

Briefing Paper

**Human Rights Impact of COVID-19:
Advocacy Forum-Nepal's Field
Monitoring Report**

June 2020



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Introduction

As the global COVID-19 pandemic continues to affect the lives of people all around the world amid concerns over the spread of the pandemic, the Government of Nepal announced a nationwide lockdown on 23 March 2020.¹ This has been extended five times until today. So far, the government has resorted to a number of preventive measures: temporary suspension of all non-essential business, strictly observing the shelter-in-place orders, ordering physical distancing, isolation and quarantine. There are widespread concerns that the Government not making sure that human rights are front and centre when dealing with the pandemic. The monitoring that Advocacy Forum-Nepal (AF) is doing so far shows the opposite being the case: human rights are being set aside in the face of COVID-19. This briefing highlights major human rights concerns raised while the country continues to take measures to prevent the spread of infection. The objective is to help relevant stakeholders not only to strengthen monitoring mechanisms but also to take effective measures to protect basic human rights during the pandemic.

Major concerns of human rights

The world faces two entwined phenomena: the rapid spread of the COVID-19 virus on a global scale and a range of systematic and widespread human rights violations taking place simultaneously. Countries across the world have resorted to special measures, which normally would be considered infringements on human rights, in response to the pandemic. Governments have invoked a state of emergency and/or lockdowns, in particular, to curb the spread of the virus, leading to the suspension of a bundle of rights,

¹ As per Section 2 of Infectious Disease Act, 1964

like freedom of expression, movement, association and peaceful assembly. The initial imposition of these emergency measures may look like it is in response to the outbreak, but there is an equally plausible chance that the State may hesitate or never relinquish them back, causing a predicament for the human rights regime.

With Governments placing a series of preventive measures, such as lockdowns, to contain the pandemic, many people are experiencing appalling human rights violations. The United Nations Secretary General António Guterres describe the response of many governments to the COVID-19 pandemic as “a public health emergency that is fast becoming a human rights crisis”.²

Nepal is now over two and half months of lockdown. It has witnessed a significant rise in incidents of domestic violence and sexual harassment,³ violations by the security forces such as illegal detention, physical assault and inhuman and degrading treatment.⁴ We have also seen the surfacing of islamophobia,⁵ the plight of returning migrant workers stranded on the border and abroad,⁶ distress of minimum wage

² Available at: <https://www.un.org/en/un-coronavirus-communications-team/we-are-all-together-human-rights-and-COVID-19-response>

³ NepalKhabar, ‘17 rape cases and 30 cases of Suicide reported in Province 5 during lockdown’, NepalKhabar Samaj, 18 April 2020, available at: <https://nepalkhabar.com/society/24887-2020-04-19-05-50-20#.XpwnelMaxb0.facebook>

⁴ Himalayan Times, ‘36 held for defying lockdown orders in Province 5’, 24 March 2020, Available at: <https://thehimalayantimes.com/nepal/36-held-for-defying-lockdown-orders-in-province-5/>; Kathmandu Post, ‘Woman dies in stampede following clash between police and locals in Saptari’, 14 April 2020, available at: <https://kathmandupost.com/province-no-2/2020/04/14/woman-dies-in-stampede-following-clash-between-police-and-locals-in-saptari>

⁵ Aditi Aryal, ‘A worrying rise in Islamophobia ever since a number of Muslim men were diagnosed with COVID-19’, Kathmandu Post, 14 April 2020, available at: <https://kathmandupost.com/national/2020/04/21/a-worrying-rise-in-islamophobia-ever-since-a-number-of-muslim-men-were-diagnosed-with-COVID-19>

⁶ The right to return of migrant workers has been addressed in detail in this Law & Policy Forum for Social Justice policy briefing: Vulnerability of Migrant Workers and their Right to Return to the

workers,⁷ loss of lives due to lack of access to hospitals amid lockdowns,⁸ corruption and lack of transparency and large-scale irregularities in medical equipment and relief distribution,⁹ reifying age-old caste-based discrimination,¹⁰ poor and unmanaged quarantine and isolation facilities¹¹ and some cases of death due to hunger¹².

The alarming range of concerns have shaken the nation, including human rights activists and organizations¹³ working in the field of protection and promotion of human rights. Defenders have taken to the streets and explored legal avenues, demanding State's accountability and prompt measures to immediately address these human rights concerns.

Country of Origin, available at: https://lapsoj.org/wp-content/uploads/2020/06/Right-to-Return_Edited.pdf

⁷ Himalayan Times, '400 Nepali migrants stuck on Sunauli border', 1 April 2020, available at: <https://thehimalayantimes.com/nepal/400-nepali-migrants-stuck-on-sunauli-border/>; The Record, 'Daily wage workers at the end of their tether', 6 April 2020, available at: <https://www.recordnepal.com/covid19/daily-wage-workers-at-the-end-of-their-tether/>

⁸ Arjun Paudel, 'While dealing with COVID-19, government should not lose sight of other infectious diseases, say doctors', Kathmandu Post, 27 April 2020, available at: <https://kathmandupost.com/national/2020/04/17/while-dealing-with-COVID-19-government-should-not-lose-sight-of-other-infectious-diseases-say-doctors>

⁹ Kathmandu Post, 'Locals beat up ward office representative accusing him of nepotism in relief distribution', 21 April 2020, available at: <https://kathmandupost.com/province-no-2/2020/04/21/locals-beat-up-ward-office-representative-accusing-him-of-nepotism-in-relief-distribution>

