, 2006. Forms and patterns of social discrimination in Nepal: a report. KAT-SHS-2006/01. See also CAHURAST-Nepal. (2018,2019,2020). *ESCR YEAR Books 2017, 2018,2019, Implementing Situation of Economic, Social and Cultural Rights in Nepal* (1st ed.). B.G.Printing Service.

⁸ CAHURAST-Nepal. 2020. *ESCR YEAR Book 2019: Implementing Situation of Economic, Social and Cultural Rights in Nepal*. Mediascape Pvt. Ltd.

⁹ Please see, RMHSFN, 2022. Rashtriya Mukta Haliya Samaj Federation Nepal's resources, <https://www.freedhaliya.org>

2. RESEARCH METHODOLOGY

2.1. Monitoring area and its population

The report builds on the existing knowledge gained through different Haliya movement and process of rehabilitation. CAHURAST in support of Finnish Evangelical Lutheran Mission (Felm Nepal) and Lutheran World Federation (LWF), since 2017, have been conducting the similar kinds of research and citizen led monitoring on ESC rights of Haliyas and other minorities in seven different districts. The Rashtriya Mukta Haliya Samaj Federation Nepal (RMHSFN), formed by federating districts Haliya liberation association of 12 districts, has been actively involved as sources of knowledge and information.¹⁰

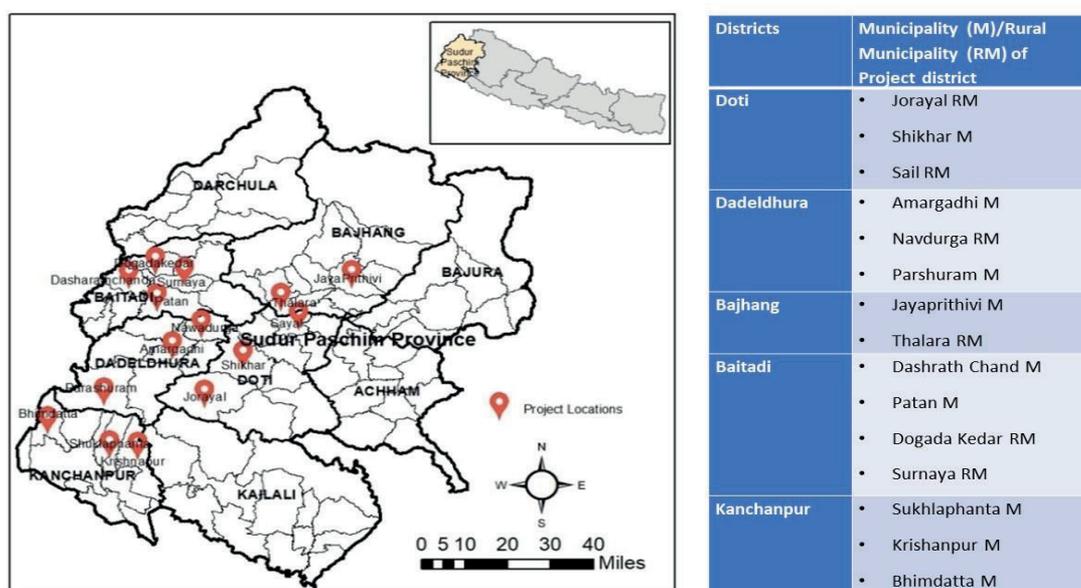


Figure 2: GIS Map of Monitoring Location of research

These locations have been prioritized for monitoring because of the following reasons:

- Haliya system is more prevalent in Dadeldhura, Bajhang, Kanchanpur, Doti and Baitadi, and has the highest percentages of Haliya.¹¹
- Majority of freed Haliyas have not received rehabilitation packages from these districts.
- Selected districts have higher percentages of PwDs and only 41% of them have disability ID cards.¹²

¹⁰ CAHURAST-Nepal. (2017, 2018, 2019, 2021). ESCR YEAR Book 2017, 2018, 2019, 2021: Implementing Situation of Economic, Social and Cultural Rights in Nepal. Mediascape Pvt. Ltd.

¹¹ Data Records of RMHSFN, Dhangadi, Information obtained during Freed Haliya Empowerment Project partners consultation meeting

Districts	Area (sq. m)	No. of Municipals		Population	Literacy rate	No. of Migrant Workers	Population in poverty	Local Language
		M	RM					
Doti	2025	3	7	214043	56.3	23544	101000	Doteli
Dadeldhura	1538	2	5	149053	65.3	11670	60915	Dotiyali
Bajhang	3422	2	10	207710	55.6	22845	110465	Bajhangi
Baitadi	1519	4	6	257888	63	21039	114355	Baitadeli
Kanchanpur	1610	7	2	484889	70.7	38398	140381	Nepali

Table 1: Socio Economic and Demographic Distribution of the Project Districts¹³

Haliyas are a group of around 100 000 people who are spread geographically in 12 districts of the Sudurpaschim and Karnali provinces of Nepal, typically living in rural communities.¹⁴ There are around 25,000 freed Haliya still unregistered in the official records of government, as claimed by Haliya leaders.¹⁵ Though 126 Haliyas have been elected to local government, their representation is limited to lower-level positions with small influence to guarantee the respect of the human rights Haliya. Subsequently, many of the processes vital to Haliya human rights have not gained political momentum: not all freed Haliyas have received a rehabilitation package as reparation of the past slavery.

The report acknowledges the different social groups among Haliya. Hence, all human rights evaluations concerning Haliya need to investigate whether some groups have it better or worse than the other. The previous yearbooks indicate that women and PwDs might live in particularly precarious situations, which echoes the human rights situation common in Nepal.

Monitoring Area	Haliya households	No. of Haliyas		Haliyas with ID card	PwDs		PwDs with disability cards
		Male	Female		Male	Female	
Doti	1321	3170	3435	1210	3583	3719	2244
Dadeldhura	2551	6122	6633	2377	2742	2408	2380
Bajhang	2945	7215	7510	2848	2534	2442	1817
Baitadi	2147	5260	5475	1619	4193	3595	3343
Kanchanpur	2699	6478	7017	1996	4830	4242	4260

Table 2: Population composition of target communities and their identity status in Project Districts¹⁶

¹² RHMSFN, 2020. Haliya Pratha in Nepal. Siddhartha Offset Press Pvt. Ltd. Dhangadhi

¹³ INSEC, 2021, Nepal Human Rights Yearbook (1st ed.). Kathmandu, Dream Graphics Press

¹⁴ UNHR, 2009. Emancipation of bonded laborers in Nepal, Retrieved from <https://www.ohchr.org/EN/NEWSEVENTS/Pages/BondedLaborNepal.aspx>

¹⁵ RHMSFN, 2020. Haliya Pratha in Nepal. Siddhartha Offset Press Pvt. Ltd. Dhangadhi

¹⁶ Data provided in an email exchange with District Land Revenue Office, 2021

2.2. Gathering data with the help of digital tools

ESCR Monitoring Mobile App: To carry out data gathering, a semi-structured interview questions were designed and uploaded in the ESCR app. Sets of questions were divided into five sections: 1) background information, 2) rights to health, 3) right to education, 4) right to decent work and 5) right to housing/ rehabilitation package. Then, the survey among the target group members was implemented face-to-face by seven' community monitors' trained to this project in five selected project districts (see full workflow in Figure 3). The use of mobile means of data gathering has proliferated in empirical social sciences.¹⁷

