

The Law Society of England and Wales Collective Campaign for Peace

Joint Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review – NEPAL

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The Law Society of England and Wales (“Law Society”) is a professional body representing more than 180,000 lawyers in England and Wales. Its aims include upholding the independence of the legal profession, the rule of law and human rights around the world. The Law Society was established by Royal Charter (the “Charter of the Society”) in 1845 and has consultative status with the Economic and Social Council of the United Nations since 2014. Its activities are established by statute: the Solicitors Act 1974, the Courts and Legal Services Act 1990, the Access to Justice Act 1999, and the Legal Services Act 2007.

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Collective Campaign for Peace (COCAP) is a national network of 43 peace and human rights non-governmental organisations from 29 different districts of Nepal. It started as an informal forum in June 2001 and was registered with the Government of Nepal as a non-profit, non-political network in December 2002. It aims to provide a common space for its members and volunteers to collectively engage in the pursuit of peace, human rights and justice in Nepal and organises national/regional level campaigns on peace and human rights in coordination with its member organisations and other like-minded organisations.

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A. Introduction

1. The information contained in this submission is based on evidence gathered by the Law Society of England and Wales (“Law Society”) as part of its Lawyers at Risk programme,¹ which supports members of the legal profession and human rights defenders worldwide who are being hindered in carrying out their profession because of the cases they work on or the clients they represent. The information regarding national legislation included in this report is based on research carried out by the Collective Campaign for Peace (COCAP)² in collaboration with Nepal Monitor,³ as well as local lawyers and human rights defenders.
2. Nepal underwent its first UPR cycle in 2011 and its second UPR cycle in 2015.
3. This submission focuses on the following matters, specifically on developments since Nepal’s last UPR cycle in 2015:
 - (i) Nepal’s Constitutional Structure;
 - (ii) Laws Directly Affecting non-governmental organisations (“NGOs”) and civil society organisations (“CSOs”);
 - (iii) Other Constitutional Provisions and Laws Affecting NGOs and CSOs; and
 - (iv) Attacks on Lawyers and Human Rights Defenders.

B. Nepal’s Constitutional Structure

4. The new Constitution of Nepal came into force on 20 September 2015. Laws can be enacted to the extent that these do not contradict the Constitution. In addition, regulations can be issued by the executive regarding the implementation of legislation, as well as to regulate matters not included in existing legislation.
5. Since the new Constitution came into force, Nepal has a federal system with three tiers of government: federal, provincial and local. In this new system, the executive mainly controls which legislation is drafted and enters into force.
6. At the federal law level, the executive generally drafts legislation, which is then sent to the Law Ministry. The latter ensures that the draft bills sent by various ministries are compatible with the Constitution. The final draft bill is subsequently sent to the Cabinet, which can also modify its substance. The relevant minister then presents the bill to the House of Representatives, where the bill will pass if there is a majority vote in favour. After this vote, the bill is presented to the National Assembly, where again the bill will pass with a majority of votes in favour. If the bill passes both Houses, the Speaker of the House of Representatives and the Chair of the National Assembly certify the law and then it is sent to the President who must authenticate it within 15 days. The law is subsequently published in the Nepal Gazette and enters into force. Individual members of the legislative can also draft bills and present them to the relevant committee.

However such draft bills that do not originate from government are not given priority for consideration and are generally not passed.

7. Provincial government is entitled to draft legislation, provided that it is compatible with both the Constitution and federal laws. It is able to draft laws on certain topics listed in an annex to the Constitution (for example, forming a provincial police force). Provincial laws passed by the provincial Parliaments are certified by the Provincial speaker and sent to the Province Governor for authentication, after which they are published in the Gazette and enter into force.
8. The same principles apply to local laws which need to be compatible with the Constitution, federal and provincial laws. Local laws are made by rural municipalities or municipal assemblies where a majority is needed to pass them. The laws are authenticated by the Chair or Mayor of that local government and published in their respective Gazettes.
9. In this new federal system, the role of local governments has increased, as established in the Local Government Operation Act 2017 (the “LGO Act”). The LGO Act sets out the duties and responsibilities of local government institutions regarding policy, regulation and law-making, especially with regard to development planning, education and health services. The LGO Act also seeks to encourage collaboration and the active participation of Nepalese citizens with local government.
10. The Nepalese government has also issued Good Governance Guidelines (the “Guidelines”) in 2018 to enhance transparency and social accountability within local government. The Guidelines state that individuals and CSOs are key to establishing good governance within local government. However, it is reported that there are practical difficulties with local government engagement and it is generally found that local projects are selected and formulated without adequate consultation with citizens and CSOs. Projects are often found to be allocated based on partisan considerations, not on the basis of local needs.