¹⁰ Tika R Pradhan, 'Serious human rights violations against Dalits reported during lockdown', Kathmandu Post, 26 May 2020, available at: <https://kathmandupost.com/national/2020/05/26/serious-human-rights-violations-against-dalits-reported-during-lockdown>

¹¹ Ujyaloabhiyan, 'Five-month young child dies due to cold in a locally arranged quarantine at Lalbandi Municipality-15, Parwanipur Sarlahi', 22 April 2020, available at: http://ujyaloabhiyan.com/2020/04/22/%e0%a4%b8%e0%a4%b0%e0%a5%8d%e0%a4%b2%e0%a4%be%e0%a4%b9%e0%a5%80%e0%a4%95%e0%a5%8b-%e0%a4%aa%e0%a4%b0%e0%a4%b5%e0%a4%be%e0%a4%a8%e0%a5%80%e0%a4%aa%e0%a5%81%e0%a4%b0%e0%a4%ac%e0%a4%be-%e0%a4%95%e0%a5%8d/?fbclid=IwAR1bZM_XhcZmqFL5cdtuIDZxQwzhtpCyJs9LFQ_OVYvh3zoRS8hbC0imJ4

¹² Abdes K Kumar Jha, 'Fighting hunger for four days: Mallar Sada breathed his last breath', Kantipur Daily, Published on 20 May 2020, Available at: <https://ekantipur.com/news/2020/05/20/158998951560893424.html?fbclid=IwAR2F5RbrTaSdAoxNkjj17ejFbBcQlynFzi79Xn-uRlajGueKPIZ5ZhF8G-Y>

Excessive use of force

International law authorizes States to exercise sovereign powers on behalf of their people, but subject to strict legal limitations and that people are not to be subject to arbitrary power (the principle of non-domination).¹⁴ It implies that a State can use its power to protect and secure rights and freedom of people, but cannot interfere with any rights (of people) merely on its whim in the name of combating a crisis. The ongoing pandemic might call for emergency measures but one shouldn't overlook the fact that the State may opt for emergency measures only 'to the extent strictly required by the exigencies of the situation',¹⁵ i.e. clearly proportionate to the crisis, limited in time, strictly necessary, non-discriminatory and in compliance with State's national and international obligations.¹⁶ More specifically, international human rights law recognizes that in the context of a serious public health emergency, restrictions on some rights can be justified when they are strictly necessary, proportionate to achieve the objective, and are neither arbitrary nor discriminatory in application.

Nonetheless, the security forces and law enforcement agencies have used excessive and sometimes extreme force to enforce lockdowns. The lockdown

¹³ Press Statement of Accountability Watch Committee (AWC), 31 March 2020 on the situation of lockdown, available at: <http://advocacyforum.org/downloads/pdf/press-statement/2020/awc-press-statement-on-lockdown-31-march-2020.pdf>

¹⁴ Ibid. p. 41

¹⁵ European Convention on Human Rights (ECHR), Article 15

¹⁶ OHCHR, 'Emergency Measures and COVID-19: GUIDANCE', available at: https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf Published on 27 April 2020

guidelines¹⁷ issued by the government permit people to leave their homes, but only to seek access to essential services (purchase food or seek medical and health care). The service providers like medical and health professionals, food/dairy and drinking water transporters, personnel from information and communication/telecommunication sector, and staff required for custom, quarantine and waste management are exempted from the lockdown. However, news reports of police targeting people venturing out to buy medicines or food supplies¹⁸ illustrate a different reality.

A video of police mercilessly beating three people (including an unwell person) on their way back home after making necessary medical purchase (in Kalanki) caused public outrage.¹⁹ It took place on the same afternoon when Metropolitan police office, Kathmandu had issued a press statement regarding an incident involving police assault on resident doctors of Tribhuvan University Teaching Hospital and Kanti Children's Hospital returning to their residence after duty, describing the occurrence as 'sad' and expressing its intention to take action against all police officers found guilty of the charge²⁰. Likewise, a similar incident took place in Dharan²¹, where Police beat a

health assistant on his way to treat a local patient. The same evening Sunsari district police issued a statement, stating that the incident was being investigated.

Numerous incidents of ill-treatment by security forces have been reported from all across the country. For instance, people in Panchthar complained that police on patrol have often beaten them in the name of enforcing lockdown.²² A vegetable vendor suffered an optic nerve injury due to police beating in Siraha.²³ Five construction workers were beaten by armed police force inside their own residence in Dhading.²⁴ Dozens were injured by police baton-charge in Rupendehi.²⁵ A fourteen-year-old boy suffered a bone fracture on his hand as a result of police baton-charge in Nepalgunj.²⁶ Police opened firing on the public to take control over minor dispute.²⁷ Jainab Khatun, a middle-aged woman, in Saptari, was killed due to highhandedness of security personnel while attempting to protect her son from the batons of police.²⁸ Many people are detained all over the country in lockdown defiance allegations.