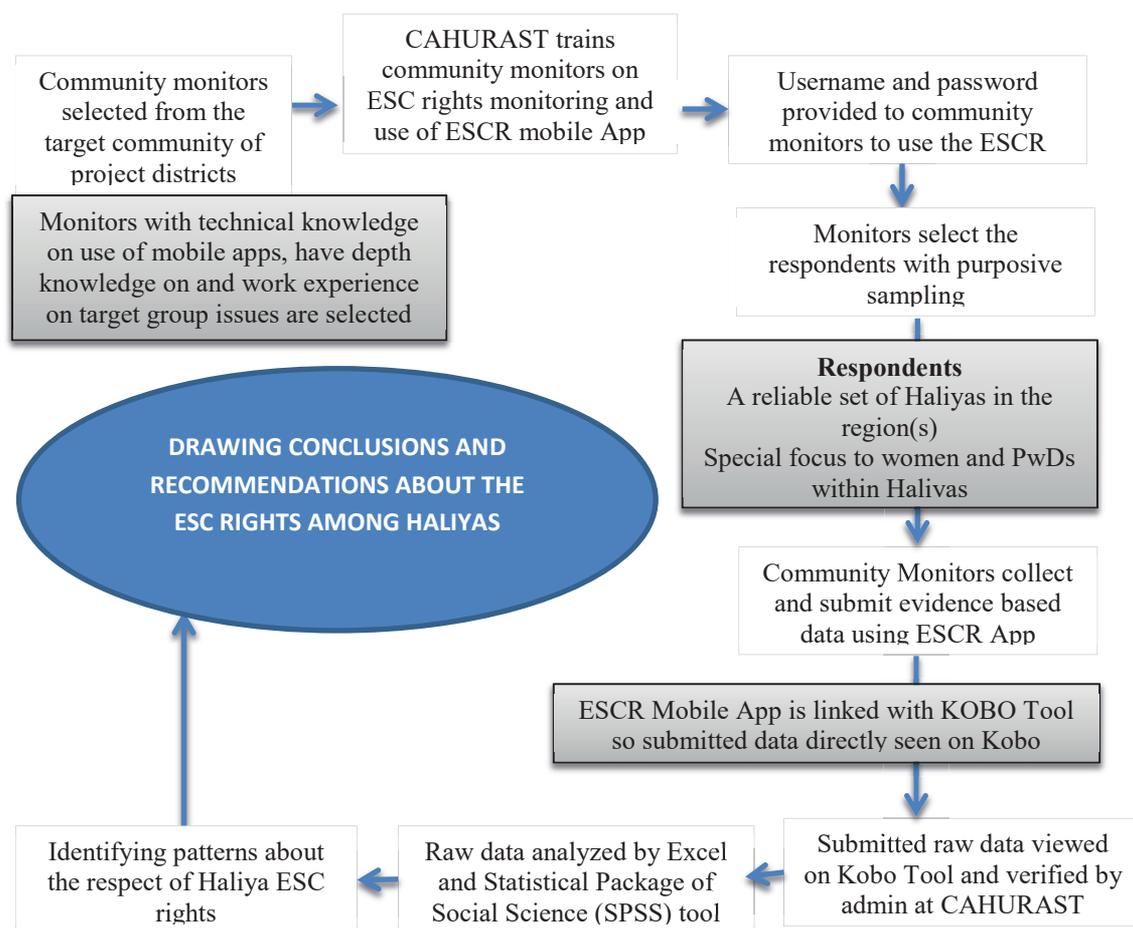


Figure 3: The workflow of the survey

The community monitors were chosen from the same community of their respective project districts. The monitors were trained on the monitoring techniques. To start up with the monitoring, they first consulted with the district chapters of freed Haliya

¹⁷ <https://www.igi-global.com/chapter/mobile-applications-used-for-human-rights/214099>

Federation – an association of freed Haliya organization of 12 districts – to map the area of freed Haliya communities’ settlement.

After mapping the freed Haliya settlement, monitors had visited those settlements and carried out the survey. Households were selected purposively, trying to reach a balanced set of freed Haliya. Few monitors were able to organize community meetings and get the contacts and respondents to the survey from there.

The manifestation of the COVID impact continued during the survey period and, alas, the collection of the data proceeded slower than expected. To cope up with the challenges, the freed Haliya leaders of respective districts were mobilized along with community monitors facilitating data collection.

The selection of respondents followed certain criteria:

- The respondents were selected from the age of 15 to above. This criterion supported to get the information and view point from different age group.
- On PwD, interviewed respondents were among persons with visual, hearing, speech, and physical impairment.
- All genders were respected as respondents for the ESC rights monitoring.

Referral Help Desk: The qualitative sets of information on ESC rights situation was gathered by community monitors and referral help desk focal persons from each project district. The cases were about the human rights violation against the target groups, particularly concerning the right to education, right to health, right to decent work, right to housing/ rehabilitation package and identity issues.

The cases were handled by focal persons of five referral help desks at project districts by coordinating with the legal advisory groups developed within the project, while referring the complex cases to the concerned authorities. They also had the obligation to verify the provided information on the violation cases with evidence in cooperation with the victim before the final submission to the respected authorities. Altogether, 12 cases were registered at the help desk section of 5 project districts in three months.

Consultations: Various consultations and meetings were conducted by the researchers pertaining to different issues of Haliyas on right to economic, social and cultural rights and Haliyas rehabilitation among Haliya movement leaders during 2021. These consultations and individuals’ recommendations have also become instrumental while writing the report.

2.3 Ethical Considerations

Working with vulnerable communities always demand additional ethical consideration concerning the ways to conduct research. Among the key principles was to localize the data: the monitors were selected from the freed Haliya communities to create the sense of trust and respect as well as to avoid any language barriers. Furthermore, the data in

this research is directed to building evidence and recommendations for better respect for freed Haliya human rights, thus seeking to transcend the freed Haliya experience of conducting interviews that do not lead to social change.

A verbal consent was been taken before the interview that was recorded in the ESCR app. As the discussions touched sensitive issues as the role of duty-bearers, the rights of privacy of the respondents have not been violated during the monitoring or any other activities related in this report. The cases were presented with the permission of the respondents.

The data protection of the ESCR mobile app answers was made cyber-safe and the data cannot be accessed without permission of the researchers and admins.

2.4 Data Analysis

The main data for the analysis is derived from the ESCR-mobile app survey. The first steps to analysis were curating the data and structuring the answers to different questions based on variables such as gender, disability, profession, age, and geographic locations. That structuring was the key to build an empirical overview about the human rights situation among freed Haliya and to identify whether there is evidence about multi-based discrimination. Subsequently, the data was approached inductively even though, based on the previous research, the focus was on gendered and disability-related phenomenon.

The analysis proceeded as quantifying means for different groups and categories to themes and topics to identify patterns. Following coding, frequency and percentages were calculated using SPSS software, and graphs were created as needed. By having solid understanding where the most salient human rights challenges exist and to whom those were targeted, making comparisons, and finding wider patterns became possible.

After gaining the quantitative grasp of the data (e.g. who might be discriminated in work and where), scrutinizing the qualitative data for additional information and characterization about the roots and means of those practices began. Subsequently, the qualitative data was approached through a method of abductive content analysis, where the analysis of the content was guided by the findings from the quantitative data.¹⁸

Finally, to draw conclusions and recommendations, the findings were reflected with the legal framework and the given policy recommendations adopted during the Universal Periodic Review (UPR) concerning Nepal. That provided a means also to contextualize the localized findings to national frameworks and identify if progress has been made; or whether the analysis indicates lack of duty-bearers capacities to respect the human rights of freed Haliya.

¹⁸ Timmermans S. Y., 2012. Theory Construction in Qualitative Research: From Grounded Theory to Abductive Analysis. *Sociological Theory*.30(3):167-186. doi:10.1177/0735275112457914

3. NEPAL'S COMMITMENTS TO RESPECTING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

3.1 Nepal's Constitutional Arrangements and the rule of law

Human rights belong to all simply by existing as a human being. Human rights are about equality: those do not depend on the sexual orientation, caste, class, or any other socio-political category of an individual.

Respect to human rights has been carved into international policy and law since the United Nation's declaration of human rights in 1948. International commitments to human rights have their articulation in the Nepalese constitution. It set the clear rule of democratic law by stating all citizens shall be equal before the law and no person shall be denied the equal protection of the law.¹⁹ Such strong connection to human rights treaties is a pattern evident in post-conflict countries that are in the transition process to peace, as those treaties glue different stakeholders under a common frame.²⁰

Such strong commitment is deemed necessary as along with the transparent and democratic justice runs that caste-based socio-political order that is the opposite. Indeed, the constitution stipulates no person shall be subjected to any form of untouchability or discrimination in any private and public places on grounds of his or her origin, caste, tribe, community, profession, occupation or physical condition, such as disability.

No discrimination shall be allowed at a workplace with or without making untouchability on the ground of caste²¹. In similar vein, the constitution takes a clear position against exploitation by stating that no person shall be usurped in any manner on the grounds of religion, custom, tradition, usage, practice, or any other grounds. Similarly, no person shall be subjected to trafficking nor shall be held in slavery or servitude, and no one shall be forced to work against his/her will.²²

In addition, the Nepalese constitution does not only provide protection from violations and exploitation, but it stipulates that every citizen shall have the right to employment, and that the terms and conditions of employment or unemployment benefit shall be provided for in the federal law.²³ Furthermore, especially in regard to Haliya who are predominantly without a caste, the state shall provide land for the landless Dalit, and furthermore, arrange a settlement for the Dalit who do not have housing.²⁴ Moreover, the state shall pursue policies to identify the freed bonded labors, tillers, landless, squatters and rehabilitate them by providing housing, housing plot for residence and cultivable

¹⁹ article no. 18

²⁰ Sean Molloy (2020): Why do states ratify human rights treaties in transitioning societies?, *The International Journal of Human Rights*, DOI: 10.1080/13642987.2020.1823370

²¹ article 24 o

²² Under article 29, Right against exploitation

²³ Article no 33 of the constitution

²⁴ Sub-articles of article 40

land or employment for their livelihood.²⁵ Moreover, citizens with disabilities shall have the right to live with dignity and honor, with the identity of their diversity, and have equal access to public services and facilities²⁶.

