



Terai Human Rights Defenders Alliance - For Equity and Justice

Urgent Appeal from Human Rights and Legal Aid Providers to be Sensitive to At-Risk Detainees and to Protect Lives and Health

Press Release

March 28, 2020

We the undersigned organizations working in the sector of human rights and legal aid recognize the positive steps taken by the Government of Nepal to control the spread of COVID-19, which is spreading throughout the world even in Nepal.

These positive steps include decisions and recommendations made by the Attorney General of Nepal, especially in matters related to the administration of criminal justice, and decisions taken from repeated meetings of the Supreme Court in order to maintain a high priority for individual liberty by continuing court operations with special hearings for special petitions. These decisions are indispensable and welcome given this challenging situation.

However, to implement such decisions, effective assistance from defense lawyers is needed, including to draft petitions and appear before courts on behalf of detainees/prisoners. Due to the lockdown, defense lawyer are unable to access detainees/prisoners to provide necessary support. As a result, these positive decisions are not being implemented effectively, and people are forced to remain in jail. Also, we would like to draw serious attention to the fact that inmates are imprisoned because of poverty: failing to convert imprisonment into a fine.

Right to life, right to a healthy environment, right to health, right to food, and the right to social justice are guaranteed as fundamental rights under the Constitution of Nepal, as well as various international instruments signed by Nepal. These rights apply to suspects, accused, and prisoners deprived of their freedom. It is the government's responsibility to protect the fundamental rights of detainees / prisoners in the present complex situation.

Prior to the appearance of COVID-19 in Nepal, decisions taken by the office of the Attorney General of Nepal and the Supreme Court full assembly appeared to be effective measures for people deprived of their liberty, but it has not been possible to assist the wider community, and implementation has been slow and inflexible. Free legal aid service for detainees / prisoners have not been provided; a public outcry has been raised in this regard. Hence, we urgently appeal to the concerned bodies to take effective actionable decisions.

We also urgently request the office of the Rt. Hon. President of Nepal, the Government of Nepal, the Supreme Court of Nepal, the Office of the Attorney General of Nepal and other relevant agencies to take

the following decisions and implementation steps to protect the rights of persons beyond the detainees and prisoners addressed by the Supreme Court's decision.

1. We call for immediate release of detainees and prisoners over the age of 60 and those with underlying medical conditions such as asthma, diabetes, and heart or lung conditions who are at high risk of serious illness or death due to COVID-19.
2. At present, there are over 25,000 detainees and prisoners, held in facilities with a total capacity of 10,433 inmates, across the country, according to the Prison Management Department's monthly statistics (MASKEBARI). Since more than twice the number of people is imprisoned than the facility capacity, people kept in prison awaiting trial or serving sentences are at high risk of transmission. Hence, we sincerely request the concerned agencies to take immediate decision as per the principle of state responsibility and the principle of necessity.
 - a) In the case of prisoners other than those convicted of heinous offences, people who have served half their sentences, there should be an immediate decision to waive or pardon of rest of their punishment in accordance with Article 276 of the Constitution of Nepal.
 - b) For prisoners detained due to failure to pay the penalty imposed by the verdict, these prisoners should be released, considering the situation, and can pay the fine due to the government once the situation becomes normal, as per implementation of section 20(2) of the Criminal Offences (Sentencing and Execution) Act, 2017 (2074).
 - c) In case of failure to pay the requisite bail amount, the situation has to be reviewed immediately in the case of criminal prosecution (Penalty Determination and Implementation) Act, 1. in pursuit of a decision to release the individual based on time served.
 - d) For people detained due to failure to pay the bail amount requested by the court, a special decision from the Supreme Court should instruct all district courts to issue a new jail bail order and hand over detainees on personal guarantee (personal bail).
 - e) Immediately collect the data for detainees and incarcerated people with special needs, who have to depend on other people for their daily living due to disability, and take a special decision to release these people from detention and prison.
3. Concerning dilemmas related to the rights of a child, such as when a judge is deciding as to whether a child to be imprisoned in a child rehabilitation home can be resentenced or have their case adjourned or have their punishment postponed, there should be instructions for the concerned courts regarding the diversion and suspension of punishment under the Children's Act, 2075 (2018). Although it appears that the District Court can make the necessary decisions for adjournment of sentence, at a judge's discretion, a special instruction from the Supreme Court on this matter should be issued soon.
4. All detainees and incarcerated people who feel insecure in their health and life given this particular situation created by the coronavirus should be able to make special pleas before the court, the Government of Nepal, and the subordinate bodies, presenting special requests related to the impact of COVID-19. Since the decision was taken from the full meeting of the Supreme Court to hold hearings for such kinds of requests and since the Prison Administration has a legal obligation to deliver such petitions before the concerned authorities from detainees and prisoners, refusal of jail administration to forward any special request, such as cases related to converting imprisonment to fine applications, shows refusal to comply with legal obligations, and failure in the protection of human rights. Such incidents have occurred and been immediately revealed. We have a keen interest in this and urge all parties concerned to carry out their legal duties effectively as soon as possible.
5. During this particular stage of transmission risk and lockdown, special cases are also being heard, and the presence of a legal practitioner before the court is important for the trial. During the

lockdown period, it is necessary to ensure that law practitioners with their professional identification have seamless access to the court and to the places where their clients are kept. We request the attention of the concerned agencies to also facilitate their vehicle access for complete health protection without interruption.

6. As per the Attorney General's Office and the Supreme Court's decision, free legal aid agencies are willing to represent the relevant bodies in accordance with the law, including the drafting of necessary legal petitions regarding release from prison. In this particular situation, we also request the concerned agencies to provide the necessary details of the prisoners and detainees who are exempted from imprisonment as per the decision of the AG office and the Supreme Court. We also request the concerned agencies make necessary arrangements with the Legal Assistance Provider Agency, the Office of the Attorney General, and the Subordinate Advocate and Subordinate Public Prosecutor's Office.

Signatures-



(Ekraj Acharya)
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(Pankaj Kumar Karna)
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(Son Luitel)
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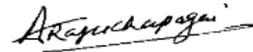


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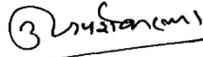


Indra pasad Aryal
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