In addition, police officers have reportedly treated people inhumanely, forcing them to do sit-ups, squats or crawl on the road, so much so that a long clamp-like device were used to hold passers-by on street and shove

¹⁷ Kantipur Daily, 23 March 2020, available at: <https://ekantipur.com/news/2020/03/23/158497075637384607.html>

¹⁸ Shuvam Dhungana & Pawan Pandey, 'For citizens out on essential errands, fear of the coronavirus and fear of the police', Kathmandu Post, 18 April 2020, available at: <https://kathmandupost.com/national/2020/04/18/for-citizens-out-on-essential-errands-fear-of-the-coronavirus-and-fear-of-the-police>; Setopati, 'Head constable of armed police force suspended for brutally beating locals at', Published on: 31 March 2020 Available at: <https://www.setopati.com/social/202805>

¹⁹ Jagannath Dhakal, 'Police brutality on people returning to home after making essential medical purchase', 16 April 2020, available at: https://healthpati.com/detail/20200416193247.html?fbclid=IwAR0HdDy-31fmzf3SbzEW8T90dIHLe_TeZO61rVm54ilq0URJ7ab1-8Jq0E

²⁰ Press Statement of Metropolitan Police Office, Kathmandu of 16 April 2020, available at: <https://mobile.twitter.com/NepalPoliceHQ/status/1250723588660817922/photo/1>

²¹ Republica, 'What is triggering police to go violent?', 17 April 2020, available at: <https://myrepublica.nagariknetwork.com/news/what-is-triggering-police-to-go-violent/>

²² Nepal Monitor, 'Police assault a tractor driver in Panchthar', 5 May 2020, available at: <https://nepalmonitor.org/reports/view/28865>

²³ Bijay Kumar Shah, 'Local suffered a optic never injury from police beatings', 16 April 2020, available at: <http://www.shirishnews.com/2020/04/15/10913.html>

²⁴ Diyopost, 'Armed Police Force's brutality on Workers', 12 April 2020, available at: <https://www.diyopost.com/04/78113/>

²⁵ Bindu Kumar Chauhan, 'Baton-charge on Locals at Marachwar', 12 May 2020, available at: <https://kharipati.com/2020/05/2639/>

²⁶ The Record, 'A Violent Curve', 30 May 2020, available at: <https://www.recordnepal.com/wire/news-the-wire/a-violent-curve/>

²⁷ National News Agency, 'Dispute over relief materials distribution in Siraha leads to firing, injuring at least four', 4 May 2020, available at: <https://www.setopati.com/social/205465?fbclid=IwAR2C20bKyhjlsInY UccaaqEUMLVZf1jESnh09T4bXz2DihQw4gwdO1vAIM>

²⁸ People's Review, 'Saptari woman dies in police action', 15 April 2020, available at: <https://www.peoplesreview.com.np/2020/04/15/saptari-woman-dies-in-police-action/>

them all inside one crammed police vehicle, completely flouting social distancing orders.

This series of excessive use of force by the security forces in the name of enforcing the lockdown, is a prima facie evidence of long seated problem in police institution and unchecked exercise of power by law enforcement agencies.

Freedom of speech and expression, assembly (persecution to the journalists, and civil society activists)

In a pandemic like this, when half of the world is forced to be inside their homes, the uninterrupted flow of credible information is more essential than ever. However, the Nepal Government seems to be using this pandemic as an opportunity to curb civil liberties of people, with instances like persecution of journalists, civil society activists raising issues of human rights violations during lockdown and corruption related to the purchase of medical equipment.

Although the lockdown guidelines²⁹ allow people in information communication/ telecommunication sector to perform their task, but in reality, they've become an 'easy prey' for the security forces. According to a preliminary media rights monitoring report by Federation of Nepali Journalists (FNJ), since the imposition of the lockdown on 24 March till 10 April 2020, three journalists have received threats, two have been reprimanded, and six journalists have been barred from reporting.³⁰ The situation continues with an increase in the reported number of incidents.³¹

²⁹ On behalf of Government, a high-level coordination committee issued a decision to impose a nationwide lockdown. Kantipur Daily, 23 March 2020, available at: <https://ekantipur.com/news/2020/03/23/158497075637384607.html>

³⁰ Preliminary Media Monitoring Report of Federation of Nepali Journalists of 10 April 2020, available at: http://www.fjnepal.org/uploads/freedoms/freedom_1586502538.pdf

³¹ Committee to Protect Journalists (CPJ), 'Nepali reporters detained, threatened while reporting on COVID-19 pandemic', 21 May 2020, available at: <https://cpj.org/2020/05/nepali-reporters-detained-threatened-while-reporti/>

Moreover, government's temptation to control free exercise of social media is upsetting. Emerging reports of activists³² or former bureaucrats³³ being targeted for a social media post by government agencies is evidence of violation of free speech. In addition, an incident of life-threatening attack on a journalist³⁴ by unknown groups, further shows the government's ineffectiveness to protect the rights of its citizens.

Access to essential services (food, medical services)

As the pandemic unfolds, it is unraveling a Pandora's Box of problems the world could never have imagined. The saga of extended lockdowns in developing countries comes with the most devastating repercussions. Due to closures of business and any other income-generating activities, families have been struggling to make ends meet. Among many other things, the food supply chain and health systems have been gravely affected.

In a crisis, the most at-risk populations are the vulnerable group who are already suffering from hunger, poor health and poverty. In Nepal, the vast majority of the population live hand-to-mouth, relying on a minimum or daily wage to secure food for their families at the end of every single day. More than 70

³² On 22 April 2020, former government secretary arrested for critical comments against the KP Sharma Oli government on social media, and charged with cybercrime for allegedly defaming Prime Minister KP Sharma Oli and his ministers on social media. He was released on bail. Available at: <https://kathmandupost.com/valley/2020/04/27/former-secretary-bhim-upadhyay-released-on-bail>

³³ On 18 May 2020, Alam Khan (a journalist and human rights defender based in Nepalgunj) posted a status over the gross mishandling of COVID-19 outbreak by local administration. Two days later he was arrested by policemen but eventually released on a general date. Available at: <https://www.recordnepal.com/wire/features/an-increasingly-intolerant-government-targets-journalists/>

³⁴ On 29 May 2020, a journalist (Bifa Chaudhary) suffered a life-threatening attack by an unknown group in Tikapur, Kailali, available at: <https://dineshkhobar.com/article/29386#.XtMzhRx3xi0.gmail>

percent³⁵ are employed in the informal sector, and with these prolonged lockdowns, destitution and starvation is inevitable. On various platforms, the Government has announced allocation of funds and relief packages,³⁶ which does not seem to reach to those in dire need.