3.2 Universal Periodic Review (UPR) in Nepal

UPR is a process guided by the Human Rights Council of the UN in which countries peer-review each other based on their capabilities to protect human rights. The process is iterative, as the evaluation of the progress builds on the earlier recommendation, and cyclical in a sense that countries are reviewed once in about five years. The goal of this process is to hasten up and encourage the implementation of human rights in the 192 countries constituting the UN.

Increasing respect for human rights is considered as a key to building sustainable peace, and subsequently, Nepal put serious effort in contributing to this process.²⁷ The country was evaluated in the third cycle of UPR in November 2020. In its own words, The Government of Nepal considers the UPR as a constructive mechanism for the protection and promotion of human rights worldwide. Nevertheless, the human rights review is not based on governmental insights, but civil society actors provide their evidence during the process too.

That is the reason why, in the following analysis, the findings and conclusions are discussed and reflected with the diverse UPR recommendations given. Altogether, Nepal has received 233 recommendations from the Working Group. Out of 233 recommendations, 196 recommendations were accepted and 37 recommendations were noted for the time being by the Government of Nepal. Specifically to this report, forty of those recommendations are under the economic, social, and cultural rights, regarding issues such as modern slavery, poverty alleviation and education among others.

²⁵ Constitution of Nepal 2072 (Page 41)

²⁶ Article 51

²⁷ Roesdahl, M., 2017. Universal Periodic Review and its Limited Change Potential: Tracking the Complexity of Multiple Actors and Approaches to Human Rights Change through the Lens of the UPR Process of Nepal, *Journal of Human Rights Practice*, 9(3), pp. 401–423, <https://doi.org/10.1093/jhuman/hux033>

4. HUMAN RIGHTS SITUATION OF FREED HALIYAS

4.1 Characteristics of Haliya: the samples

The Haliyas, which literally means ‘ones who till the land’, refer to people who were entwined within a system of bonded labor.²⁸ It is associated closely with the system of debt bondage common to caste-based communities, a form of modern slavery. Typically, enslaved Haliyas had no direct association with any debts. Rather, in most cases, the laborers were held because of the debts accumulated by their ancestors over generations. Haliya system is prevalent in the western part of Nepal, more specifically in Kanchanpur, Dadeldhura, Doti, Baitadi, and Bajhang.

In Nepal, generally, Haliyas were bonded through three kinds of working relationships. First was based on an ancestry, where a Haliya worked for the landlords to pay off the loans taken by their elders. Second was more connected to the land and livelihood as a Haliya might have taken a small piece of land from their landlords to cultivate in exchange for their labor. Third kind of work relation was a direct payment of a debt that Haliya herself had taken from a landlord.

Haliya is not only a system of economic control as it has roots in the socio-cultural traditions of Nepal. Indeed, extreme poverty and debt in the western regions of Nepal have relegated many members of the lower castes, known as Dalits, to Haliya status. Haliyas face double discrimination, as Dalits and as Haliya, compelling them at the bottom of society for centuries. They are subjected to many human rights abuses, including severe thrashing, forced starvation, water deprivation as punishment, and various forms of humiliation. Due to discrimination, Haliyas have small political influence in governance.

The landlords are generally from the high caste Brahmin and Chhetri or higher status ethnic groups like Gurung and Magars among others. Also, among Haliyas themselves, the hierarchy-based caste system prevails and affects social relationships between families.

The majority of Haliyas live in isolated communities and, for instance, have separate water sources and temples from the other population groups. There are altogether 19059 freed Haliyas listed in the government record from 12 districts of Karnali and Sudurpaschim provinces. This research accentuates on five key districts and Figure 4 shows the distribution of respondents in municipalities.

²⁸ UNRHCO June 2011

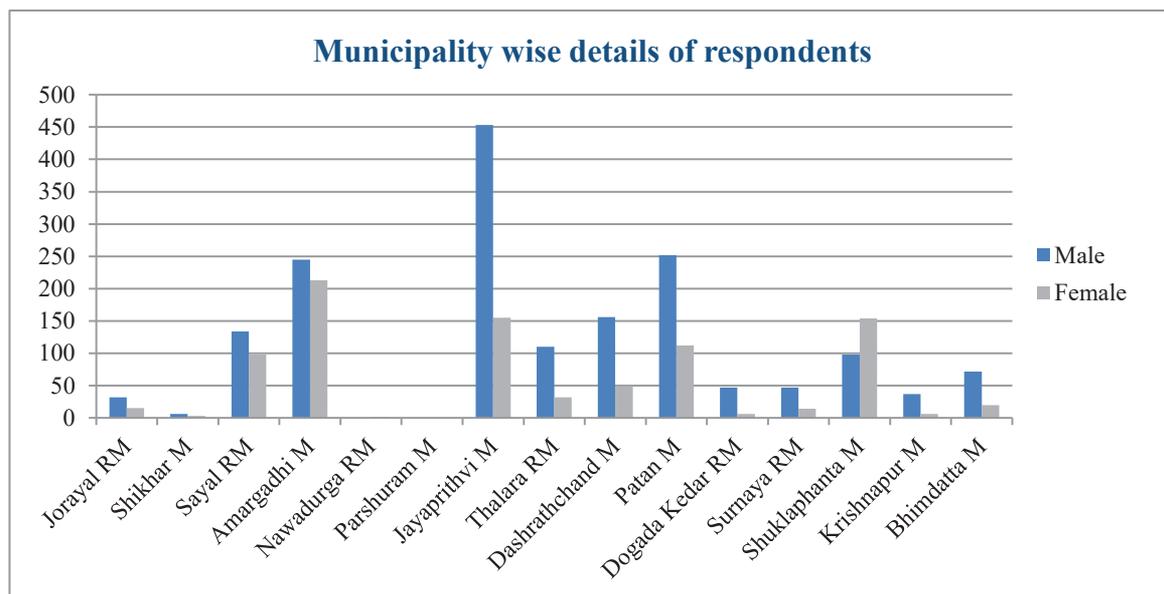


Figure 4: Distribution of respondents by Municipalities

Among the 2567 freed Haliyas who took part in this research, 66% were men and 34% were women, which makes the gender balance sample set biased in relation to population in general. However, there is a specific reason for that: Nepal's labor participation is male dominated and holds particularly true in Haliya system of forced labor. As all members of Haliya family were bound to work for the employers, subsequently female workers were typically considered as a mere attachment to the labor of male Haliya.

The higher numbers of participants were the age group of 25-40 years, whom the study has defined as Adults with 45 %, followed by those who were 45-55 years, defined as Late Adults, with a share of 29%. The amount of Senior Citizens (55 Years plus) having a share of 21 % and finally, Youth (<24 Years) with a share of 5%. That balance of among respondents can be considered a good representation of those of Haliya bearing in mind that children were not considered a priority to this investigation.

Occupation-wise more than half of the respondents (56%) were from the agricultural sector followed by around one third being a daily wage worker in mixed societal sectors (See figure 5). The category 'other' consists of dozens of different professions ranging from servants to students. The two remaining categories showcase the share of disabled persons unable to work (which allows deducing that the majority of disable persons among Haliya are in work life) and the share of people who have not been able to find work or that they need to stay home taking care of their families for instance. In general, it was found that there are gender differences to work life: more women were in agriculture than men, and the share of men among daily wage workers were higher than women.

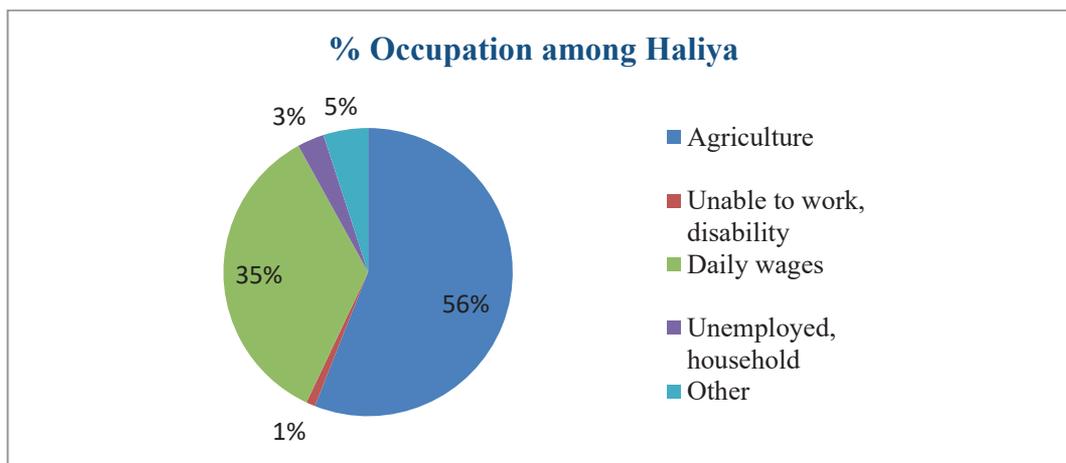


Figure 5: Occupation details of Haliyas

The fertility rate among Haliya is high. The majority of participants (53%) have a family size of up to five members, followed by those 39% having a family size between six and nine, and 8% having families of ten to fifteen members. Families might be considered among Haliya as extended communities of relatives as 18 participants informed that they have a family of 16 to 30 members. Regarding marital status, it is found that 93% of the respondents are having married life.

