

DIALOGUE PROGRAM ON RULE OF LAW, TRANSPARENCY AND PARTICIPATION: A PERSPECTIVE FROM FINLAND

NOVEMBER 7, 2023 (2080/7/21) TUESDAY
HOTEL YELLOW PAGODA, KANTIPATH



PREPARED BY
CONSTITUTIONAL WATCH GROUP &
NEPAL LAW SOCIETY

Organized by
Constitution Watch Group/ Nepal Law Society

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Detail Program

**DIALOGUE PROGRAM ON
RULE OF LAW, TRANSPARENCY AND PARTICIPATION: A PERSPECTIVE FROM FINLAND
PROCEEDING REPORT**

November 7, 2023, Tuesday

1. BACKGROUND

The Nepal Law Society (NLS) and the Constitution Watch Group (CWG) have been holding regular dialogue programs on rule of law, democracy, constitution and independence of judiciary by inviting keynote speakers from respective field. In this connection, an interaction program was organized on "Rule of Law, Transparency and Participation: A Perspective from Finland" on November 7, 2023 at Hotel Yellow Pagoda. Ambassador of Finland to Nepal Ms. Riina-Riikka Heikka delivered a keynote speech followed by discussion.

As Nepal works to consolidate democracy, the institutionalization of rule of law has been a challenge. From law making to law implementation and in the checks and balance through judiciary, the rule of law has faced multiple challenges in the country. Finland, on the other hand, is known for its strong rule of law and robust democracy.

With the purpose of discussing the experiences from Finland and lessons that Nepal can emulate, the interaction program was organized by the NLS and CWG. There were 150 participants participated at the program including the parliamentarians, judges, leaders of the civil society, government officials, lawyers and experts.

The NLS and CWG regularly hold such dialogue programs to inform and educate the public, especially on constitutionalism and rule of law.

The CWG is a group of seven civil society organizations - Nepal Law Society, Niti Foundation, Nepal Open University, General Election Observation Committee, Nepal Bar Association, Constitutional Lawyers Forum and Kathmandu University - that works as a watchdog on constitutional matters by raising issues of national concern.

2. OBJECTIVES

Key objectives of the program were as follows:

- * To facilitate dialogue on rule of law among MPs, lawyers, judges, and civil society leaders,
- * To learn the experiences of Finland in the establishment of rule of law, transparency and accountability on governance system,
- * To share the contributions of judiciary in the establishment of rule of law in Nepal.

3. TARGET GROUP

- * Parliamentarians;
- * Political leaders;
- * Government officials;
- * Judges;
- * Civil Society Leaders;
- * Lawyers;
- * Professors;
- * I/NGOs representatives;
- * Media Persons etc.

4. OUTCOME OF THE EVENT

- * Participants understood the state of rule of law, institutional arrangements and governance style of Finland,
- * Participants learned about the good practices and things that can be emulated in Nepal from Finnish experience,
- * Participants informed about the challenges to rule of law in Nepal and ways to meet and overcome them,
- * Participants interacted with the justices of the Supreme Court on issues of rule of law and judiciary,
- * Representatives from the government, the parliament, the judiciary and the civil society brought together for a dialogue on rule of law.

5. RECOMMENDATIONS

- * Regular public dialogue is necessary to strengthen law making, law implementation and judicial intervention to consolidate rule of law,
- * Sharing of challenges in law making with the parliamentarians every three months,
- * Sharing of challenges in law implementation with the concerned government agencies every three months,
- * Sharing of challenges in judicial intervention with the judges every three months,
- * Follow good practices on institution building and application of rule of law from Finland,
- * Hold regular dialogues to share international experiences on democracy, rule of law and constitution.

6. KEY VOICES

- * Justice Kalyan Shrestha, Former Chief Justice

Making a law alone is not enough. Laws must be just and participatory. Laws must also be disseminated widely to the people.