*“...Mallar Sada, 50, from Saptari, died due to hunger, as he and his family had no food to eat for four days in a row. As per reports, the local level had given the family 15 kg of rice and Rs.120 weeks ago. Passing four days without food, Mallar walked to lean on some food for his family but never returned back alive. The family did not even have money to perform the last rites, so locals raised money to cremate the body”.*³⁷

*“...Surya Bahadur Tamang, in Kirtipur, was found dead in the pavement, with shabby clothes and a strap in his hand that he used for carrying weights. According to locals, he worked as a porter for years, due to lockdown he had no work for past two months. During this time, he survived on food distributed by local wards.”*³⁸

³⁵ International Labour Organization, ‘Informal Economy in Nepal’ 2019, available at: <https://www.ilo.org/kathmandu/areasofwork/informal-economy/lang--en/index.htm>

³⁶ On 1 April 2020, The Finance Ministry issued the standards to be followed by local governments while distributing aid to the workers in the informal sector and people in need. As per the working model, a family will get 30kg rice, three kg pulses, two packets of salt, two litres of cooking oil, four soaps and two kg sugar for the lockdown period. A ward distributes the relief considering one family as a unit and keeps record, the guidelines state. The quantity of relief materials is for a family with three or more members. For a family of up to two members, the specified quantity is a half of each. Only a family having no source of income at the moment qualifies for the aid. Available at: <https://kathmandupost.com/national/2020/04/01/rice-pulses-salt-oil-soap-and-sugar-to-be-distributed-to-informal-sector-workers-and-destitutes>

³⁷ Abdes Kuma Jha, ‘Fighting hunger for four days: Mallar Sada breathed his last breath’, Kantipur Daily, 20 May 2020, available at: <https://ekantipur.com/news/2020/05/20/158998951560893424.html?fbclid=IwAR2F5RbrTaSdAoxNkjjl7ejFbBcQlYnFzi79Xn-uRlGueKPIZ5ZhF8G-Y>

³⁸ Unik Shrestha, ‘He lived a life carrying heavy load, breathed his last on the road’, Setopati, 24 May 2020, available at: <https://www.setopati.com/social/207139>

People dying of starvation is not a natural occurrence, it requires urgent measures. However, reports of corruption and irregularities in relief distribution,³⁹ low quality food supplied in relief packages by local level authorities,⁴⁰ local productions being barred from local markets (reports of authorities forcing farmers to dump homegrown vegetables at Kaski and Arghakhanchi) while trucks laden with food, fruits, vegetables from neighbouring country make it to the Nepalese market,⁴¹ are clear examples of Government’s insensitivity towards public concern.

Access to medical health

The private hospitals not wanting to attend to or refusing to treat patients with coronavirus-like symptoms, owing to lack of safety equipment⁴² has resulted in people being denied their right to the highest attainable standard of health. Without running any tests, patients with fever are directly being referred to State-run health facilities.⁴³ Private hospitals turning

³⁹ Abdes Kuma Jha, ‘Locals beat up ward office representative accusing him of nepotism in relief distribution’, The Kathmandu Post, Published on 21 April 2020, Available at: <https://kathmandupost.com/province-no-2/2020/04/21/locals-beat-up-ward-office-representative-accusing-him-of-nepotism-in-relief-distribution>; Kamal Panthi, ‘Bardiya’s poor are starving while the local unit has been slow to distribute relief’, The Kathmandu Post, Published on 22 April 2020, Available at: <https://kathmandupost.com/province-no-5/2020/04/22/bardiya-s-poor-are-starving-while-the-local-unit-has-been-slow-to-distribute-relief>

⁴⁰ Ratopati, ‘Half a dozen fall sick consuming oil distributed in relief packages’, Published on 24 April 2020, Available at: <https://ratopati.com/story/127493/2020/4/24/Sick-mahotari>

⁴¹ Nabin Dhungana, ‘Imported Vegetables makes it to the Kitchen, Local produces makes it to the dumping site’, Published on 1 June 2020, Available at : <https://www.onlinekhabar.com/2020/06/869530>

⁴² Vivek Rai, ‘Private hospitals say they can’t treat suspected COVID-19 patients’, 22 March 2020, available at: <https://en.setopati.com/social/152491>

⁴³ Arjun Paudel, ‘While dealing with COVID-19, government should not lose sight of other infectious diseases, say doctors’, Kathmandu Post, 27 April 2020, available at: <https://kathmandupost.com/national/2020/04/17/while-dealing-with-COVID-19-government-should-not-lose-sight-of-other-infectious-diseases-say-doctorshttps://kathmandupost.com/national/2020/04/17/>

away patients due to coronavirus scare, or patients' not getting access to health services on time⁴⁴ has caused loss of lives.

