



नि:शुल्क कानुनी परामर्श
आप्रवासी कामदारहरुको न्यायमा पहुँच सम्बर्धन परियोजना
मानव अधिकारका लागि जनमञ्च (पिपुल फोरम)



ADVOCACY FORUM-NEPAL
एडभोकेसी फोरम नेपाल
Lawyers Forum for Human Rights & Rule of Law



Terai Human Rights Defenders Alliance
- For Equity and Justice



Urgent Appeal from Human Rights Groups and Legal Aid Providers to Reduce Risk and Arrange for Hearings through Technology

Press Release
April 12, 2020

The undersigned humanitarian and legal aid organizations welcome the positive steps recently taken by the Government of Nepal to control the turbulent conditions that have spread throughout the world, and Nepal. This includes recommendations from the Attorney General's Office on the administration of criminal justice, the special decision against the deprivation of liberty and the extension of remand hearings, jail/bail hearings and the subsequent decision of the Supreme Court on April 10, 2020.

Over time, interruptions such as stopping bail hearings, could lead to congestion when courts open at once. This increases the risk of infection to detainees, police, government lawyers, court staff, attorneys, judges and detainees, as well as anyone else who comes in contact with them. Following implementation of the prior decisions, further urgent steps need to be taken, and we would like to draw the attention of the concerned agencies and officials to our request.

Regarding the work carried out by the police administration and government attorneys

- Security personnel may also be at risk of infection with the coronavirus in the event of a person being arrested, so considering the critical circumstances and the decision of the Attorney General's Office and the circular, to the greatest degree possible the suspect or other accused should not be arrested in the first place; arrange for collection, recording and examination of other evidence, without arresting the suspect or accused as soon as possible for information or FIR of criminal incidents reported.
- If the person has been identified by the collected evidence and then arrested, the suspect, if not accused of a heinous crime, will be released by the investigation officer on bail or general date, in keeping with form of "Territorial House Arrest." The concerned ward office or municipality should be informed about "Territorial House Arrest".

- Evidence including testimony of the person wanted for investigation should be collected, preserved and stored electronically, with support of technology and arrangements as needed to submit digitally in court.
- If the arrested person indicates an attorney, to inform them about arrest and charge; if the arrested person does not have counsel, then inform the concerned bar unit or any other legal aid provider there about the arrest and charge.
- Provide the necessary security equipment, including hand sanitizer, to security personnel who are going to make arrests; urgently require the arrested person to wear a mask and other safety items including gloves and maintain the minimum distance prescribed by the World Health Organization, without transmission, and to be kept in a safe place. Establish contact between the detainee and court for a remand hearing through video conference.
- An application for arrest warrant issuance or approval requests for an urgent warrant shall be sent by electronic means to the court.
- Since the statement of the arrested person before the authorized officer in written and signed form will be high-risk for person-to-person transmission of disease (virus), we highly recommend recording the statement using video technology to minimize the risk and making necessary arrangement for safekeeping of those records.
- If the arrested person indicates an attorney, to inform them of the date of the charge sheet filing; if the arrested person does not have counsel, then inform the concerned bar unit or any other legal aid provider there.
- Ensure that the arrested person can communicate confidentially with their legal practitioner through electronic means, arrange for these communications not to be recorded, and to ensure that if such recordings are made, that they are not valid to be used against such detainees or lawyers, and that this violation is recorded as a privacy offense to be prosecuted and punished under cyber laws.

With regard to judicial administration

- As the court staff, service seekers, attorneys and judges are also at additional risk, necessary management support for the purpose of electronic hearings to mitigate that risk should come from the Government of Nepal with implementation from the Supreme Court as follows:
 - Arrangements should be made for digitally presenting the arrest request, approval request for urgent warrant, remand request, indictment (charge sheet filing), etc. through secure electronic means, and for archiving the document (in hard copy) on file.
 - Communicate with detainees through audio-visual communication systems (video conferencing) for arrest approval and remand.
 - Arrangements for recording of the testimony (statement of accused) before case hearing authority/court after the indictment (charge sheet filling), including recording technology (Skype or similar technology) through audiovisual communication system (video conferencing).
 - To allow adequate time for the detainee or attorney assigned by detainee to make a brief pleading note, on the basis of which he/she will be allowed to make oral argument through a telephonic or audio-conferencing system or video conferencing.

- To keep the accused of general criminal charge on general date; accused of grave (serious) or heinous (felony) charge should be tried on "Territorial House Arrest" and proceed the case. The concerned municipality ward office and police should be informed about "Territorial House Arrest" through electronic means.
- Due to the lockdown situation, accused may not able to provide asked bail or file any deposit (property security), bank guarantee or cash immediately after jail bail order. Considering the doctrine of necessity, accused person should provide "Territorial House Arrest" with terms to present in court with bail security once the situation normalizes. The concerned ward office on municipality and police office should be informed about "Territorial House Arrest" through electronic means. The theoretical policy that such kind of order can be made and implemented by all courts is needed to pass through the Supreme Court of Nepal.

Related to detention / prison administration

Since prison facilities hold double the number of juveniles than juvenile correction homes, and since the transmission of COVID-19 within a juvenile correction home, jail, or prison would cause unimaginable human damage and could occur, we urgently request all agents to make risk reduction and infection prevention arrangements as follows:

- Although the decision from the Supreme Court on March 20, 2020 has been made to provide the necessary decision by the relevant juvenile bench on the special request for parental custody, so the juvenile can be handed over to their parents/guardian from the juvenile correction home, neither the juveniles themselves nor anyone else is in a position to file a petition to the court on their behalf for further proceedings in this critical situation. Hence, the Head of the Juvenile Correctional Home must make sure to identify the guardian of the child, and with the help of his legal officer or legal aid provider, will send an application to the juvenile bench through the electronic system and arrange for a representative to be located near the guardian's house.
- The decision and recommendation of the Attorney General's Office dated March 19, 2020, in the matter of giving a general amnesty to those who have served 50 percent of their sentence, has yielded any concrete action taken by the Government of Nepal until today, hence a decision should be taken by government of Nepal immediately in this regard.
- As most of the prisons in Nepal have more captives than they currently have capacity for, and more than 23,000 inmates are currently imprisoned across the Nepal, to ensure the availability of mask, gloves, sanitizer, and precautionary arrangements are in place to reduce the risk of contagion among prisoners, prison management and security personnel and safeguard their health.
- In the meantime, the detainees jailed for trial shall be held in a separate facility at the police detention center, rather than in prison.
- The detainees kept in prison for the failure to pay fines should proceed for general amnesty if they have completed half the term of imprisonment.
- The Government of Nepal should declare and post the notice of the continuance of the provisions related to sentencing of the Criminal Offences (Sentencing and Execution) Act of 2017, and the provisions related to probation and parole should at least be implemented.

- In the case of a detainee held in detention for failure to pay or deposit bail asked by the court, the concerned prison administration should seek help from attorneys to file a petition requesting the court to grant a court date with terms of "Territorial home detention" and follow the decision from court.

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