- * Justice Sapana Pradhan Malla, Supreme Court

Points regarding the improvement of service delivery by the judiciary, appointment of judges, uniformity of decisions, equality in case hearing etc that were raised in this program will be presented at the full court for discussions.

- * Ms. Riina-Riikka Heikka, Ambassador to Nepal, Finland Embassy, Kathmandu

Need to build trust on institutions and representatives to improve implementation of law. The trust of democratic institution and authorities is very high in Finland. Independent courts and high-quality judiciary have created a high level of trust in authorities.

- * Ms. Stela Tamang-

Build access to justice for all. Reduce political influence in appointing judges to build trust in judiciary.

7. PROCEEDING OF THE PROGRAM

7.1 Chair and Facilitation

- * Mr. Kalyan Shrestha, Former Chief Justice and Chairperson of Constitution Watch Group (CWG):



Mr. Shrestha expressed pleasure at the presence of the ambassador from Finland to Nepal in the program aimed at discussing the rule of law, transparency and participation. He said that the ambassador is resourceful and can explain the experience of legal development in Finland. As per him, rule of law is a timeless and global issue. Humans developed the concept of rule of law as their civilizations progressed and

they realized that there ought to be rule of law instead of rule by some individual. This concept has been embraced universally and one can see various stages of application of rule of law in different countries in the world. He further highlighted that the discussion today will focus on the experience of Finland, which is number 1 in the world in the rule of law index. He pointed at various institutions in Finland such as ombudsman, which has

ensured that its parliament functions effectively and its government sets standard. Although Nepal is located far away from Finland, he added, that it can learn from their experiences. As per him, Nepal can learn from Finland as how the country became number 1 in the rule of law, and how it developed consistency over the period of time.

He spoke about different contexts in South Asia and Europe, and elsewhere. He explained that a dialogue can lead to share experiences and help in creating safer world for all. Mr. Shrestha added that rule of law is an engine that can guarantee development, peace, and civilization. He suggested that international rule of law should be able to support national rule of law system and mechanisms.

7.2 Welcome Remarks

☛ Mr. Tirtha Man Shakya, Chairperson, Nepal Law Society

Mr. Shakya welcomed the participants to the interaction program on Rule of Law, Transparency and Participation: Perspectives from Finland. He said that it would be of benefit to all to hear from the keynote speaker, the ambassador of Finland. As per him, in the absence of quality laws by legislature, the rule of law turns into rule by law in which case the judiciary will face big challenges - something, which he said, was happening in Nepal. It will, therefore, be relevant to understand the perspective from Finland. The NLS was always in the forefront in advancing the causes of democracy and rule of law.



7.3 Objectives Highlights

☛ Mr. Krishna Man Pradhan, Member Secretary of Constitutional Watch Group (CWG):

Mr. Pradhan briefed about the objectives of the NLS and Constitution Watch Group. He said that the NLS has been active since last four decades to promote constitutionalism, inclusive democracy, rule of law, human rights and



independence of judiciary through policy support, as well as capacity building programs. Likewise, CWG has been holding regular public dialogues on issues of constitution, rule of law, independent judiciary and democracy.

In this connection as per him, the latest program was being held this day to discuss about the issue of rule of law. In order to strengthen the rule of law in Nepal, it would be important to look at how others have done it in their countries. Finland, he said, was one of the topmost countries with solid record in rule of law. Therefore, it would be relevant and beneficial to learn about its experiences, challenges and opportunities from the Finnish Ambassador in Nepal. As per him, the program will also include remarks from justice of the Supreme Court on the experiences and contributions of Nepalese judiciary in strengthening rule of law.

Aiming at that objectives the NLS and CWG plan to hold public dialogues on important and relevant topics once a month in the coming days.

7.4 Key Speakers

- Ms. Riina-Riikka Heikka, Ambassador of Finland to Nepal, The Embassy of Finland, Kathmandu

First of all, my whole-hearted thanks to the Constitution Watch Group and Nepal Law Society for inviting me to give remarks today and contribute to the discussion on rule of law. I appreciate the invitation and presence of all of you today here. Let me also note



that Nepal has faced very sad days during the weekend due to the earthquake. I would like to personally offer the condolence to the people in the province of Karnali and express our solidarity towards the people of Nepal.