The dataset allows this report to examine closer the ESC-rights among persons with disabilities among Haliya. The communities at the rural part of Nepal still view disability as a penance to the sins committed in previous birth and are treated as objects of pity and Haliya communities are not apart from this form of discrimination. PwDs might be chided as a matter of social prestige by families.

There were 366 freed Haliyas with disabilities with 239 males and 127 females., which reflects the general gender balance in this dataset (See figure 6). Moreover, PwDs participated the research from all the districts.

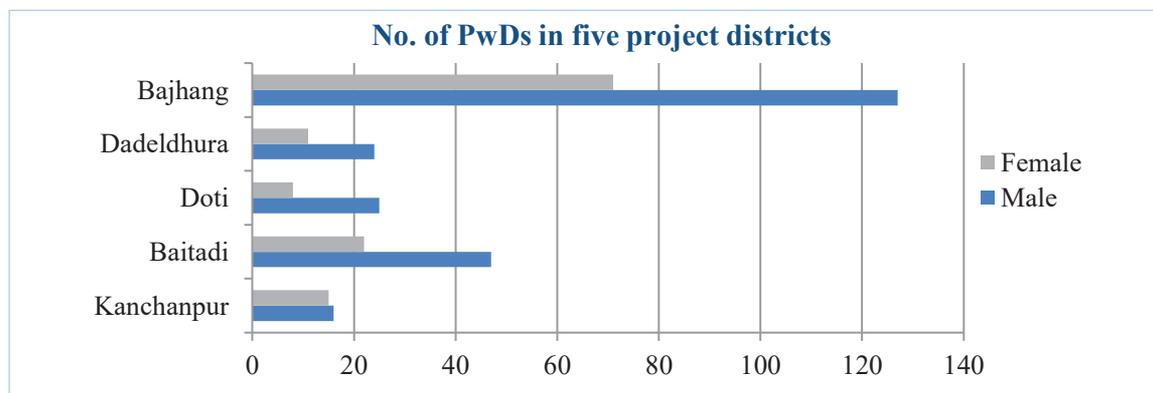


Figure 6: District wise representation of PwDs

4.2. Right to Health

Legal framework

Constitution of Nepal 2072, article no. 35: every citizen shall have the right to free basic health services from the state and no one shall be deprived of emergency health services²⁹.

Labor Act 2017, chapter 12: duties are set to the employer towards labor, e.g. making a safe environment for work, providing necessary information notice and training relating to the safety and health to the labor and providing safety equipment for free to labor.³⁰

Health Service Act 2075, chapter 2: every citizen shall have the right to obtain quality health service easily and conveniently and no one shall be deprived of health services.³¹

UPR recommendations

No. 159.38, 159.143 and 159.147: Continue efforts to facilitate access to health services and to create favorable conditions for ensuring access to public health for all

No. 159.132: Maintain its commitment to implementing health plans and programmes to ensure the protection of the right to health during emergencies and pandemics

No. 159.144: Continue to expand efforts towards universal health coverage while minimizing disruption in access to basic health-care services during the pandemic, taking into consideration the ongoing COVID-19 pandemic.

Findings

The data shows considerable gaps in providing health care for freed Haliya. Namely, more than half (53%) of the report that the health services are not accessible for them. For those who consider health care facilities accessible appreciate that they are not discriminated there, and that there is adequate knowledge about the services they provide.

This access problem to health care is not equal among the groups: from the able-bodied men, half experienced challenges, whereas out of women problems were faced by 55%. Then, for disabled women, the lack of access already touched close to two-thirds of the respondents.

Making generalizations, however, becomes tricky as there is a need to consider geographic differentiation in access (See figure 7). In Kanchanpur, about 4% of Haliya

²⁹ Constitution of Nepal 2072 (Nepal Law Commission)

³⁰ The Labor Act 2017 (Nepal Law Commission)

³¹ The Public Health Service Act 2075 (Nepal Law Commission)

in total considered healthcare to be accessible whereas in Dadeldhura that number is more than 80%. Thus, it becomes evident that districts have differentiated capacities in respecting the rights of Haliya.

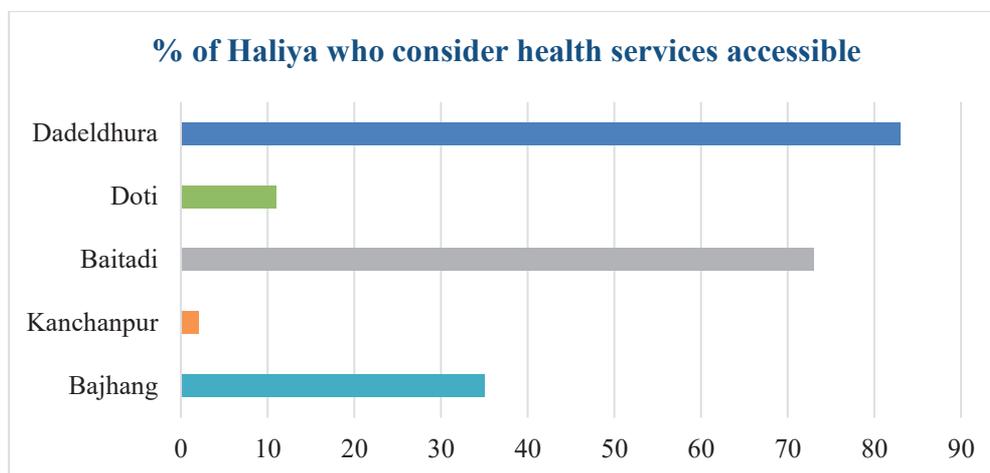


Figure 7: The access to health care in five districts among freed Haliya

In addition to the problems related to the accessibility, one sixth of freed Haliya face discrimination in health services (see Renu Tiruwa case). Although the number in general rather low, especially for able bodied women as only 7% of them reported being discriminated, the disabled persons have it worse as every fourth of female PwD have faced discrimination. That finding is a clear evidence of multi-based discrimination and points to further research needs to understand the roots of this discrimination more thoroughly.

Renu Tiruwa, a resident of Dashrathchand Municipality, is a single mother living with two children with disabilities. Her 9-year-old son has an intellectual disability and 11-year-old daughter has a physical disability. When she asked the Municipal doctor for a disability certificate of her children, the doctor refused and blamed her for making children a medium to get free funds from the Government.

In absence of the disability card, her children are deprived of getting the services they are entitled to. She and her children have no easy access to health services. She feels that the doctor discriminates during check-ups and doesn't provide the free medicines that she is entitled to. She thinks that the discriminative behavior is because she is a Haliya, a single woman, and has children with disabilities.

Among the largest potential explanations on the problems of reaching healthcare is the lack of resources. Only half of the freed Haliya mentioned that have never paid for health and medicine facilities. Interestingly, women (two-thirds) are more likely to get free services than their male counterparts. The challenge was echoed in Haliya leader

discussions as they held the opinion that health insurances should be provided for free to Haliya as the costs of health-care is a major problem for many Haliya in poverty. Furthermore, there was general mistrust to health care services as around two-thirds held the opinion that the health posts had enough staff in relation to the population that they should serve.

On the positive developments, only tenth of the respondents reported being served expired medicine that was a rampant problem in the Nepal still in 2010s³² but might have improved after government setting heavy sanctions.³³

Based on the findings, it appears that the main challenge to securing the human rights of Haliya to health care is related to the accessibility and the quality of health services. The finding is in line with previous academic research that criticizes the unequal distribution of health care facilities and the poor road transport infrastructures to those services.³⁴

Consequently, especially in those districts where the accessibility to the services low, it is important to allocate resources for correcting the challenges as the Covid-19 has not disappeared. Only one sixth of Haliya shared the opinion that the health facilities were operational and provided services since the emergence of the COVID-19. One avenue of such corrective measures, originating from Haliya leaders' consultations was that the information about the available health services and their accessibility could be improved by governmental awareness raising activities. For instance, 91% of Haliya women reported that they did not receive health related information during the pandemic.