C. Laws Directly Affecting NGOs and CSOs

11. Article 51(j) of the new Constitution establishes what is known as a “one-door policy” for CSO regulation. This provision gives rise to concern to the extent that it allows government to “involving NGOs and INGOs [international NGOs] only in the areas of national needs and priority.” In addition, the provision intends to make “the investment and role of such organizations accountable and transparent”. This allows for government interference with the regulation and oversight of NGOs and INGOs. To conform with this constitutional provision, other legislation that regards the functioning of CSOs and NGOs will need to be updated.

12. The following are examples of existing and draft laws that allow governmental authorities to restrict the functioning of national (and sometimes also international) NGOs and CSOs:

Associations Registration Act of 1977

13. The Associations Registration Act 1977 requires any “association” (defined widely and covering the development and promotion of “social, religious, literary, cultural, scientific, educational, intellectual, philosophical, physical, economical, vocational and philanthropic activities”) to be registered with the local authority by way of written application. A failure to do so may result in a fine of up to two thousand rupees per member of the association’s management committee (Section 12). Other penalties exist for an association which fails to provide other documentation requested by the local authority (for example the association’s statement of accounts - up to 500 rupees per member).
14. This provision gives a disproportionate power to local authorities to determine whether or not to register associations. It also makes it possible for such authorities to significantly hinder the functioning of NGOs or CSOs that speak out against government injustices or human rights violations.

Social Welfare Act of 1992

15. The Social Welfare Act of 1992 governs the provision of “social welfare” and “social service” activities within Nepal, and established the Social Welfare Council (the “SWC”). NGOs must obtain prior approval from the SWC to receive foreign funding and for implementing projects with support from foreign donors. The process for approval of such applications is not transparent and is at the discretion of individuals within the SWC. Furthermore, appointments to the SWC are exclusively made by the Nepalese government. This means that the government can exert control over which NGOs are allowed to work in Nepal, the activities they are able to carry out, and the funding they can receive. In addition, a requirement to obtain funding from the SWC itself can also result in delays to the implementation of projects.

LGO Act of 2017

16. In 2017, the LGO Act replaced the Local Self-Governance Act of 1999. It aims to encourage CSOs and NGOs to coordinate with local governments for certain types of work. In practice, this means that such work requires prior approval from local governments. Local officials may halt the implementation of any activities if prior approval has not been obtained by a CSO or NGO.
17. Section 25 of the LGO Act provides that: (a) carrying out any kind of study, survey or programme can only take place on the basis of an agreement with the local authorities; (b) CSOs’ annual plans, programmes and budgets need to be included in the local authority’s annual plan, programme and budget; and (c) a joint monitoring and progress reporting system, as designed by the local authority, needs to be implemented.

Social Organisation Act

18. The Nepalese Government has proposed a Social Organisation Act (the “SO Act”), which would supposedly facilitate NGOs’ and CSOs’ registration in the new federal system. This SO Act would supersede three other Acts: the Association Registration Act, the National Directorate Act, and the Social Welfare Act.
19. The SO Act was drafted by the Ministry of Home Affairs and was submitted by the Nepal Law Commission to the Ministry of Law, Justice and Parliamentary Affairs. It envisages NGOs and INGOs being registered at the federal, provincial or local level, with a renewal of such registration. This appears to be a more burdensome registration process than the current one, which already requires NGOs to be registered with the District Administration Office, the Inland Revenue Department, and the Social Welfare Council (for an “affiliation certificate”), as well as the Ward office and “Nagar Palika” (municipality office).
20. There are other provisions of the SO Act that give rise to concern. For example, it provides government authorities with more powers - in addition to existing criminal legislation - to prosecute members of CSOs under espionage laws and for criminal offences, including breach of the peace.