Today, I have been asked to share some perspective about Finland as was outlined here. What are our best practices and lessons we learnt when talking about rule of law? What are the things we need to do

better? I think rule of law is critical in the heart of Finland and Finnish mindset as well. So, let me address you today on some thoughts on Finland's national characteristics. Needless to say, that I cannot cover this wide topic comprehensively in this talk program. I would rather focus on some areas and the highlights. Let me start with some general remarks on the concept of rule of law. Although there are many ideas, it has no universally accepted definition. I actually quite recently read a lecture from my previous professor. He said that rule of law has been compared to the concept of good meaning which everyone wishes but everyone has a different view on what it actually entails. I think this was actually well put and relates to the fact that there is no universal definition. I am not an academic and I do not have legal expertise, I am only a humble diplomat who is a graduate in law. Let me first start with the general remarks on the concept of rule of law from the perspective of Finland. In a state governed by the rule

of law, all public authorities act within the limits set by the law. In a state governed by the rule of law, everyone has access to public services. In addition, corruption and abusive public power are prevented and people trust the authority. And in a state governed by the rule of law, the drafting, enactment and implementation of legislation are fair, effective and compliant with the principles of open and good governance. Individuals have not only rights but also responsibilities towards each other and the society. So, in other words the essence of rule of law is based in the society as a whole. And Finland's experience is based on a broad concept of democracy where human rights, rule of law, freedom of expression, good governance and the eradication of corruption are seen as important interdependent elements of democracy. This is important when you look from the Finnish perspective and I think it also raises our Bar Association both in our work nationally and internationally. In Finland, rule of law is one of the cornerstones of our society where Finland has performed well in international comparisons concerning human rights and rule of law. Finland is one of the least fragile state and the second least corrupted country in the world. Finnish also trusts the judiciary. But our story is not only about success. It is also about striving to meet the challenges and evaluating processes and practices periodically based on national and international observation as well as recommendations. For example, in Finland the effectiveness of police investigation and the long duration of judicial process and related cost have been identified as main challenges, which might put the access to right at risk. We have also stepped up our efforts in order to improve quality of law drafting and quality of government Bill. So, we are also very alert on what we need to address better. Dear audience, let me draw your attention to some national characteristics of Finland relevant to the main discussion today. The factors supporting democracy in Finland includes extensive participatory rights, stable government based on rule of law, a free civil society, a high education level, low level of corruption and gender equality. Finland has strengths that protect the rule of law against any attempts to undermine it. This includes, in particular, the realization of fundamental and human rights as well as the high level of equality and non discrimination and access to education to all children and young people. The principle of openness and government activities and high trust in democratic institutions and the authority is very high in Finland. Let me address some of this a bit more in detail. Firstly, the trust of democratic institution and authorities is very high in Finland. Independent courts and high-quality judiciary have created a high level of trust in authorities. This trust is a feature of the Finnish society as a whole and we systematically measure the trust of people towards different governmental institutions. For example, according to the national statistics, the people of Finland trust the border guards, the rescue department, the defense forces and the meteorological institutes the highest among others. As you can see there is a wide variety in these institutions that we trust in our everyday life such as meteorological institute and the information that they provide to everyone, everyday. Traditionally the judiciary, police and the government leaders enjoy a very high level of trust. Our research about this prevailing trust indicates that people value the most accountability of governmental organizations, social, environmental and fiscal accountability. On the other hand, people will wish for more independent approaches of the governmental institutions. But this is an area that requires constant vigilance and cannot be taken for granted. This trust is also very much linked to the transparency of government as well as the possibility of people to participate in an inclusive manner. It also requires the official communication from the government. We have invested in the participation of youth and different marginalized groups in order to be fully inclusive society. The participation of all brings me to the second characteristics of Finland - participation and the role of the very active civil society. A strong and free civil society is one of the cornerstones of democracy. Finland supports freedom of expression,