³² Bhattarai, T., 2012. Expired, Fake Medicines Flood Pharmacies in Nepal, <https://globalpressjournal.com/asia/nepal/expired-fake-medicines-flood-pharmacies-in-nepal/>

³³ Himalayan News Service, 2018. Harsh penalty set for sale of expired drugs, <https://thehimalayantimes.com/kathmandu/harsh-penalty-set-for-sale-of-expired-drugs>

³⁴ Devkota, H.R., Murray, E., Kett, M., Groce, N. 2018. Are maternal healthcare services accessible to vulnerable group? A study among women with disabilities in rural Nepal. PLoS ONE 13(7): e0200370. <https://doi.org/10.1371/journal.pone.0200370>

4.3 Right to Education

Legal framework

Nepal Constitution 2072, Article 31: all citizens shall have the right to access to get compulsory and free education up to basic level and free education up to secondary level from the state. and that the economically stricken citizens shall have the right to higher education by the state as per law³⁵.

Free and Compulsory Education Act 2075, Chapter 2: The government of Nepal, Provincial and Local Government are to provide education up to basic level & secondary to every citizen with the necessary arrangement. *Chapter 3, sub-section 6*: state shall provide basic level education to the children aged 4-13 years with one year's early childhood development. *Subsection 23*: Economically destitute children may provide monthly scholarships by the local government to provide education up to a basic level.

UPR recommendations

No. 159.121: Pursue the good management of policies related to the basic needs of citizen such as rights to education

No. 159.153: Continue its efforts to ensure an inclusive education system the leaves no one behind, including children with disabilities

No. 159.147, 159.151, and 159.152: Continue its efforts to create favorable conditions for ensuring access to free and quality education for all without discrimination

No. 159.181: Step up efforts to provide equal access to online education for girls, especially during the COVID-19 lockdown

Findings

In Nepal, education is considered as a privileged area for enabling development, especially regarding women in rural settings³⁶ - where Haliya generally reside too. Issues related to education touch the majority of Haliya with large families. Among the Haliya respondents, 90% reported that they are sending their children to school.

In general schools were considered more accessible than health care services while only around 25% considered those to be out of reach. In that sense, the regionalization of education might have brought positive development to school accessibility.³⁷

³⁵ Constitution of Nepal, 2072 Page no. 22-23

³⁶ Castellsagué, A., Carrasco, S., 2021. Schooling and development: global discourses and women's narratives from Nepal, Compare: A Journal of Comparative and International Education, 51:7, 1058-1076, DOI: 10.1080/03057925.2019.1709803

³⁷ Daly, A, Parker, SL, Sherpa, S and Regmi, U. 2019. Federalisation and education in Nepal: contemporary reflections on working through change. Education 3-13. ISSN 0300-4279

Nevertheless, the accessibility to schools was highly differentiated with the districts (See Figure 8). By reflecting that finding to education, it becomes evident that in Kanchanpur, both services remain hard to reach whereas in Baitadi the situation is opposite in the positive manner that both services are considered mostly accessible. Interesting, the accessibility of services can also differentiate as in Dadeldhura, access to health was high but schools was not, whereas Doti accessing health was considered difficult but reaching education was good. Again, such geographical differentiation warrants caution of drawing conclusions to all Haliya.

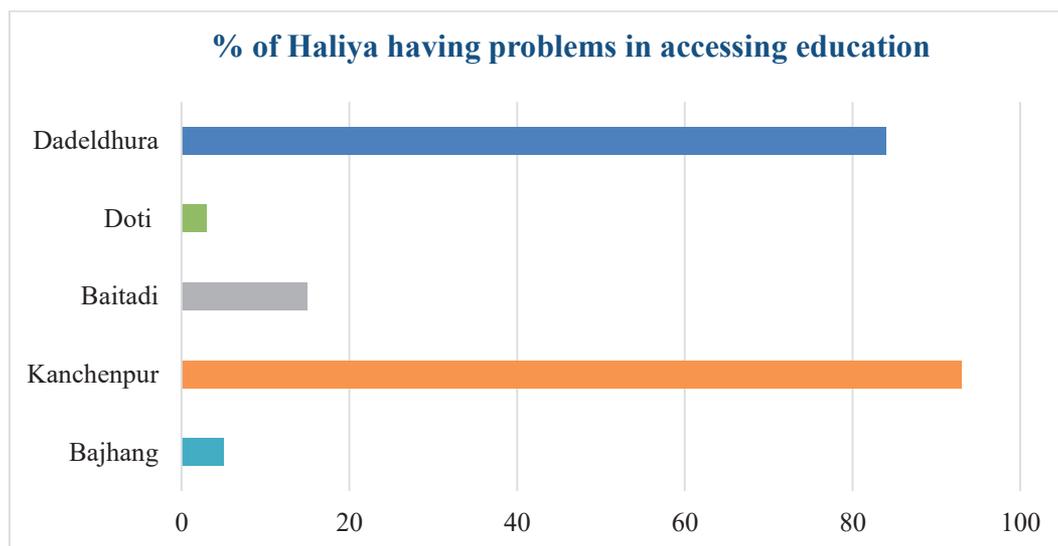


Figure 8: Percentage of Haliya facing challenges to access education by districts

Moreover, the data suggests that, at least the parents of school children have not witnessed gender related discrimination: approximately 15% of both male and female reported discrimination – and the numbers were smaller among the PwD respondents. Subsequently, the data allows some optimism that the differences between social groups in the school engagements might be dampening.³⁸ Indeed, the main reason for accessibility was non-discrimination in schools and not, for instance, physical reach even though around 60% had the opinion that the school was in a safe physical distance.

Along with the access issues, the quality of education raises suspicion as forty percent consider that there are required numbers of teachers per children and approximately the same percentage held the opinion that teacher to be adequately trained for their profession. Here, we see differentiation concerning persons with disability as more than half of both female and male PwD did not trust the competence of teachers.

³⁸ Bhattarai, N., Bernasek, A., Pena, A.A., 2020. Factors Affecting School Attendance and Implications for Student Achievement by Gender in Nepal, *Review of Political Economy*, 32:2, 259-282, DOI: 10.1080/09538259.2020.1769296

Despite the emphasis of guaranteeing free and quality education for all, close to half of Haliya deems that education is not free for them (see Damai case). Among the reasons for such challenges are reported is that even though the education might free, there are costs related to books, school uniforms and other necessary equipment.

Pawana Damai is a 13-year-old girl with a disability who lost her father when she was nine. Unfortunately her mother also left her family before her father's death. Therefore, she is compelled to live at her uncle's house with her two younger sisters and a brother and her uncles' family in a small two-roomed house.

The entire family is dependent on her uncle, who works as a daily wage laborer. The low income of the uncle is not enough to feed the family two times a day. Their house barely protects them from wind and rain. Some villagers also blamed her for being a burden to her uncle, which naturally burdens her spirit.

She wants herself and her siblings to study for a good life with dignity. Her disability card is useless for her though. The reason is related to lack of resources: though education is free with disability card, extra money is needed for other things like stationaries, lunch, school dress, and other essentials.

Apart from basic education, it was highlighted by the Haliya leaders that scholarships would be required to higher levels of education, especially to the fields of agricultural and technical education that Haliya deem areas of importance for community upliftment.

Education is a field of ESC-rights where **Covid-19** has made it more difficult for the government to guarantee education for all: only one percent of Haliya agreed that distance education methods reached their children. For the disabled persons, the issue might be the most daunting as only two PwD out of the 366 noted that support had been received which highly contrasts with the UPR recommendations about online opportunities for education and inclusion.

4.4. Right to decent work

Legal framework

Constitution of Nepal 2072, Article no 34: Every laborer shall have the right to appropriate remuneration, facilities, and contributory social security. Every laborer shall have the right to form and join trade unions and to engage in collective bargaining³⁹.

The Nepal's Labor Act (2017) and Civil Offence Act (2017): Provisions to promote decent working conditions for all workers. It has mandated labor office to take judiciary actions against the violation of labor rights as provisioned by the law. An employee shall have a defined working hours of 8 hours a day.

Child Labor Prohibition and Regulation Act (2006): Employment of children in hazardous condition and under 14 years is criminal offence.

UPR recommendations

No. 159.105: Continue to take measures to further strengthen implementation of the Right to Employment Act and the contributory social security system and, in particular implemented target interventions for vulnerable groups

No. 159.121: Pursue the good management of policies related to basic needs of citizens such as rights to work

Findings

Labor issues are central to Haliya who have suffered from decades of slave labor and who have challenges to sustaining their basic livelihoods.⁴⁰ Subsequently, the majority of Haliya live in poverty even though the vast majority of Haliya, close to 80%, are employed and earning for their life.