National Integrity Policy

21. The National Integrity Policy (“NIP”), first introduced in 2018, is yet to be implemented. However, there are concerns that the NIP introduces onerous measures and restrictions on INGOs and NGOs. These measures would especially limit the functioning of smaller NGOs and CSOs, which have less resources. For example, INGOs would be required to secure approval for their annual work plans and budgets from the Ministry of Finance.
22. The NIP also envisions a special mechanism for the Ministry of Home Affairs to exercise oversight over the activities of INGOs and NGOs. This would allow for restrictions on scope of activities and access to funding. Articles 9.2.3(2) and 9.2.3(4) of the NIP would impose heavier reporting requirements for NGOs receiving foreign assistance. The NIP would also limit INGOs’ ability to recruit foreign nationals and bar foreign nationals employed by INGOs from working for more than three years in the country. In addition, reports to be sent back to an INGO’s home country would need to be approved by the government.

NGO (Regulation) Bill

23. In 2014, the NGO (Regulation) Bill (the “NGO Bill”) was drafted setting out a new approach for monitoring and regulating NGOs, which would repeal Nepal’s National Directorate Act (1961) and Association Registration Act (1977). Although this NGO Bill has not yet entered into force, many of its provisions are considered to be restrictive for NGOs and CSOs.
24. Through the Association Registration Act (1977), the SWC has been the only body that has a history of working with NGOs and CSOs operating in the social sector in Nepal.

As noted, the SWC has its shortcomings - mainly being controlled by government – but the NGO Bill aims to significantly amend its role. Many of its responsibilities would be allocated to chief district officers or other local authorities. This would be detrimental to NGOs’ functioning, since it forces them to act as local authorities rather than as independent development partners of local authorities.

25. The ability of NGOs and CSOs to work freely and independently is essential if they are to effectively carry out their work. While it is accepted that some degree of regulation of such organisations is necessary, the Ministry of Home Affairs (which is also responsible for national security matters) would take over the regulation, registration, and supervision of NGOs.
26. Set out below are sections of the NGO Bill that give rise to particular concern:
 - a. Section 10: bi-annual reporting places a disproportionate burden on NGOs (and exceeds the reporting requirements for government authorities).
 - b. Section 12: NGOs are required to seek prior approval from relevant local authorities for their district-based programmes at the beginning of a fiscal year. Currently, approval is only required for large-scale projects. In addition, subsection (4) of section 12 requires a memorandum of understanding to be signed between an NGO and a district development committee before implementation of district-based programmes is possible. These requirements are disproportionately onerous on NGOs.
 - c. Section 29: provides that, if an NGO performs actions contrary to the provisions of the NGO Bill, or if it is found to be involved in espionage or conspiracies against the state, or found to be involved in corruption, then the relevant local authority can issue directives for the dissolution of NGOs and CSOs. This facilitates the dissolution of NGOs by local authorities.

The draft NGO Bill allegedly also provides that the Home Ministry, as well as the Ministry for Women, Children, and Social Welfare, can issue directives to NGOs with regard to their management, and that it shall be the responsibility of the management of such organisations to ensure compliance with those directives. This represents inappropriate government interference in NGOs’ functioning. In conclusion, the NGO Bill would increase oversight of NGOs by local authorities and also increase reporting requirements. These measures could significantly curtail NGOs’ independence.

D. Other Constitutional Provisions and Laws Affecting NGOs and CSOs

27. Nepal’s Constitution guarantees fundamental freedoms, for example freedom of expression and freedom to assemble peacefully. However each of these freedoms is subject to the provision that “reasonable restrictions” can be imposed on any act that may undermine matters including the “nationality, sovereignty, independence, and indivisibility of Nepal”. This leaves a wide discretion to Nepal’s government to restrict its citizens’ fundamental freedoms.