assembly and association as well as human rights-based digital government, independent media and we protect whistle-blowers and human rights defender. Civil society cannot function effectively if information is restricted or biased. Independent, vibrant, pluralistic civil society creates the environment of participation for citizen. So, civil society has played an important role and in this regard, Finland has developed democratic system. Strengthening civil society in developing countries is essential and integral part of the development cooperation. Civil Society is providing opportunities to the people to participate and influence the development of the society. And we also support civil society organizations here in Nepal. I think there are around 20 Finnish civil society organizations at the moment that are working with their local partners in Nepal. Some are present here as well. The third characteristics is working against corruption. Finland has invented its own anticorruption work and quite successfully. So, if you look at the statistics of the Transparency International, Finland ranks second out of 180 countries. But corruption free countries don't exist. This is true also for Finland. There is very little so-called street level corruption in Finland. Most of the corruption is hidden in different networks and structure of the societies. There are different approaches to take regarding anti corruption related work. Let me explain some elements of Finland's approaches. In Finland, a broad range of ministry authorities and other actors are engaged in anti corruption work. The ministry of justice has set up an anti corruption cooperation network but there is no separate agency for anti corruption activities as such. We share a broad responsibility in combating corruption. We also have a broad anti corruption strategy adopted in 2021. It commits both the public administration and political actors to combat political corruption in Finland effectively. We see that the legislation plays a key role in comprehensively combating corruption. The legislation must have a preventive impact and provide authorities with sufficient possibilities and necessary tools to intervene where there is malpractice. Finland has no separate legislation governing anti corruption measures. Instead, we have a broad practice of various kinds of legislation. Important factors behind the successful prevention of corruption in Finland are also the well functioning authority collaboration and sufficient authorization to exchange information among different authorities. Additionally, citizens and media also play a crucial role in the prevention of corruption related to decision making. Anticorruption work is the strong base of judiciary and equality within the society.

Fourth characteristic is on gender equality in rule of law as well. Finland has a strong global profile of gender equality and rights of women and girls. These things are highly supporting factors for the development process. The new government of Finland also focuses on the development of these factors. For us, both political and economic empowerment is key for the development. And last, but not the least, our national characteristics also focuses on investing in education. Factors supporting democracy in Finland include high level of education. I would like to relate this to the rule of law and participation as well. Learning is very much about seizing opportunities on inclusion. Quality and equality are at the heart of the Finnish education system. Education allows the youth and people to use their citizen rights and ensure the participation of a society in a meaningful way. As a small nation we have five and a half million inhabitants in Finland. We cannot afford to leave anyone behind in our society. So, our standing point has been equal and inclusive education for all -regardless of one's socio-economic status, regardless of gender, regardless of disability or any other factor. It is very much about investing on the human capital.

Dear audience, those were some national characteristics but I also would like to share some thoughts about international work being a diplomat and with experience of

working in that field. Our foreign and security policy has long been based on the rule of law, human rights, and gender equality. Developing and supporting the rule of law in international activities is traditionally important. We promote the implementation of fundamental and human rights, democracy and rule of law as an integral part of foreign policy. During the recent years, our works have been specially focused on safeguarding the political participation of women and promote better operating conditions for the civil society. Our work within our foreign policy is based on a broad view of democracy in which human rights including freedom of expression, the rule of law, good governance, participation and eradication of corruption are seen as important elements. It is our view that sustainable development is best achieved in democratic countries where there is rule of law, strong social institutions, and functioning civil society. In regard to the development cooperation, the focus of Finland on supporting the rule of law is based on building legal system. Especially legal aid, improving the legal protection of citizen, enabling the functioning the regional and international system of human rights and combating impunity and ensuring protection and status of victims. Globally, Finland works on strengthening the legislation and institution. In recent years we have supported, in particular, the development of the national legal aid system and activities of national human rights situation. Finland also supports international and regional monitoring system both through the EU, the UN and nationally. In Nepal, Finland has supported UNDP's Rule of Law program during 2013 to 2017. The program also supported legislative action and strategic planning of the judiciary. This has been one of the development collaboration and contributions in Nepal whereas at the moment our main focus is on education, gender equality and social inclusion as well as water and sanitation, climate and livelihoods.