The labor that Haliya have engaged with is harsh. Four issues attract attention: *First*, more than four out of five Haliya feel that they are obliged to work for the bare survival of the family. Second is related to having little freedoms to choose livelihood opportunities, as more than one fourth feel that they are forced to work. The finding raises questions about the existing legacies of Haliya systems and underscores the need to abolish the system beyond political declarations. The issue of feeling forced to work is gendered as one third of the women feel being forced.

That interpretation is invigorated, *thirdly*, by the fact that still one fifth of the respondents claim that they personally, or their family members, still works as Haliya. Finally, around forty percent of Haliya have the experience that they need to work more

³⁹ The Constitution of Nepal 2072 (Nepal Law Commission)

⁴⁰ Nepali, P.B., Pyakuryal, K.N., 2011. Livelihood options for landless and marginalized communities in agrarian societies: a case study from western Nepal. *Pakistan Journal of Agricultural studies*, 48(1), pp 1-10.

than 8 hours for day, mainly because it is necessitated by the employers. Here, we see a pattern that PwD need to work the most (See figure 9).

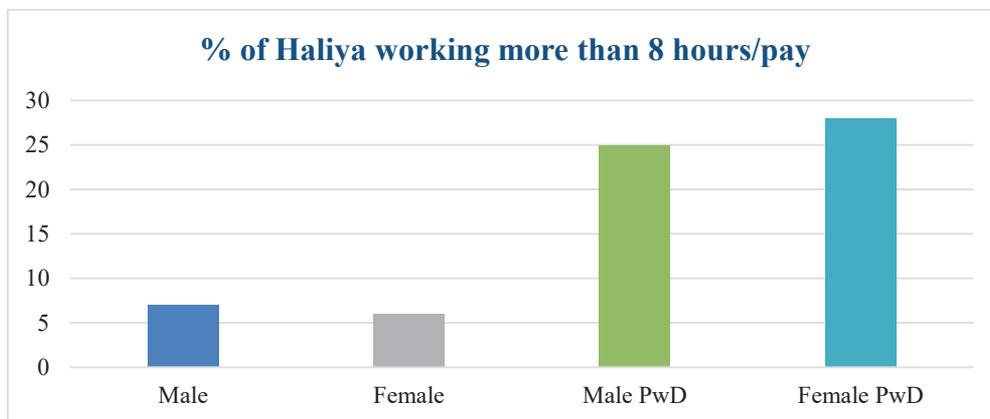


Figure 9: Distribution of Haliya working beyond 8 hours per day

The precarious situation of Haliya is exacerbated since the working place injuries are fully compensated only in about 2% of the cases whereas well above half of the workers did not receive any support for the injuries that they have suffered, which naturally, is likely to result in the increasing losses of income. For the population in general, work-related accidents are rare but for both genders of PwD, work place injuries are alarmingly high. The data does not allow to draw conclusion whether the accidents at work been the cause for disability or whether disability turn people more prone to accidents.

Sadly, the data suggests that protection of children from labor has not been fully enacted: out of the children less than 15 years that took part in the survey, 7 out of 10 mentioned that they are employed (see Harikala case).

Harikala BK, 38, got married at the age of 18. After her marriage, her family started pressuring her to give birth to a son. She already had two girls. When she gave birth to a girl as a third child, she was severely beaten by her family.

The situation became dire when her husband decided to marry another woman. After that, husband and the new wife started to discriminate and bully her more intensively and her children became victims to. They stopped sending her daughters (11 and 13 years) to school as the previous husband and the new wife decided to force her children to work on daily wages. Failing to control child labor, thus, exacerbates the problems in education.

In addition to the human rights violating situations where many Haliya conduct their work, the labor is the field ESC -rights where most discrimination takes place. Indeed, more than third of Haliya reported labor related discrimination. Ironically, discrimination does treat different Haliya equally: the percentage of Haliya faced with discrimination is more or less the same in the different age, gender and disability groups. The case of Sarki illustrates the limited opportunities to survive as a PwD.

Finally, job opportunities have become scarce due to **Covid-19** especially because many Haliya go work abroad to sustain their families. Under the heavy economic burdens, it was reported that around 40% of Haliya have witnessed increasing violence. The number is larger, close to fifty percent, for male PwD.

Data provides a bleak characterization about the human rights situation of Haliya in work. For certain, Haliya face most discrimination in their working environments where they conduct their labor in precarious situations putting in long working hours, feeling pressured to work for the bare survival of their families and hoping not to face injuries as recovering from those are not likely to be supported.

Gulaaf Sarki, 61-year-old Haliya works as a farmer to feed the family of six members in Bajhang district. He has a problem with his eaist and legs, so he cannot even walk or sit for a long time. Because of this, he is not able to find a job.

He has neither Haliya card nor disability card. With no identity cards, he has been deprived of all the government services. A disabled Haliya man is deprived of his right to decent work because of his physical condition and caste.

4.5 Right to Rehabilitation Services

Legal framework

Constitution of Nepal 2072, Article 51: State shall pursue policies to identify the freed bonded labors, tillers, landless, squatters and rehabilitate them by providing housing, housing plot for residence and cultivable land or employment for their livelihood.⁴¹

Freed Haliya Rehabilitation Plan and Policy 2075/76: Provide rehabilitation funds for upliftment of the economic condition of Haliyas and funds for land, renovation, and settlement of houses where they are currently living.

Freed Haliya Rehabilitation Format & Planning 2070: Ensure safe housing, improved economic conditions, and better access to health and education for Haliya. Moreover, under the strategy, there is a provision to provide an identity card for Haliya.⁴²

Kamaiya Act, 2002: Prohibits any bonded labor system.

UPR recommendations

No. 159.121: Pursue the good management of policies related to basic needs of citizens such as the rights to adequate housing (relates to Haliya rehabilitation)

No. 159.133: Make progress in social economic recovery with a human rights perspective to face effects of the COVID-19 pandemic, taking into consideration the special needs of vulnerable groups in society

Findings

As the previous analysis on labor demonstrates, the remnants of Haliya slave labor system still haunts present day working conditions of ‘freed Haliya’. Thus, strong focus on reparations and the practical abolition of the system should be enacted urgently.

Despite the commitments made in law and policy recommendations, less than one fourth of the respondents has received the Haliya identity card which is a condition for becoming eligible for receiving such reparations (please see Chaudhary case). Here, the data suggest that the men have been more successful on this front, as 26% of them have the freed Haliya ID card whereas among women the number is 20%. Interestingly, Haliyas with PwDs have the freed Haliya card more often than without disabilities, which might boil down to the fact they have been more active to be able to secure benefits to PwDs (See Figure 10).

⁴¹ Constitution of Nepal 2072 (Page 41)

⁴² Freed Haliya Rehabilitation Plan and Policies 2075/76, Pg. 10, 14

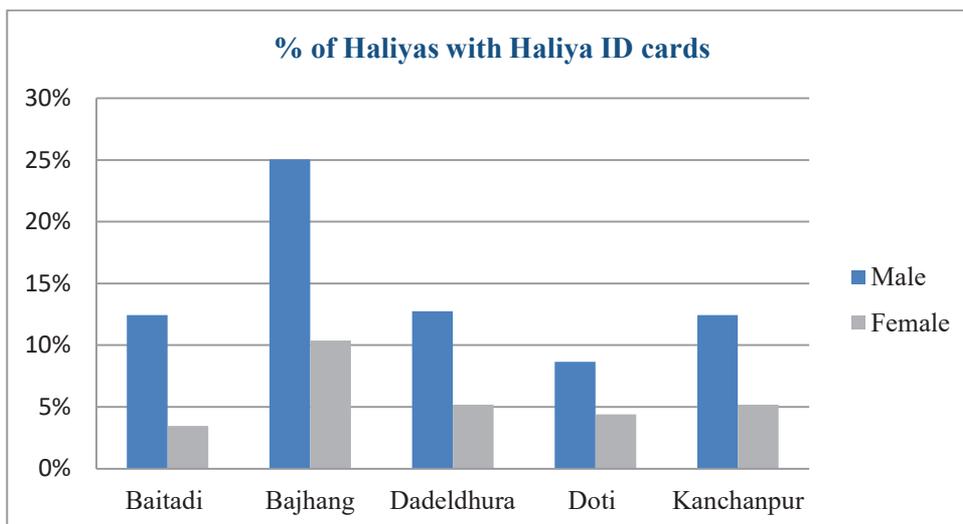


Figure 10: Distribution of Haliya ID cards among Haliyas

As a consequence, providing rehabilitation support for Haliya can be considered a failure as the vast majority, at least two thirds have had no support for this from the government, and the data suggests that Covid-19 has slowed the process even further. Indeed, in the Haliya leader consultations, it was highlighted that governmental duty-bearers have had problem or reaching many Haliya, which is why they are not registered to any official informational systems.

