

**Joint submission to the Universal  
Periodic Review of the Federal  
Democratic Republic of Nepal  
37th Session of the UPR Working  
Group, January 2021**



**FREEDOM FORUM**

"A Nepali CSO (civil society organization) dedicated to democracy, human rights and governance"

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## **SUBMITTING STAKEHOLDERS:**

1. **Freedom Forum** (FF) is a not-for-profit, non-governmental organization, working for institutionalization of democracy, protection and promotion of human rights, press freedom, freedom of expression and right to information in Nepal. The organization was founded in February 2005. <http://freedomforum.org.np>
2. **Free Press Unlimited** (FPU) is a not-for-profit, non-governmental organisation based in Amsterdam, the Netherlands that contributes to a diverse, professional information landscape consisting of independent media and journalists that drive (social) change in their society, and was established in 2011 following a merger between Dutch NGOs Free Voice (established in 1986) and Press Now (established in 1993). <https://freepressunlimited.org>

## **EXECUTIVE SUMMARY**

3. Freedom Forum and Free Press Unlimited are happy to collaborate and contribute to the third cycle of the Universal Periodic Review (UPR) of the Federal Democratic Republic of Nepal. This undertaking emphasizes Nepal's domestic laws and obligation to the international instruments for the protection and promotion of the freedom of expression and information and journalists' safety. This report has been prepared by Freedom Forum and Free Press Unlimited and provides an analysis and recommendations relating to issues relevant to Article 19 of the ICCPR, and is based on the press freedom monitoring and advocacy work of Freedom Forum in Nepal and additional research that has been commissioned by Free Press Unlimited. All interviewees, experts on freedom of expression and press freedom in Nepal, have consented to be quoted in this submission and in the research report. This research report '*Impact of the 2015 Universal Periodic Review on Press Freedom in Nepal*' is annexed to his report.

4. Freedom Forum and Free Press Unlimited observe that Nepal made a huge achievement with its new Constitution that came into effect on September 2015. The Constitution of Nepal 2015 prepared a new legal base and helped conclude an extended period of political transition. Nepal held three-tiers of elections and formed governments at the federal, provincial and local level, thereby devolving rights and authority concentrated in the center for centuries to the sub-national governments. The incorporation of 'full freedom of the press' in the very preamble and ample provisions on fundamental rights in the Constitution is a welcome deed.

5. While the new Constitution and new form of governance are substantive improvements considering the modern history of Nepal, we discern a rising trend of press freedom violations and suppression of citizens for exercising their right to freedom of expression. Furthermore, bills have been introduced that will, if made into law, curtail freedom of expression and the ability of media professionals to do their work without undue interference.

6. This joint submission underscores the following concerns related to Article 19 of the ICCPR thoroughly:

### **7. A: DETERIORATING ENABLING ENVIRONMENT FOR THE MEDIA**

- A.1 Failure of the State of Nepal to make amendments in the Constitution to comply with international standards of Freedom of Expression and Access to Information

- A.2 Continued efforts by government and political actors on different levels of government to suppress citizens and journalists through misuse of the Electronic Transaction Act
- A.3 Shrinking online space for Freedom of Expression and Access to Information

#### **8. B: ALARMING SITUATION CONCERNING THE WORKING ENVIRONMENT AND SAFETY OF JOURNALISTS**

- B.1 Deterioration of Freedom of Speech, Press Freedom Situation and Journalist Safety
- B.2 Failure of the transitional justice system and inaction to end impunity relating to crimes against journalists
- B.3 Failure by the government of Nepal to acknowledge the right to access to information and journalists' safety in sustainable development goal SDG 16.10
- B.4 (Self) censorship and online harassment

## FOLLOW UP OF PAST RECOMMENDATIONS

9. The previous UPR of Nepal in 2016 resulted in two specific recommendations for promoting and protecting freedom of expression and information and ensure safety to journalists:

- Ensure the right to freedom of expression online/offline in law and in practice, including by decriminalizing defamation, and to investigate all cases of threats and attacks against journalists and human rights defenders (Estonia);
- 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 (Ireland);

10. On the first recommendation, the government of Nepal failed to investigate all cases of threats and attacks against journalists. This stark lack of will to launch a comprehensive investigation into the cases of journalists who were killed and disappeared during a decade-long civil war (1996-2006) can be reflected in the inaction of the transitional mechanism - being the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP) - to address impunity relating to crimes against journalists. For lack of human and financial resources, non-cooperation from political parties and government, the transitional justice mechanisms failed to deliver justice to the families of those killed and disappeared during the conflict era. A study by Freedom Forum has shown that no initiative was taken to cater justice to the families of the victim journalists.<sup>1</sup> The growing presence of people online has not resulted in meaningful attempts to protect free expression online. Rather the proposed IT Bill as well as the Media Council Bill contain worrying provisions capable to stifle citizen's Freedom of Expression online. Freedom of Expression online and offline deserve equal respect and protection as per international standards.

11. On the second recommendation, the government of Nepal has introduced a number of vaguely worded provisions in laws and bills, mentioned in section A, A1 in this submission, that curb rather than ensure press freedom, *inter alia* through government control of media, regulating and monitoring advertisements, criminalisation of defamation and, as mentioned in Section B of this submission,

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<sup>1</sup> <http://freedomforum.org.np/unabated-impunity-suffers-nepali-media/>; [https://www.youtube.com/watch?v=g6koJ5A5Ax8&feature=emb\\_logo](https://www.youtube.com/watch?v=g6koJ5A5Ax8&feature=emb_logo); and <http://freedomforum.org.np/download/impunity-continues-unabated-nepali-report-updated-2019/?wpdmdl=3623&refresh=5efedb75d98d31593760629> (in Nepali)

a deteriorating working environment because of press freedom violations and increasing (self-)censorship and online intimidation.