28. Under the Constitution, only those who hold citizenship are entitled to the protection of their fundamental human rights. This leaves the rights of non-citizens, including migrants and people who are undocumented or cannot prove citizenship, unprotected.⁴ This is problematic as it is estimated that 5.4 million individuals (around 24% of the population aged 16 and over) lack citizenship documentation. In addition, Article 11 of the Constitution limits a woman’s rights to pass on citizenship to a child or a non-citizen spouse.⁵
29. In 2018, since the formation of the majority government in Nepal, there have been a number of legislative changes that increase government control and curtail civil liberties in Nepal.⁶ The following are a few examples of such changes:

The Passport Bill

30. In September 2019, the National Assembly endorsed the Passport Bill which had been previously sent back by the President of Nepal for revision. Section 12 of the Passport Bill stated that the passport issuing authority “shall deny passports to those against whom the Government of Nepal or a court of law has issued an order instructing government authorities not to issue a passport for them”.
31. The provision raises concern regarding the power of government authorities to deny citizenship on insufficiently defined grounds. It allows such authorities to issue an order that prevents passports being issued to those who are critical of the government or to human rights defenders.

The Nepal Special Service Bill 2019

32. The government of Nepal has recently announced the issuing of a Nepal Special Service Bill 2019 (the “NSS Bill”) which increases the powers of surveillance of intelligence services.⁷ Clause 10 of the NSS Bill is particularly problematic because it provides that audio and audiovisual conversations at “individual or institutional level” may be kept under surveillance, monitored or intercepted if the conversations are suspicious.
33. These wide-ranging powers allow for an arbitrary and disproportionate use that would have severely negative consequences for the right to privacy and could also increase the insecurity of lawyers and human rights defenders who are already at risk. In addition, this provision could lead to violations of lawyer-client confidentiality, which could undermine the independence of the legal profession as well as fair trial guarantees of citizens in Nepal.

Law to amend the National Human Rights Commission Act

34. The government has proposed that the National Human Rights Commission Act 2012 (“NHRC Act”) be amended through the Human Rights Commission Bill (the “HRC Bill”). Section 17 of the HRC Bill provides that the Attorney General has discretion to investigate and implement recommendations of the National Human Rights Commission (“NHRC”) in relation to alleged human rights violations. This amendment would undermine the jurisdiction and independence of the NHRC.⁸ Section 18 of the

HRC Bill also provides for government interference with the financial autonomy of the NHRC. Section 26(2) provides for restrictions on the opening of provincial and other offices of the NHRC, thereby limiting the ability of citizens in different provinces to access the Commission.

E. Attacks on Lawyers and Human Rights Defenders

35. There have been reports of attacks against lawyers and other human rights defenders (“HRDs”) in Nepal which can have systemic consequences for the administration of justice, access to justice, and the rule of law. In some cases, lawyers and HRDs are threatened, criminally prosecuted, and prevented from carrying out their work.
36. Many lawyers report a lack of trust in law enforcement agencies which results in a reluctance to file a complaint. Some have also reported that filing a complaint, especially when it regards a complaint against state authorities, puts them at risk. There are also human rights defenders in more remote regions who are providing basic legal assistance because of a lack of access to legal representation. These HRDs are especially vulnerable and at risk of threats, intimidations and violence.
37. Especially women HRDs who work on cases regarding gender based violence (“GBV”) are at risk. This risk increases when the perpetrators are state agents or otherwise influential. These women HRDs often received threats, because they are the only ones who are willing to file and follow up cases via “First Information Reports” at local police stations.⁹ In addition, they face marginalisation, intimidation, defamation and social stigma, both within their homes and in their communities.
38. One common strategy to target women HRDs is to defame the defender in her local community and women in early adulthood are particularly vulnerable to these attacks. Attacks on the woman’s reputation can lead to non-acceptance and hostility against the woman by family and community members. Spouses and female family members of male HRDs are also subject to these attacks.
39. The preference of local authorities to present domestic violence cases for mediation rather than criminal prosecution, means that HRDs who work on such cases face significant challenges in their work and also experience threats from perpetrators. In many cases, local law enforcement bodies fail to provide adequate protection to lawyers and HRDs from these attacks and do not bring the perpetrators to justice.