One quite new initiative in Finland has been the establishment of the rule of law centers a couple of years ago. This has been one of the important initiatives and it is actually located within the universities of Helsinki, our capital. The center brings together top Finnish expertise and experience to support the rule of law in developing countries. The functions of the rule of law centers include raising general awareness of the laws, importance of sustainable development and linking theory with practice. For example, they support national rule of law reforms. The rule of law centers' first projects are on their way and are being implemented in Albania Mozambique and Uzbekistan. They are focusing on electoral process and national trust, rule of law, and education.

As I already mentioned, Finland is a supporter for the civil society organization and also the development cooperation. Many Finnish organizations are carrying out the important work to defend human rights, civil society space and freedom of expression. Finland channels supports for developing the rule of law through both the international and Finnish civil society organizations.

I have outlined some of our national characteristics from the Finnish perspective. I spoke at length about the interdependencies of democracy, rule of law and human rights as a value-based approach, and basically all of these pillars are needed - if one starts to break down the other will collapse as well, and that is why we are investing in them continuously. We have many national initiatives that are ongoing in order to strengthen our work. One of the most recent initiatives is a working group of the ministry of Justice to strengthen the rule of law and development of Judiciary. The goal is to enhance the independence of administration of justice and the quality of legal protection as well as to make the judicial services more user-friendly. Likewise, we have passed an act of establishing a transparency register. The purpose of the act is to improve the transparency of the decision making to prevent undue influence and to reinforce public confidence. The Finnish parliament adopted the act earlier this year and it will enter

into force the next year. The government of the Finland also handed the government report on the administration of justice to the parliament last year. This report sets medium term objectives for achieving reasonable quality of administration of the justice in Finland. So, our national work is very much a work in progress. The commitment of Finland is to strive for better results and firmly uphold our rule of law. It's not an easy task but we think it is worth investing in.

🗣️ Mr. Sapana Pradhan Malla, Justice, Supreme Court



We have all just heard from the ambassador on the approaches adopted by Finland, which is at the number one rank in terms of rule of law. My focus will be on the primary concept of 'no one is above law,' - whether in judiciary, parliament, public authority or private institution/individual. There must be no one above the law despite their social or political status. Our constitution has embraced this concept of rule

of law. Judiciary has a big role to play in protecting that concept. Judiciary is a guardian of the constitution and rule of law. So, how has our judiciary performing in this regard? In our tradition, we must not forget the role played by a section that approaches our courts on behalf of the people. If such stakeholders like civil society organization, Nepal Bar Association or other litigators do not approach court, then there are few rare instances where the courts themselves have taken up a case suo moto. Therefore, non-state actors have bigger role here in protecting rule of law. As far as judiciary is concerned, the power of judicial review is a powerful toll with us. In order to promote rule of law, there must be just law and good law. This challenge, however, is not unique to us. Recently, there has been a discussion in the sixth committee of the UN on sovereignty rights vs international rule of law norms. There were debates on how to forge a balance between the two. Similarly, there are also debates on what does rule of law entail - is it rule of supremacy or supremacy of judiciary or supremacy of executive or the parliament. Our constitution says that there shall be supremacy of constitution. If we are guided by the concept of supremacy of constitution, we have to follow this concept. In the system we have established and followed, the constitution guarantees rights for the good governance, rule of law protection, protection of people and for the limited government. There have been cases regarding the judicial review and test of constitutionality in a law. They showed that when applying judicial review, you may not conduct malafide test of constitutional amendment or law but only conduct malafide test of administrative action. Thus, I would like to say that in Nepal's context instead of exercising power, we are only exercising values of rule of law and constitutionalism. Supreme Court of Nepal looked into cases of parliament dissolution where it conducted constitutionality test of whether alternative government can be formed. It declared the move by the prime minister to dissolve the parliament as unconstitutional and overturned it twice. Recently, in Koshi province, too, the court made similar observations and asked the authorities to follow alternatives as laid down by the

