

Submission to the United Nations Universal Periodic Review

Individual UPR submission

Nepal

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Human Rights Council

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Presented by:

Lawyers for Lawyers Foundation

An NGO in special consultative status with ECOSOC, United Nations

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A. Introduction

1. Lawyers for Lawyers (“**L4L**”) submits this report on the state of human rights in Nepal, especially in respect of the legal profession, with recommendations for the 37th session of the UPR Working Group in the UN Human Rights Council in January / February 2021.
2. L4L is an independent and non-political Netherlands foundation, which was established in 1986 and is funded by lawyers’ donations. L4L promotes the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has special consultative status with ECOSOC since 2013.

B. Executive Summary

3. This submission highlights key concerns regarding Nepal’s compliance with its international human rights obligations to guarantee the right to independent counsel as set out in the UN Basic Principles on the Role of Lawyers’ (“**Basic Principles**”) and other international human rights instruments, focusing on two main themes: (i) no effective guarantees for the functioning of lawyers, and (ii) the independence of the Bar Association. Non-compliance with the Basic Principles undermines the proper functioning of the judicial system, in particular the right to fair trial and effective access to justice.

C. Normative and institutional framework of the State

4. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. This is an important part of the rule of law. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are free to carry out their professional duties independently of the government and political pressure. This follows inter alia from the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights (“**ICCPR**”) to which Nepal is a State party.
5. Furthermore, on 22 June 2017, the Human Rights Council (“**HRC**”) passed a resolution condemning in general “the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions”. The HRC expressed its deep concern “about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession” and called upon States “to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable”.ⁱⁱ
6. In its task of promoting and ensuring the proper role of lawyers, the Government of Nepal should respect and take into account the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a

fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.ⁱⁱⁱ

7. During the Universal Periodic Review (“UPR”) 2nd cycle in 2015, Nepal received and accepted^{iv} recommendations regarding ensuring the independence and impartiality of the judicial system^v, that all cases of threats and attacks against human rights defenders are being investigated^{vii}, and the creation and maintenance of a safe environment for human rights defenders in which they can practice their profession independently^{viii}. Nepal stated that it “is fully committed to implement the recommendations received through the Universal Periodic Review”^{ix}.
8. However, reports gathered by L4L, including information received from lawyers in Nepal demonstrate that Nepal does not always uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. Consequently, lawyers encounter difficulties in carrying out their professional duties independently. This also undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

D. No Effective Guarantees for the Functioning of Lawyers

a. Access to information and lack of lawyer-client confidentiality

9. Protection of human rights and fundamental freedoms requires effective access to legal services provided by an independent legal profession.^x For lawyers to be able to carry out their activities, authorities should “ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients.”^{xi} Such access should be provided at the earliest appropriate time. It was reported by lawyers from Nepal that it has occurred that in the preparation of cases brought before the Court, lawyers received the necessary documentation shortly before the hearing. As a consequence, they did not have sufficient time to prepare their case.
10. Furthermore, the Basic Principles provide that governments “shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential”^{xii}. In addition, the Basic Principles provide that “[A]ll arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality” and that such consultations “may be within sight, but not within the hearing, of law enforcement officials.”^{xiii}
11. However, lawyers from Nepal have reported that insufficient measures are taken to guarantee the confidential nature of the meetings of lawyers with their clients. Lawyers sometimes don’t have access to their clients at all. Furthermore, the visits often do not take place in a private room and allegedly there is often a police officer present who can hear what is being discussed.

b. Threats and harassment of lawyers

12. Fundamental to improving human rights for the people in Nepal is a justice system that allows lawyers to work independently without fear of harassment or intimidation. Article 16 of the Basic Principles states that governments must “ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (...) and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”. According to our information, lawyers in Nepal working on sensitive cases are sometimes the subject of surveillance by law enforcement agencies. Some lawyers in Nepal reported to have been subjected to threats and harassment in connection to their professional activities. This is demonstrated by the following examples:

(a) *Mr. Badri Bhusal is a Nepalese lawyer, human rights defender, and chair of the Collective Campaign for Peace (“COCAP”). COCAP is a national network of 43 peace and human rights non-governmental organizations from 29 different districts of Nepal. Mr. Bhusal has legally represented clients in many high-profile cases, has reported on prison conditions, and has advocated against the use of torture by the police and for the inclusion of torture as a crime in domestic legislation. As a consequence of these activities, he has previously faced threats.*

Since August 2018, Mr. Bhusal’s security situation has worsened due to his legal representation of victims in the Nirmala Panta case. On 26 July 2018, Nirmala – a 14 year old school girl – was raped and murdered in the Kanchanpur District, Nepal. Mr. Bhusal and other lawyers representing the victims, as well as human rights defenders working on the case and family members of Nirmala, have been threatened.

The threats against Mr. Bhusal have included public defamation, intimidation and verbal threats. On 20 February 2019, he was contacted by a police superintendent based at the police headquarters in Kathmandu, who accused Mr Bhusal of “continuing to work against the police” and advised him to stop his involvement in the Nirmala Panta case. On 19 April 2019, Mr. Bhusal received a visit at the COCAP offices from someone who told him that he was taking risks to his personal security by his continued involvement in the Nirmala Panta case. Mr Bhusal was told that he could be attacked at any time by the police or the perpetrators of the crimes committed against Nirmala, and that no-one would protect him when that time came.^{xiv}

(b) *Mr. Indra Prasad Aryal is the president of Human Rights Organisation of Nepal, the first human rights organization in Nepal, established in 1988.^{xv} He has been working as a lawyer for 18 years and focuses his work on civil*

cases, cases concerning human rights violations such as torture and cases involving Tibetan refugees.