*"...Rabindra Yadav, 27, of Devangunj-1, Sunsari, who had been suffering from high fever, lost his life after different hospitals in Biratnagar refused to admit him."*⁴⁵ Numerous health facilities not providing health services to people due to fear of COVID-19 transmission is bound to invite further health problems. Prolonged lockdowns is likely to have a knock-on effects on public health. The latest data reveals that there is almost 200 percent increase in maternal mortality since the imposition of lockdown i.e. at least 24 women have died of birth-related complications in the last two months, compared to 80 in the whole of last year.⁴⁶ Hospitals designated by the Government to treat COVID-19 patients are ill-equipped, meaning that they lack sufficient testing kits, necessary infrastructure, trained health workers, protective equipment and other medical essentials.⁴⁷ As the government has not played an effective role in coordinating with different community raising awareness about the people (including vulnerable people) with symptoms are still unsure where, how and whom to approach to get tested for the virus. Moreover, there are widespread concerns

while-dealing-with-COVID-19-government-should-not-lose-sight-of-other-infectious-diseases-say-doctors

⁴⁴ Kathmandu Post, 'Family of man suspected of Covid-19 infection refuses to accept his body alleging hospital of negligence', 4 April 2020, available at: <https://kathmandupost.com/province-no-5/2020/04/04/family-of-man-suspected-of-covid-19-infection-refuses-to-accept-his-body-alleging-hospital-of-negligence>

⁴⁵ Laxmi Gautam, 'Hospitals turn away patients with fever', Himalayan Times, on 2 May 2020, available at: <https://thehimalayantimes.com/nepal/hospitals-turn-away-patients-with-fever/>

⁴⁶ Arjun Paudel, 'A 200 percent increase in maternal mortality since the lockdown began, The Kathmandu Post, Published on 27 May 2020, Available at: <https://kathmandupost.com/national/2020/05/27/a-200-percent-increase-in-maternal-mortality-since-the-lockdown-began>

⁴⁷ Republica, 'Test for COVID-19 slows down in Sudur Paschim Province for lack of test kits' Published on 17 April 2020, Available at: <https://myrepublica.nagariknetwork.com/news/test-for-covid-19-slows-down-in-sudur-paschim-state-for-lack-of-test-kits/>

of limited number of tests being available, and that people who have means to pay can get tests, while others can't. The 'ability to pay' inevitably deepens inequalities, and spark discrimination in the service provided; the ones who can afford can easily access it while those unable will be kept at bay.

Handling of dead bodies

It is imperative for the government to frame contingency plans, including preparedness to deal with mass fatality during a pandemic, even if the chances of mass fatality remain highly unlikely. As a response to the pandemic, it is expected of a government to prepare proper guidelines for dignified disposal of dead bodies in compliance with international mechanisms.⁴⁸

Although the Government issued funeral guidelines,⁴⁹ due to a lack of trained health workers oriented particularly on disposal of dead bodies, insufficient medical equipment for health workers involved in handling bodies, lack of transportation facilities as well as physical infrastructures needed for storage of bodies and places for burials and cremations, the handling of dead bodies in a dignified manner, remain as a huge void for the Government to fill.

Additionally, the government has decided that those who succumb to COVID-19 near Kathmandu will be cremated at the country's only electric crematorium while deceased outside Kathmandu are to be buried in accordance with the funeral guidelines.

"...The first confirmed death from COVID-19 in Nepal was of a 29-year-old woman, who had given birth through normal delivery on May 6 at Tribhuvan University Teaching Hospital and [was] discharged on May 7, as the health condition of both the baby and

⁴⁸ WHO, 'Disposal of dead bodies in emergency conditions', available at: https://www.who.int/water_sanitation_health/publications/tech_note8/en/index1.html

⁴⁹ National Risk Reduction and Disaster Management Authority with the Ministry of Health have published the 'Dead Body Management of COVID-19 Cases', available at: https://drive.google.com/file/d/1ENGIDUd_qlxuoTp44VTsMiileaC0q0LW/view

the mother was normal. The woman had subsequently returned to her village in Sindhupalchok and reported a fever and respiratory difficulties shortly after returning home, treated at the local health centre for the same. After her condition worsened, she was referred to the Dhulikhel Hospital on May 14. She died on the way to the hospital.”⁵⁰

Afraid of contracting infection, ambulance drivers to hospital workers reportedly refused to move the body from the morgue to the crematorium. A group of local volunteers were called by authorities to handle the body of the deceased.

“...When we reached the morgue, there was blood spattered all over the floor and the body was also not properly wrapped. We had to repack the body in a body bag, lift it in the vehicle and drive it to the Pashupati temple for cremation, even at the crematorium, the staff would not go near the body, so the team loaded it into the furnace while the family stood at a distance.”⁵¹

The body of a deceased in Banke was buried using an excavator.⁵² This highlights the ubiquitous fear and stigma attached to the disease. But given that government still has not initiated significant measures to make aware and train health workers on disposing of dead bodies, there is a clear possibility that the fatalities in the near future will be denied dignified funerals.

COVID-19 and its effect on criminal justice system

As the various measures imposed have affected different sector, Nepal’s criminal justice system is no exception. With the Government concentrating all its

efforts to fight the crisis as infection continue to rise across the country; the basic rights of people coming into conflict with the law have been tossed aside. Some criminal justice institutions too have been hit hard by the pandemic, judiciary being one of them.