constitution. During Covid, the role played by Nepal Bar Association was very important. For the first time, a 19-member Bench was established in the Supreme Court. We had to stay in a tent to run the Bench. Parliament was not in session during the pandemic. There were cases about statute of limitations in some laws framed by the parliament, but in pandemic time such limitations would have killed access to justice. So, the court intervened and not only declared zero time during such extraordinary period but also made decisions similar to making new law during that transitional phase. As it was done during pandemic, other institutions of the state, too, viewed it positively and respected court decisions. But I would like to tell the Finland ambassador that we do have implementation challenges. In general, our orders, verdicts and decisions are respected and followed by responsible actors. But there are challenges, too. Then, there are issues of socio-economic rights - whether to consider them as only aspirations or the fundamental right. In South Africa, they have put a rider to fulfill those rights 'within the available resources.' If resources are not available, should we limit ourselves to just reading those rights. How to translate them into practical life? I would also like to seek inputs from civil society leaders regarding our socio-economic rights and the budget implication. Our constitution has created modern rights that calls for justice with compensation and rehabilitation. We cited the Article 21 of the constitution while making recent decision regarding the pardon by the president. If we look at our budget allocations, they are framed with crime combating approach. They do not include provisions to cover compensations or reparations for the victims. I believe we need to view rule of law from this perspective as well. The ambassador earlier said that in Finland they put premium on equality, representation and participation. Our courts have also worked for gender equality, proportional representation etc. Courts are guardian of rule of law but they alone cannot protect rule of law. Unless and until laws are just and parliaments abide by their duties, it is not possible. Unfortunately, during the entire last session of the parliament, they only formulated one single law. Executives, too, should apply conscience when enforcing laws. What I want to emphasize is that the judicial decisions alone are not enough. Untill and unless judiciary insists on the implementation of rule of law through policies, programs, or budget allocation, it will not happen. If you look at the budget allocated for the courts, you will see that from 2003/2004 to 2013/2014, the percentage of budget allocated has come down from 0.57% to 0.43% despite the fact that the number of cases and staffs have increased in that period. This will impact our administrative and financial autonomy. In the Supreme Court, there are 7 vacant positions for justices. There are huge backlogs of the pending cases. Who is responsible? Recently, a UN special rapporteur on independence of judiciary commented to me that political interference in appointments has become a challenge to independence of judiciary. I know there is a political process and committee of political nature for the appointments. If you look at India, there is a collegium for this purpose. Here, Prime Minister and opposition leader have to recommend the chief justice, and again he/she has to go through parliamentary hearing. There are many obstacles to constitutionalism. Another major challenge is the issue of media trial. A judge has to face the challenge of decision-making or sticking to indecision. Media trial has become a threat to the independence of judiciary. On the day of the decision, media tend to report on their views of facts and values, which will put the judges in a difficult situation. Judiciary is sensitive towards the freedom of expression. It has not yet taken action against media on numerous cases of contempt of courts. But freedom of expression, too, has limitations. It has to be viewed from the perspective of access to justice and fair trial. I would like to end my remarks here and I expect your feedbacks.