Mr. Aryal worked on the Nirmala Panta case, described in point (a), together with Mr. Bhusal. In connection to the case he has experienced threats. It was reported that these threats all had the intent to stop him from pursuing the Nirmala Panta case.

Since June 2019 Mr. Aryal's security situation has worsened, in connection to his legal representation of Mr. Kumar Paudel, a local leader of the Maoist splinter party Biplav. On 20 June 2019, Mr. Paudel was shot by the police who claim they shot him after Mr. Paudel had fired at them. According to the information received, Mr. Aryal has been the subject of surveillance and is regularly followed when travelling to his house or his office. Furthermore, Mr. Aryal has received continuous threats in connection to his professional activities since taking up the Kumar Paudel case.

*(c) Mr. Mohan Karna is a Nepalese lawyer and is the Executive Director of Terai Human Rights Defenders Alliance ("**THRDA**"), an NGO advocating for the protection of human rights and the rule of law in Nepal.*

Mr. Karna has been dealing with several cases related to torture, extrajudicial killings and enforced disappearance, women who are victims of violence and caste-based discrimination. According to the information received, Mr. Karna and his colleague lawyers have experienced harassment from the security forces of the government and from the community, in order to prevent them from representing victims of such cases.

c. Criminal investigations and prosecutions

13. Some lawyers working on sensitive cases have been subjected to or threatened with prosecution. There is reason to believe that their prosecution is connected to their legitimate activities. This is demonstrated by the following examples:

- a. A human rights lawyer (who prefers to remain anonymous), who works on sensitive cases concerning a marginalized community of the Southern Plains of Nepal, was prosecuted in 2017 under Section 47 of the Electronic Transactions Act for sharing a statement made by the Asian Human Rights Commission. L4L was informed that the human rights lawyer was not informed of the charge nor was his statement taken. The police and public prosecutor filed the case in the court claiming that the human rights lawyer was absconding.*
- b. Mr. Aryal, mentioned in point 10.b, filed a case against the police for their conduct in the Nirmala Panta case. The government and the police administration subsequently filed a case against Mr. Aryal. It is believed that this was in connection to Mr. Aryal filing the case against the police and done with the purpose to intimidate him.*

E. Independence of Bar Association

14. In the preamble of the Basic Principles it is stated that “professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from prosecution and improper restrictions and infringements, providing legal services to all in need of them”. The Nepal Bar Association is the leading federal organization with the authority and role to protect the lawyers and to promote democracy and the rule of law.^{xvi} Apart from this leading organization, multiple local bar associations exist in Nepal.
15. Multiple lawyers informed L4L that they do not always feel supported by the bar associations when they are being harassed or threatened in connection to their legitimate work as a lawyer.

F. Recommendations to the Government of Nepal:

- **Take immediate measures to ensure that all consultations between lawyers and their clients within their professional relationship are confidential, in accordance with art. 22 of the Basic Principles.**
- **Immediately take measures to guarantee that lawyers have access to appropriate information, documents and files in sufficient time to enable lawyers to provide effective legal assistance to their clients.**
- **Immediately take effective measures necessary to ensure that threats, harassment, and other violations against lawyers are effectively investigated and publicly condemned at all levels, and that the perpetrators of such acts are prosecuted.**
- **Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers, including their criminal prosecution on improper grounds such as the expression of critical views or the nature of the cases that the lawyer is involved in.**
- **Take immediate measures to ensure that Bar Associations in Nepal are independent and provide protection from harassment to all their members.**

ⁱ Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

ⁱⁱ UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers A/HRC/RES/35/12, 22 June 2017, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20

ⁱⁱⁱ During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles on the Role of Lawyers and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”. See UN Human Rights Council, Independence and

- impartiality of the judiciary, jurors and assessors, and the independence of lawyers A/HRC/RES/29/6, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11
- iv Report of the Working Group on the Universal Periodic Review of Nepal, A/HRC/31/9, 23 December 2015, p. 19-22.
- v Recommendation 122.52 Ensure the independence and impartiality of the judicial system, in particular through efforts to guarantee that the Judicial Council operates without interference from the Executive Branch of government (Canada);
- vi Recommendation 122.60 Investigate all cases of threat and attacks against human rights defenders (Botswana);
- vii Recommendation 122.72 Ensure the right to freedom of expression online/offline in law and in practice, including by decriminalizing defamation, and to investigate all cases of threats and attacks against journalists and human rights defenders (Estonia);
- viii Recommendation 122.73 Create and maintain, in law and in practice, a safe and enabling environment in which journalists, media workers, human rights defender and civil society can operate free from hindrance and insecurity, in accordance with Human Rights Council Resolutions 22/6, 27/5 and 27/31 (Ireland);
- ix Report of the Working Group on the Universal Periodic Review Nepal Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 24 February 2016, A/HRC/31/9/Add.1
- x Article 2 of the Basic Principles.
- xi Basic Principle 21
- xii Principle 22 of the Basic Principles.
- xiii Principle 8 of the Basic Principles.
- xiv In a joint letter the Law Society of England and Wales and Lawyers for Lawyers called upon the Nepalese authorities to properly investigate the threats against Mr. Bhusal and others involved in the Nirmala Panta case and to take all reasonable measures to secure their safety. See also: <https://lawyersforlawyers.org/22469/>
- xv <http://www.huronnepal.org/home/presidents>
- xvi Nepal Bar Association: <https://www.nepalbar.org/?url=pages&capid=2>
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