F. Lack of Implementation of Previous UPR Recommendations

40. The following recommendations made during the second UPR cycle of Nepal are especially relevant to this submission:
 - a. Continue to ensure the implementation of ratified human rights treaties; and advance in the comprehensive implementation of the new Constitution, consistent with the protection of human rights (A/HRC/31/9 121.1; 121.2 - supported);

- b. 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 (A/HRC/31/9 122.72 – supported);
 - c. Create and maintain, in law and practice, a safe and enabling environment in which journalists, media workers, human rights defenders and civil society can operate free from hindrance and insecurity, in accordance with Human Rights Council resolutions 22/6, 27/5 and 27/31 (A/HRC/31/9 122.73 - supported);
 - d. Amend the citizenship laws to allow citizenship through either parent (A/HRC/31/9 122.67 - supported);
 - e. Ensure the independence and financial autonomy of the National Human Rights Commission; Ensure the effective functioning of the National Human Rights Commission in accordance with the Paris Principles, in particular by providing the Commission with required and adequate levels of funding as well as sufficient autonomy (A/HRC/31/9 122.15; 122.16 - supported);
 - f. Investigate all cases of threat and attacks against human rights defenders (A/HRC/31/9 122.60 – supported).
41. Nepal supported these recommendations and indicated that they had either been implemented or were in the process of being implemented. However, the information contained in this submission shows that there is still a lack of implementation of these recommendations. This has had a detrimental impact on human rights in the country.
42. We reiterate the need for the implementation of these previous recommendations. In addition, we recommend the following measures for the relevant authorities in Nepal to implement:

G. Recommendations for Nepal’s 3rd UPR Cycle

- A. Amend or repeal existing legislation and regulations - and abstain from adopting new legislation and regulations - that allow for disproportionate government interference (whether at the federal, provincial or local level) in the functioning of NGOs and CSOs**
- B. Amend or repeal existing legislation and regulations - and abstain from adopting new legislation and regulations - that otherwise hinder or place a disproportionate administrative burden on NGOs and CSOs**
- C. Introduce and enforce measures to protect the safety and security of lawyers and human rights defenders, particularly women human rights defenders**
- D. Amend or repeal existing legislation and regulations - and abstain from adopting new legislation and regulations - that negatively affect the jurisdiction and independence of the National Human Rights Commission**

E. Amend or repeal existing legislation and regulations - and abstain from adopting new legislation and regulations - that restrict the right to freedom of expression, freedom of assembly, freedom of association, and other fundamental human rights in an impermissible manner

We can provide technical assistance, as needed, to facilitate Nepal’s compliance with these recommendations, in particular with the review of legislation to bring it into conformity with international human rights standards.

¹ <https://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk>

² <http://www.cocap.org.np/>

³ <https://nepalmonitor.org>. NepalMonitor.org is a system designed to alert local organisations to human rights and security incidents happening in their area, as well as allow anyone to easily share incidents they see with local, national, and international organisations. This should help these organisations to better respond to what happens around them, and keep themselves safe. NepalMonitor.org maps reports from media, collected by large reputable organisations or sent directly by individuals.

⁴ Freedom House- Freedom in the world Report 2019 - <https://freedomhouse.org/report/freedom-world/2019/nepal>

⁵ <https://kathmandupost.com/national/2019/03/24/delay-in-decision-over-citizenship-through-mothers-leaves-young-people-waitingand-without-much-hope>

⁶ <https://kathmandupost.com/national/2019/12/30/curtailing-civil-liberties-in-nepal-one-legislation-at-a-time>

⁷ <https://kathmandupost.com/national/2019/12/17/government-registers-bill-allowing-intelligence-department-to-intercept-personal-conversation>; <https://kathmandupost.com/national/2019/12/30/government-tables-bill-that-will-allow-intelligence-agencies-to-listen-in-to-private-conversations>

⁸ <https://kathmandupost.com/columns/2019/08/25/the-government-is-attempting-to-cripple-the-national-human-rights-commision>

⁹ Collective Campaign For Peace, Civic Space for Peace, Justice and Strong Institutions 2019 Provincial Assessment:

<http://www.cocap.org.np/assets/uploads/publication/Workshop%20Report%20Civic%20Space%20Assessment%5b1444%5d.pdf>