7.5 Question and Answer Session- By Participants

After the remarks by key speakers, around 15 participants including Mr. Shekhar Poudel, judge; Mr. Parshuram Koirala, senior advocate; Mr. Arjun Khadka, joint secretary, Nepal Government; Mr. Shyam Maskey, advocate; civil society representative Dr. Hemraj Lamichhane, Ms. Stela Tamang, Ms. Anjana Shakya; media experts Mr. Liladhar Upadhyaya, Mr. Tanka Panta, Mr. Rajan Kuikel and Mr. Lenin Bista raised various queries and gave their feedbacks. Some highlights of their queries and comments are as follows:



- Our executive, legislature and judiciary are all to blame for the failure to institute rule of law. In the entire parliamentary session, only one law was formulated. And there are 7 vacant positions in the Supreme Court. Who is to blame?
- Experience of Finland shared by the Ambassador was brilliant and comprehensive. But Nepal lacks consistency and ownership in law implementation. There is shortage of accountability.
- The Ambassador has raised the important point that there has to be a high level of trust in order to maintain the rule of law. But what is the extent of the level of trust on the political leaders in Finland?
- Although, the Supreme Court is running in one-third capacity, was it effective when it was running in full capacity. Even when it had all positions filled, it took four-five years to settle a case.
- It would be good to know the nature of role played by opposition party in Finland - how they support the promotion of rule of law and what about coalition governments?

- The existing provisions in the Constitution are enough to safeguard rule of law and independence of judiciary. But judiciary has to be accountable towards the people and the nation. Judges need to be courageous.
- The matter of judicial review is often mized with judicial activism. So how can judicial review be in compliance with the rule of law.
- It is a challenge to deal with media trial. Besides, there are now new media and online news that are shared and commented upon. Some comments are really dangerous.
- There have been many changes in Nepal but the style of working has not been changed yet.
- There is a matter of conflict of interest in courts. How to control that? And why is court shying away from deciding on cases linked to political parties and big corruption.
- Rule of law in Nepal is a complex issue.

Response from the Ambassador

First of all, thank you Ms. Sapna Pradhan Malla for your powerful speech and thanks also for sharing your views and for the very active discussion. I cannot comment on everything that's actually not my role but let me just try to highlight some of the fundamental answers to the questions raised here. The issue of trust - let me remind that we are a very small country. We are 5.5 million people and we are a welfare state, which means the public sector is very close to everyone. We have only public schools, we have a massive welfare state system and that brings a certain mindset for people when we talk about trust because you are actually so close to the public institution as well as the local institutions within every community; everyone goes through the health care center of the community. Everyone goes to the community school. So, this I think creates a very fundamental sort of backbone to how we think and how we see the trust towards institutions and the fact that our culture is no hierarchy culture - so in government or politics, everywhere, everything is very accessible. Basically, when we talk about trust and we measure most the trust of institution. We measure the trust of politician through election. They forecast their vote and then your trust is estimated. But when we talk about institution, I think that is interesting that for example the president of the republic of Finland estimated very high within the trust and he is elected by the people through direct votes. When we talk about coalition, we always have a very broad coalition government. I mean that's a very typical for the Nordic countries. Sometimes we call them the rainbow government because there are so many parties in the coalition and again the culture has been that they work. Why, because there is trust, there is a joint willingness to strive for solutions. We are very pragmatic people in Finland. I think pragmatism is one that very much guides our politics and how we work. And also, because the government is very open about everything and is very transparent - that also makes it work. And when we talk about the opposition, the opposition is quite often included when there is a main issue of national interest. So, we have a parliamentary structure that also includes the opposition very heavily and they can have their say within the parliament. We also have these participatory mechanisms within our parliament that offers the opposition the true possibility to influence.

Response by Ms. Sapana Pradhan Malla, Justice, Supreme Court

Thank you for raising these important issues such as public trust and processes. I have taken these comments on delay in justice and complicated processes as feedbacks. I will take these points for discussion at the full court. Judiciary has to be responsible and accountable. Independent judiciary does not mean judiciary cannot be held to account. The issue regarding the new media and social media is important. They have posed challenges that need to be debated. One commentator pointed that the judiciary could not settle cases within time even when it was running on full capacity. One has to look at the outcomes. I would rather term our activism as constitutional activism rather than judicial activism. When talking about political interference, it is important to look at our verdicts and decisions. The court is also a part of the limited government and must restrain itself. Regarding the corruption cases, an individual may be bad but not the system or the policy. We are moving towards the digitalization and automation of technology. But we cannot affect justice in the name of transparency or autonomy. We will discuss all these points in the full court.