On 20 March 2020, a full bench at Supreme Court issued a directive⁵³ to temporarily suspend non-urgent Court proceedings, in all three tiers of Court, by limiting their services to hearing writ of *habeas corpus*, remand hearing and hearings related to COVID-19. As judiciary is one of the bedrocks of any nation, such a judicial blockage puts an entire criminal justice system in shambles. Below we document some emerging effects of COVID-19 on the administration of justice and criminal justice system.

Difficulties in Registering First Information Report (FIRs):

AF lawyers have faced difficulties in filing FIRs even in cases related to serious offenses.⁵⁴ Citing coronavirus fears, police authorities have been refusing to register FIRs and complainants are asked to come back with the complaint once the lockdown is lifted.

Cases against prisoners are entertained: Contrary to its refusal to consider mandamus or FIRs the police and the Court have been issuing arrest warrants, summons regarding Appeal and sending it to the public prosecutor’s office, and the public prosecutors have been promptly filing Appeals against prisoners and detainees. This is happening despite detainees and prisoners not having access to their lawyers (due to lockdowns), let alone access to a copy of the summons for Appeal.

Risk of unlawful detention: Though legally the Courts should decide a case within one year of admission of

⁵⁰ Arjun Paudel, ‘Nepal reports its first Covid-19 death’, 16 May 2020, available at: <https://kathmandupost.com/national/2020/05/16/no-evidence-yet-that-covid-19-patient-s-death-on-thursday-was-due-to-the-disease>

⁵¹ Statement of Arun Sainju, one of the volunteers of the group named RHA-16 (Rescue and Awareness), available at: <https://thehimalayantimes.com/nepal/nepal-volunteers-become-local-heroes-during-virus-pandemic/>

⁵² AF Field Report, Banke

⁵³ Press Statement of Supreme Court of Nepal of 20 March 2020, available at: <http://www.supremecourt.gov.np/web/assets/downloads/%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A5%87%E0%A4%B8-%E0%A4%B5%E0%A4%BF%E0%A4%9D%E0%A4%AA%E0%A5%8D%E0%A4%A4%E0%A4%BF-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AC-%E0%A5%A7%E0%A5%A8-%E0%A5%A6%E0%A5%AD.pdf>

⁵⁴ Authorities in Rupandehi have denied filing a FIR against a perpetrator, in an offense relating to abduction and taking hostage, with rape.

evidence, most cases in the Courts are not prosecuted within this period. This leads to prolonged and sometimes even unlawful detention of people. For example, a person who is charged with an offence for six months' imprisonment but due to various reasons, his/her case could not be heard for a year leading to the person being imprisoned longer than the law permits.

Juveniles have been impacted: Parents have not been able to come to Court with an application of release on behalf of minors due to lockdowns. The government's directive to release prisoners framed in terms of the economic ability of prisoners to pay legal charges for the remaining period of their sentence is unfair to those who are economically disadvantaged.⁵⁵ Against the decision of the full bench of the Supreme Court, AF found some juveniles sent to Child Correction Homes for trial.

Quality of proceeding: Claiming the risk of COVID-19, the public prosecutors have been limiting their appearance before the court for pleading. In some cases, they do not even appear before the Court to plead on behalf of the State but request Judges or court officials to put their names in the decision. This impacts the quality of proceedings and poses a risk to the right to fair trial.

Despite the considerable limitation in right to movement, the Court has not yet entertaining registration of cases/complaints via electronic means in an uniform manner. Although in some district courts⁵⁶ remand hearing through video conference calls are entertained and facilitated but not in others.

⁵⁵ Press Statement of Supreme Court of Nepal of 20 March 2020, available at: <http://www.supremecourt.gov.np/web/assets/downloads/%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A5%87%E0%A4%B8-%E0%A4%B5%E0%A4%BF%E0%A4%9D%E0%A4%AA%E0%A5%8D%E0%A4%A4%E0%A4%BF-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AC-%E0%A5%A7%E0%A5%A8-%E0%A5%A6%E0%A5%AD.pdf>

⁵⁶ Available at: https://www.newsofnepal.com/2020/05/28/321229/#.Xs_SDxNVDV1.facebook, accessed on 28 May 2020.

Situation of detention centres, prisons and child correction homes

The conditions of prisons, detention centres and child correction homes of Nepal have been under scrutiny of national and international community for many years. Long before the COVID-19 outbreak, reports from government bodies⁵⁷, national and international human rights bodies⁵⁸ have time and again revealed a grim picture of Nepalese detention centres, prisons and child correction homes, their findings unanimously shedding light on 'overcrowding' and 'inhumane living conditions'⁵⁹ of inmates as major problems in such confinements.

In Nepal, there are 74 prisons, in total. The overall holding capacity of prison is 16,556 inmates, however, the total number of prisoners, at present is 24,227 (male: 22,769, female: 1,458 and infant dependants 87), meaning 46.33% more than the original holding capacity.⁶⁰ Similarly, in 8 correction homes across Nepal, 708 minors (all males) are residing, above the original holding capacity of 492 minors.⁶¹ At 15 surveyed detention centres,⁶² a total of 489 (including

⁵⁷ Office of Attorney General, Nepal, 'Prison and Detention Monitoring Report 2019', December 2019, available at: <https://ag.gov.np/publication>

⁵⁸ Office of the High Commissioner for Human Rights- Nepal, 'INSIDE: Prison and the Rights of Detainees A Photo Exhibition on Prison Conditions in Nepal', December, 2008, available at: https://nepal.ohchr.org/en/resources/publications/PrisonDayBrochure_Eng.pdf