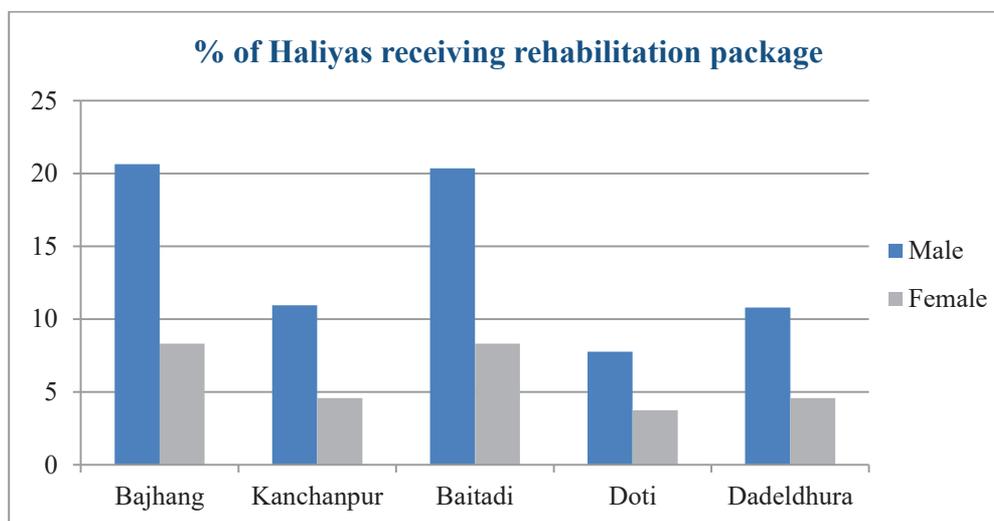


Figure 11: District wise data representation on one who received rehabilitation package

Even though there is no strong differentiation among the different social groups or regions as a whole, there is strong differentiation within the regions, which opens up future research avenues to examine the reasons for the differentiation in detail (see

Figure 11). For instance, in Dadeldhura, more than one third of the male responded that they have received the rehabilitation package for disabled persons (male, 13% and women 9%), which points to difficulties of respecting PwD rights in that district. In comparison, in Kanchapur, PwDs had more often received the package than the able bodied. In addition, there were clear differences between male and female receiving the rehabilitation package: women had better situation in Bajhang and Baitadi, but worse in other, the lowest being in Dadeldhura where only 16% women had received the package in comparison to the 34% of the male.

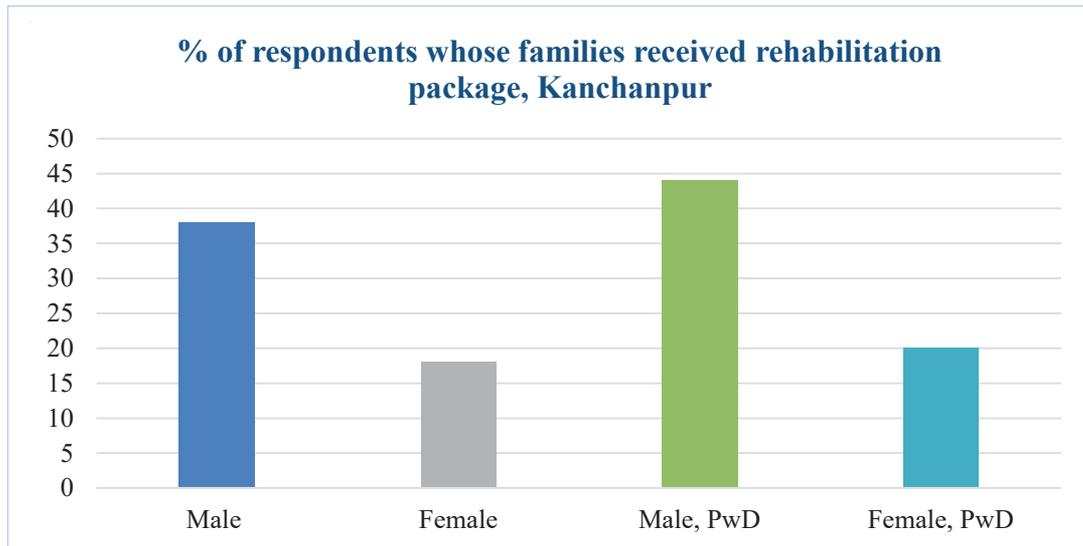


Figure 11: Families who have received rehabilitation package in Kanchapur

For the ones who have received rehabilitation, the main support has been house maintenance whereas, for instance, land has been allocated only to a fraction of Haliya thus allowing the landlessness to continue. For a fact, the lack of Haliya identity card has been identified as the key obstacle to gaining access to the rehabilitation along with reasons such as the perceived reluctance of government to take restorative action (see Kaami story).

Tulashi Chaudhary is a 44 year old woman residing Shuklaphanta Municipality of Kanchanpur District. Her challenges are rooted inter-caste marriage in 2050 BS that her family did not approve. With difficulties to survival, they and their four children started to live as Haliya in the house of her landlord for four years together from 2050 to 2054 BS.

However, due her family's opposition, she was not allowed to make her identity on the caste of her husband because her husband's caste was lower than her. As a result, she was abstained from her of consumers account and voters' card. The problem became intergenerational as her daughters did not have birth certificates either.

Further, in 2065, though she was listed as freed Haliya, she could not receive the Haliya card and was thus deprived of the rehabilitation package. Today, after long and difficult facilitated negotiations with the family and district authorities, she received her citizenship. She is now eligible to get the Haliya card and will get the rehabilitation package too.

The case illustrated how so called caste system hinders to get citizenship. Tulashi herself explains that without the expert help from the referral help desk "I would not have received till date and also don't know the legal process."

Haliya leaders proposed alternative avenues facing with the challenges of rehabilitation as it is currently enacted as they discuss the wider range of livelihood support that would build on cultivating the agency of Haliyas, for instance through free skill-oriented training regarding agriculture, farming, tailoring, auto mobile, driving, maintenance, wiring among others. Furthermore, they have the opinion that land could be leased for Haliya communities for income generation and support the forming of agricultural cooperatives.

For those who have received the rehabilitation package, the question about the quality of the package arises. Namely, only around 15% of those persons considered that the package was sufficient in meeting their needs. Indeed, respondent informed that they face livelihood challenges after the package and the most daunting ones are affiliated with insufficient monetary support and land, especially to PwDs. In particular, the monetary support for Haliya has been unable to uplift Haliya from landlessness as less than 5% of all Haliya deem that they had enough compensation to buy land.

5. DISCUSSION AND CONCLUSIONS

For the Haliya Community, the concluding observations made by the committee on ESC rights on the third periodic report of Nepal was “Although the traditional bonded labor system (Kamaiya, Haliya and Kamalari) has been formally eradicated and measures have been taken for the rehabilitation of former bonded laborers, many of them, in particular in Western part of Nepal, face obstacles to social reintegration, due to their lack of skills and lack of access to fertile lands for cultivation, which leads them to return to their previous employers, by whom they are often exploited (arts. 2 and 7)

Based on this analysis, agreeing on that recommendation is easy. Even though the number of Haliya who report that they still work as bonded labor is rather small (20%), the fact is that a) any number above zero percent is a serious human rights problem and b) those around 80% who do not live in the conditions of modern slavery have a long way to see their economic, social and cultural rights fully respected.

Focus can be set for the most salient issues out of which the most pressing is the slow identification of Haliya officially and the subsequent action to enact reparations to correct the transpired injustices. Namely, livelihood options remain scarce without support in terms of funds or land. Living on the margins of society and facing rampant discrimination in working life upkeeps vicious circle poverty and working under precarious circumstances for the bare survival of families.

In terms of right to education and health, the data shows gaps of different magnitude. However, in general, report can conclude that problems related to the quality, access and costs are likely worsen the capabilities of Haliya learning about their rights and being able to defend those. The self-enforcing nature of human rights violations is depicted in the Figure 12.