7.6 Closing Remarks from the Chair

First of all, I would like to appreciate the Ambassador for sharing with us the legal system and rule of law in Finland. She linked the legal system of Finland with Nepal's rule of law system. If we look at the global rank on rule of law, Finland has obtained 2.06 points whereas Nepal has obtained 0.47 points. Finland sits at the number 1 position but Nepal is at 122. We must inquire what are the reasons for this? Finland is a smaller country and used to be under-developed and poor like us. What catapulted it to number 1? We must listen carefully to what the Ambassador said such as the trust in democratic institutions, continuity of the government, trust in the government institutions, transparency etc. Another important point is the participatory approach embraced by Finland. I find that Finland has enjoyed the concept of 'small is beautiful' whereas we suffered from inferiority complex by ourselves. Finland is also helping other countries to promote civil society participation. But in Nepal there are now problems like increasing negativity towards civil society. We tried to put everything in the constitution. In Finland, they gave number 1 priority to corruption control and they are now in the top spot in clean governance. They created ombudsman that can look into corruption cases in the government, parliament or judiciary. They have a trust surplus that has made their democracy vibrant, functioning and sustainable. Therefore, we must investigate where we have failed and why our constitution could not deliver. However, we should appreciate what we could do. We should strive for participation in the real sense of the word in law making. Because if people do not know what kind of law has been made, they would care less in abiding by them. It is important to make people understand what kind of laws have been made. These also require resources, management and favorable environment. There is also the need to improve the capacity of law enforcing agencies like lawyer, police and judges. Then there is the question of culture of law abidance. We should not feel brave in breaking law. We should be able to share the benefits of the law. There has to be universal distribution of benefits of law irrespective of gender, caste, community, region etc. If we can develop the culture of abiding by law, that will lead to quality of law making and quality of implementation. We need to be equally mindful about the accessibility of law and cost effectiveness. If seeking justice becomes expensive, that will be counterproductive - it will not be

justice. The issue of media trial raised in the program is equally serious. It can impact us all. There is no reason to be defensive about it. One cannot appreciate media trial. This one session may not be enough for us to find out the ways of overcoming all the challenges, but will certainly move us towards change.



**AN INTERACTION ON
RULE OF LAW, TRANSPARENCY AND PARTICIPATION: A PERSPECTIVE FROM FINLAND**

November 7, 2023 (2080/7/21) Tuesday

HOTEL YELLOW PAGODA, KANTIPATH

Organized by

**Constitution Watch Group and Nepal Law Society in coordination with Finland
Embassy**

Draft Detail Program

- 3.00-3.30 : Tea/ Coffee
- 3.30- 5.00 : WORKING SESSION
- Chair : Mr. Kalyan Shrestha, Chairperson, Constitution Watch Group
(Former Chief Justice of Nepal)
- Welcome : Mr. Tirtha Man Shakya, Chairperson, NLS and Former Chief
Secretary, Government of Nepal
- Objective Highlights : Mr. Krishna Man Pradhan, Executive Director, Nepal Law
Society
- Brief Issue Presentation : **Rule of law, transparency and participation: A
perspective from Finland**
- Hon'ble Riina-Riikka Heikka, Ambassador, Finland
Embassy, Kathmandu
: Contribution of Judiciary in the Rule of Law in Nepal
- Hon'ble Ms. Sapana Pradhan Malla, Justice, Supreme
Court
: Inputs from Participants
- Remarks from the Chair : Mr. Kalyan Shrestha, Chairperson, Constitution Watch Group
(Former Chief Justice of Nepal)
- 5.30 pm : High Tea