⁵⁹ The Kathmandu Post, 'Prisoners in Nepal are living under 'inhumane conditions' says Office of the Attorney General', 14 May 2019, accessed on 27 May 2020, available at: <https://kathmandupost.com/national/2019/05/14/prisoners-in-nepal-are-living-under-inhumane-conditions-says-office-of-the-auditor-general>

⁶⁰ Office of Attorney General, Nepal, 'Prison and Detention Monitoring Report 2019', December, 2019, Available at: <https://ag.gov.np/publication>

⁶¹ AF field report

⁶² AF surveyed fifteen detention centers from province 1 to province 7 (District Police Office Gorkha, District Police Office Tanahun, District Police Office Syangja, District Police Office Manang, District Police Office Mustang, District Police Office Baglung, District Police Office Rautahat, District Police Office Saptari, District Police Office Siraha, District Police Office

6 female) detainees were found, above their capacity of 480 detainees. Prisoners' in Banke and Rautahat are forced to reside in makeshift tents because of overcrowding. In all 8 correction homes across the country, minors are forced to share beds⁶³, exposing them to the risk of other forms of harassment.

Effect of COVID-19 on juveniles, prisoners and detainees

The powerlessness that inmates detained or imprisoned in facilities feel is unfathomable. Public health has always been a concern in detention centres, prisons, correction homes. The COVID-19 crisis has reinforced the need for more attention. As the infection is highly contagious, and is spreading with exponential rate, the physical and psychological well-being of the inmates, staff members in facilities should be a crucial area of concern.

a. Response Plan and the discrepancy in implementation

Anticipating the possible outbreak of virus, on 20 March 2020, a full bench of the Supreme Court issued a directive order⁶⁴ to hand over minors who were detained at child correction homes into parental custody and to release prisoners (convicted, at the first instance, of any offence punishable by a sentence of imprisonment for a term of one year or less), who were qualified to be released after paying the amount for the jail term that they were yet to serve as stipulated by the

Mahottari, District Police Office Morang, Area Police Office Butwal, District Police Office Rupandehi, District Police Office Kancharpur, Area Police Office Jhalari, Kancharpur).

⁶³ AF field Survey

⁶⁴ Press Statement of Supreme Court of Nepal of 20 March 2020, available at: <http://www.supremecourt.gov.np/web/assets/downloads/%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A5%87%E0%A4%B8-%E0%A4%B5%E0%A4%BF%E0%A4%9D%E0%A4%AA%E0%A5%8D%E0%A4%A4%E0%A4%BF-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AC-%E0%A5%A7%E0%A5%A8-%E0%A5%A6%E0%A5%AD.pdf>

penal code.⁶⁵ Following the directive order, the district courts released 216 prisoners (all over Nepal), out of a total of 430 prisoners had applied for the release (20 March 2020 - May 2020).⁶⁶ Likewise, a total of 228 minors have been released from child correction homes.⁶⁷ Some prisoners, detainees and minors at facilities are dissatisfied with the implementation of the SC's decision. The release of some juveniles, prisoners and detainees as per the discretion of Judges have shattered a 'number of hopes' of many others'.⁶⁸ One of the main reasons behind the SC directive was to control the density of population inside these facilities; however, the influx of new inmates rising every day is confounding matters.

b. Physical Effect

Some preventive measures adopted by the Government such as Rapid Diagnostic Test (RDT) on new inmates, a quarantine period of recommended timeframe⁶⁹ inside a secluded place in the facilities, temperature check or sanitization measures on entry point, suspension of family visits, distribution of personal

⁶⁵ The National Criminal Procedure Code, 2017, Section 155

⁶⁶ As per AF field survey report, in Rupandehi, a 65-year-old man was denied release. 10 other inmates (senior citizen) were denied release in Banke.

⁶⁷ AF field Survey Report, CCH-Biratnagar- 24 released; CCH-Parsa-23 released; CCH-Hetauda- 8 released; CCH-Bhaktapur-72 (Male 65: Female 7); CCH-Gandaki- 16 (of total 38 applicants); CCH-Banke- 48; CCH-Rupandehi-17; CCH-Doti-20 released before the SC order via diversion, 19 will have to return back after the pandemic

⁶⁸ Whether it is in juvenile homes or in prisons, number of people has applied for release. Among many, few were released as per the decision of the district court. Some express that their friend, in a similar nature of offense, with similar sentence was released while they had to remain in the facilities. (AF Field Survey)

⁶⁹ Notice of the Department of Prison Management of 27 May 2020, Available at: [https://www.dopm.gov.np/uploads/files/COVID-19%20Purba%20tayari%20pratikarya\(2\).jpg](https://www.dopm.gov.np/uploads/files/COVID-19%20Purba%20tayari%20pratikarya(2).jpg). The Department claims that preventive measures are in compliance with WHO guidelines Available at: <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/focus-areas/prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention>

protective equipment and other medical essentials⁷⁰ is commendable. However, the question is will these measures be sufficient enough to prevent the transmission in such compact places?

With overcrowding of inmates in the facilities, physical distancing measures may seem absolutely impossible, with frequently used common space (same washrooms, rooms and beds), it further builds the risk of transmission. The soaps, sanitizers, masks distributed to inmates need to be refilled and rechecked regularly; providing them only once is not enough. Sanitation in the facilities is another major issue that attracts little attention. Considering the ongoing pandemic, the expert have time and again emphasized on the consumption of nutritious and healthy foods, but children in almost all correction homes and prisons are deprived of nutritious food.⁷¹ Shortage of food due to extended lockdowns⁷² is another concern largely unaddressed. For women inmates with dependent child, the struggle for food is real.