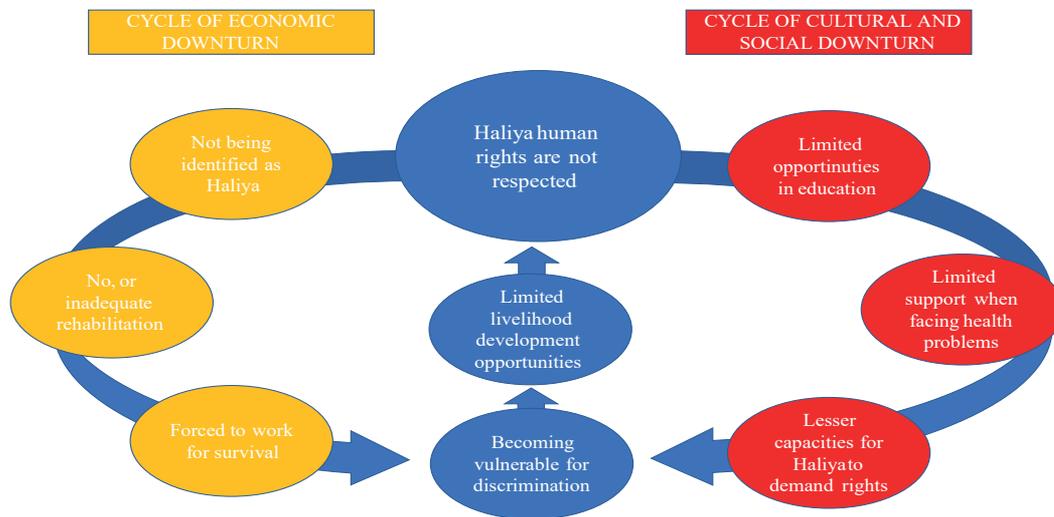


Figure 12: The vicious circles of disrespecting human rights

Summing up the Covid-19 responses from the state institutions is easy: they have failed to protect the rights of Haliya. Healthcare facilities have been largely unable to provide services and information, schools have not enabled distance learning for children and the pandemic has slowed down the economic reparation process. Alas, Covid-19 has been likely to enforce the vicious circles of challenges to respect Haliya human rights.

Finally, the article draws attention specific nuances of the human right challenges on two different fronts. First, gender and disability are important social categories to pay attention to. For instance, women have more difficulties in accessing health, and they feel forced to work more often. For PwD, it was evident that they had more problems in sustaining their lives even after receiving the rehabilitation packages and PwD were facing more commonly work-related injuries – that have remained largely uncompensated. Second, many of the human rights issues like access to education, health care or rehabilitation vary between the districts. Subsequently, the report encourages to stronger localization of governmental responses to the findings of this report. Some regions might be providing accessible health care services while there are challenges to provide education. Kanchanpur, on the other hand, has poor access in both previous fronts, but their capabilities to provide the rehabilitation of PwD is higher than average.

6. RECOMMENDATIONS

Recommendations for Local Level Government - on researched themes:

Right to Education:

- Municipals should take a lead in providing vocational training and skill-based training for income generating activities and regular monitoring by local level to ensure the impact of those training or support needed to move ahead.
- Introduce free meals in school to reduce the dropout rates of freed Haliyas in schools.
- Eradicate all forms of discrimination in education sector fostering safe, inclusive and welcoming school environment.

Right to Rehabilitation Package:

- Task Force (a unit formed by National Government to study situation Haliyas) should conduct a ground level survey reaching each individual/ households to ensure all freed Haliyas in Nepal are registered and are provided the correct category of Haliya ID card.
- Mobilize the Task Force extensively to interrogate and expedite access to adequate rehabilitation package in a just and timely manner.

Right to Decent Work/Livelihood component:

- Haliyas are skillful in agricultural sector in major. So, the necessary modern agricultural tools and equipment should be distributed in equitable manner for free.
- Agriculture Cooperatives should be formed and managed by the Haliya leaders with inclusion of equal proportion of male and female including the persons with disabilities.
- Decentralize the Haliya community with diverse skills and broaden up their businesses, they should be provided a loan with zero percent interest or a very low percent interest.
- Municipals should bring ***One household- One employment opportunity program*** for Freed Haliyas to ensure they are not relied only on the rehabilitation package for their livelihood
- Municipals should implement equal wage for similar nature of work regardless of gender or caste to eliminate the unfair wage system among the Freed Haliyas.

Right to Health:

- The health centers should provide easy and free access to freed Haliyas on the health services regardless of age, gender or social groups.

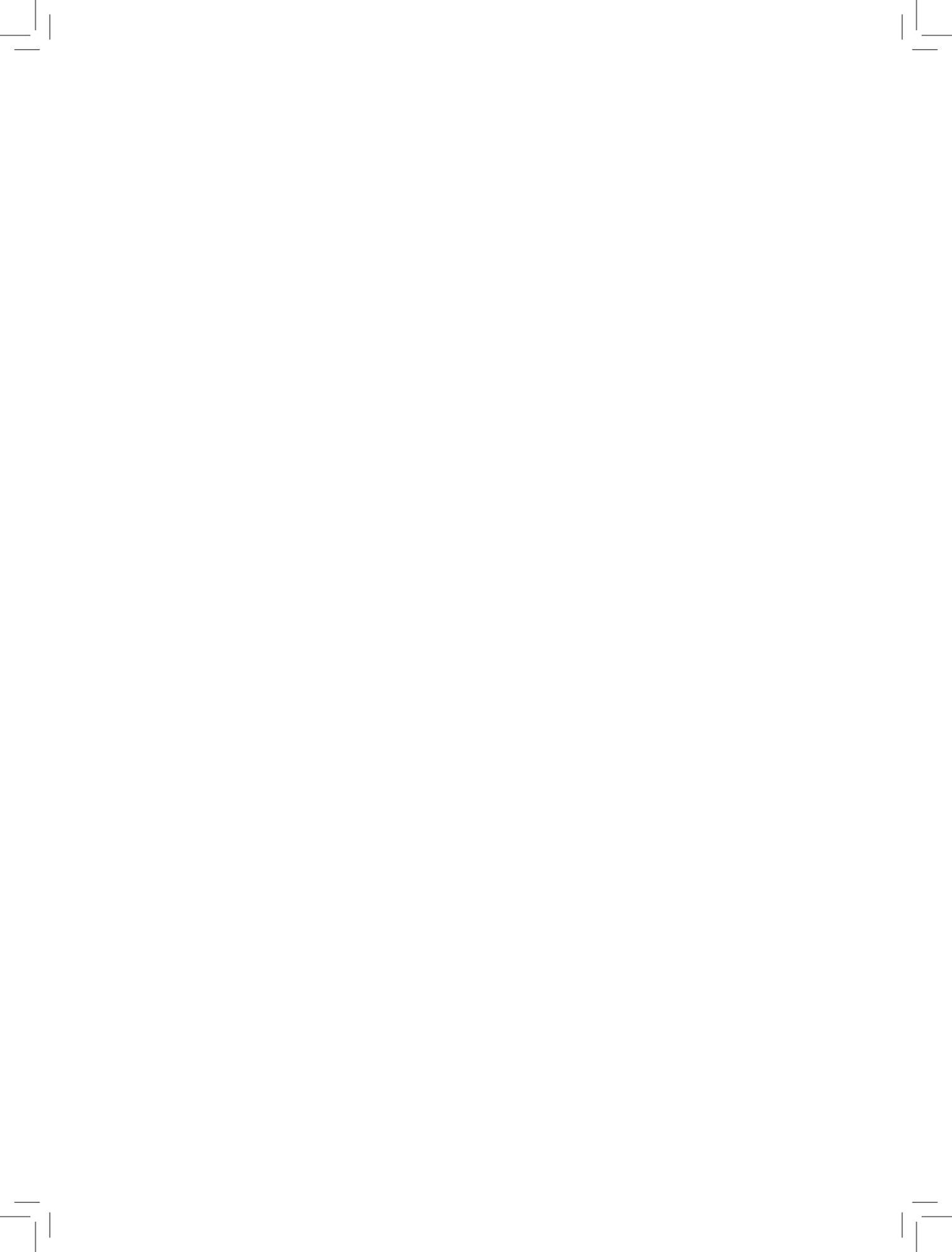
Recommendations for Provincial Level Government:

- Empower and equip law enforcement agencies to take immediate action in investigating all forms of discrimination cases (especially caste based discrimination, gender based discrimination and discrimination on disability) and prosecute those implicated in such discriminations.

Recommendations for Federal Level Government:

- Devise a Federal land policy to safeguard legal acquisition and ownership of land to landless people as provisioned in the Constitution of Nepal. Amend a Land Act with special provision on land reform to grant fertile and safe lands as a rehabilitation package.
- Government should update the laws and provisions set for the Haliyas respecting their economic, social and cultural rights prioritizing marginalized group within them - women and PwDs who goes through multiple discrimination within their own community.





आर्थिक, सामाजिक तथा साँस्कृतिक
आधिकारप्रति हाम्रो प्रतिबद्धता ।

सम्पूर्ण मानवअधिकारको संरक्षणमा
अभियानको क्रियाशीलता ।

मानवअधिकार उल्लंघन तथा
हवन सम्बन्धी घटनाहरूको
जानकारी गराई मानवअधिकार
संरक्षणमा सहयोग पुऱ्याऔं ।



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