Moreover, facilities largely depend on running water, tap water or ground well water or tube wells. Neither correction homes nor prisons have a filter plant for pure drinking water, exposing inmates to waterborne diseases,⁷³ making prisoners more vulnerable, creating underlying conditions that will increase risk of death

if caught COVID-19. Only some facilities have health workers appointed to treat inmates. Due to months of lockdowns, health workers have not visited facilities.

c. Psychological Effect

It is not surprising that the mental health of prisoners, detainees, and minors in facilities is extremely vulnerable. The inability to avail help, the feeling of being stuck with strangers, and the wish to be alongside their loved ones, is beyond comprehensive. The ongoing pandemic has multiplied their sorrows. In most facilities, family visits has been suspended due to the potential risk to both inmates and people outside,⁷⁴ the inmates are unaware of what is happening in their legal proceedings⁷⁵ and the increasing uncertainty makes them feel more helpless. Due to prolonged lockdowns, many prisoners are facing financial crisis, as the money they earned by selling products (made by them) has stopped. Minor scuffles amongst prisoners/detainees have been reported.⁷⁶ As per reports, before the COVID-19 outbreak, some organizations visited facilities for psycho-social counselling, but this has ceased since lockdown.

So far there has been two confirmed case of infection⁷⁷ in detention facilities. The Government authorities lack preparedness to curb a possible proliferation of the virus. It is high time for them to ensure the mental health of people living in facilities, including staff members, in order to minimize fear and anxiety. Besides, authorities need to frame contingency plans to strike a balance between the rate of release and new arrivals of inmates. Also, inmates should be allowed to

⁷⁰ The Department of Prison Management, Kathmandu issued a notice stating that 166 sets of personal protective equipment (PPE), and other medical equipment such as thermal guns, sanitizers and gloved have been distributed to all prison offices under it. Notice of the Department of Prison Management of 27 May 2020, available at : <http://dopm.gov.np/uploads/files/covid.jpg>.

⁷¹ AF field Survey Report

⁷² Waikhari.com 'Lockdown hits hard on Children at Children's Home in Kapilvastu. Forced to stay hungry. No attention has been paid in regard to it', 18 April 2020, available at: <https://www.waikhari.com/2020/04/21349/>

⁷³ A minor residing in Child Correction Home died while undergoing treatment on 31 May 2020. The minor was hospitalized on 30 May 2020, Available at: <http://inseconline.org/np/news/%e0%a4%ac%e0%a4%be%e0%a4%b2%e0%a4%b8%e0%a5%81%e0%a4%a7%e0%a4%be%e0%a4%b0-%e0%a4%97%e0%a5%83%e0%a4%b9%e0%a4%ae%e0%a4%be-%e0%a4%b8%e0%a4%9c%e0%a4%be%e0%a4%af-%e0%a4%ad%e0%a5%81%e0%a4%95%e0%a5%8d/>

⁷⁴ As per AF field survey, in Kaski prison, considering the urgency of the situation, the inmates are allowed to visit their families. Whereas, in detention centers, visiting facility has been suspended for time being.

⁷⁵ Child Correction Home Visit Report, Banke AF

⁷⁶ In Dillibazar prison, tussle between inmates was reported. Available at: <https://www.dopm.gov.np/uploads/files/Dillibazar.jpg>

⁷⁷ An accused detained at Baitadi Prison has tested positive. Notice of Office of Attorney General, 30 May 2020 ; See Also, Daraudi, ' Detainee at District Police Office test Positive in Gandaki Province', Available at: <https://daraundi.com/main-news/25963/>

have access to information regarding their impending cases, and minors in correction facilities should not be refrained from virtual learning.

Conclusion and Recommendations

We call on our political leaders and the government authorities to put human rights front and centre of the COVID-19 response.

Human rights have to be a central consideration as we try to create the national unity we need to combat the devastation caused by COVID-19. Some rights that we hold dear, like freedom of association, freedom of expression and freedom of movement, must only be reduced when it is absolutely necessary to protect human life and must only remain reduced for the minimum time absolutely necessary.

We call on civil society to carefully and constantly monitor government actions to make sure that they are in line with international law, and particularly the obligation to provide the best possible health provision for all. This should include equal access for the vulnerable, the poor, women people in detention, prisons and child correction homes and other

marginalised groups. And our international partners must stand by us as we try to make sure that our government maintains these standards.

The government must make sure that there is no discrimination and undertake immediate remedial measures when it does. Any limitation of the state's commitments to human rights must be fully explained and justified and based on scientific evidence, not just political slogans. These limitations must explicitly have a time limit of no more than a few months—they can be renewed if the crisis persists and makes it necessary.

The elderly must get special attention taking into account their needs. The same is true for priority groups which must include prisoners, who are particularly vulnerable at times like this and the government must ensure that their living conditions are adequate to stem the threat of contagion.

As Ms. Mohna Ansari, National Human Rights Commission (NHRC) Commissioner said recently: "Beating Covid-19 is a tough task, and one that falls on all of us. We will not be successful if we are not united. We will not be united if our rights are arbitrarily brushed aside. The virus cannot be defeated by the repression and violations of rights. Such a scenario may push people away from participating in the solution."⁷⁸



⁷⁸ Mohna Ansari, 'Can human rights be set aside in our fight against Covid-19?', The Kathmandu Post, Published on 3 May 2020, Available at: <https://tkpo.st/2WhgDKS>