### **Intimidation of human rights defenders**

12. One of the indicators whether the government is abiding by the national legislation and international instruments on human rights to protect and promote citizen's freedom of expression is how it receives recommendation of the national human rights institute and international human rights bodies. The treatment of Ms Mohna Ansari, member of the National Human Rights Commission (NHRC), is a stark reminder of how the human rights advocacy by NHRC, upon return from Geneva in 2016, received a cold shoulder from the Government of Nepal following her remarks before the international community:

*13. 'NHRC members present at the meeting uniformly expressed the sentiment that [the Prime Minister], through his aggressive questioning and reprimanding of the commissioners over the contents of certain sections of its submission, was trying to intimidate the commission and in particular Commissioner Ansari, at whom the questioning appeared exclusively directed.'*<sup>2</sup>

### **SECTION A: DETERIORATING ENABLING ENVIRONMENT FOR THE MEDIA**

14. Complying with the recommendation of “creating and maintaining, in law and in practice, a safe and enabling environment in which journalists and media workers can operate free from hindrance”, the Nepali government has been introducing new media laws. However, the provisions of these bills curb rather than ensure press freedom. While the Information Technology Bill requires social media websites to register with the government, the Media Council Bill has provisions of establishing a government-controlled media council and imposes hefty fines and/or imprisonment for publishing objectionable content. Moreover, existing laws like the Electronic Transaction Act are being misused to further punish journalists and curb press freedom. On December 26<sup>th</sup>, 2019 the Committee to Protect Journalists (CPJ), who regularly quote Freedom Forum sources in their reporting, reported on the total lack of stakeholder input for the new media laws, the passing of numerous bills at provincial level and concerns of civil society actors and journalists about the abuse of the current existing legal framework to curtail the work of journalists.<sup>3</sup>

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<sup>2</sup> <https://www.refworld.org/docid/57230e6a4.html>

<sup>3</sup> <https://cpj.org/blog/2019/12/nepal-press-freedom-risk-legislation-restricted.php>; See also: <https://kathmandupost.com/2/2020/02/14/oli-administration-is-ignoring-a-key-component-of-democracy-during-lawmaking>

15. In the following sections, a number of concrete examples as well as recommendations will be provided to substantiate the observed negative trend.

### **A.1 Failure to make amendment in the Constitution to comply with the international standards of freedom of expression and information**

16. **The Constitution of Nepal 2015** is regarded as the most progressive national charter Nepal has ever got. However, some provisions relating to citizen's right to Freedom of Expression and information draw concerns. In the process of legal reform of Nepal's Constitution, Freedom Forum observed that old laws are being replaced by regressive laws and policies, and is ignoring the compliance to the international instrument as Universal Declaration of Human Rights (UDHR- Article 19) and International Covenant on Civil and Political Rights (ICCPR- Article 19).

17. Although, it is praiseworthy that **Article 17 of the Constitution of Nepal** mentions 'every citizen shall have the following freedom – a) freedom of opinion and expression', the proviso clause (1) of Article 17 uses the vague terms as 'harmonious relations between the Federal Units,' 'public morality', 'harmonious relations between various castes, tribes, religions and communities', 'territorial integrity'. These terms need to be defined more clearly. Similarly the proviso clause (4) of the same article restrictions are used by putting words and phrases in condition clause under **Article 19: 'Right to communication,'** The proviso here mentions that the State can impose restrictions in the name of 'harmonious relations', 'public decency or morality', 'hatred to labour' 'caste-based untouchability'. Such terms need to be clearly defined or removed altogether.

18. The government introduced a new **Mass Communication Policy in July 2016**. The use of vague words as 'creation of equitable society', 'fair, dignified, responsible and accountable mass communication,' in the preamble invites suspicion that the policy is promoting State controlled communication media. Instead, it should mention the promotion of independent, fair and professional media. Similarly, section 2.1 in the policy mentions 'unrestricted exercise of freedom of press and expression in line with established international value'; to which, it could mention explicitly the Article 19 of UDHR and ICCPR. The Policy also needs to erase the ambiguity on 'regulation of internet based media as per laws' in **Section 3.7.2**.

19. Similarly, the provisions on defamation (**Section 305-307**) in the **Criminal Code** have criminalized defamation via media. It curtails FoE and a free press, hence the provisions of defamation via media must be removed from criminal offense. Investigative reporting will be threatened with the provision that

photographing without permission is banned. Similarly, the ban of 'publication, sales and distribution of book with indecent contents' (Section 121), mentioned in the Criminal Code has used blanket approach on 'indecent content.' Instead of using the vague term of 'indecent content', the Code can explicitly mention what is meant with the term indecent content.

20. **Section 21 (d) of Civil Code** has banned the journalists to take photographs, listen to conversation without permission in the name of privacy. It is against a journalists' right to free reporting because investigative journalists should be able to take photos, and listen to conversations. Such provisions discouraging free reporting must be removed or made clear.

21. In 2018, the central government introduced in the parliament the **Information Technology Bill**, which would mandate the registration of social media websites with the Department of Information. Social media sites that fail to register would have their services blocked. The IT Bill brought by the government with the provision making it mandatory for the online (internet-based) media to get 'registered' under government system is against the spirit of online journalism and citizen's journalism. It can lead to government authority to monitor and filter media contents and finally control it. **Section 88 of the IT Bill** also uses the vague and broad words which go beyond the provision in Article 17.a. (freedom of speech) of Constitution of Nepal. Similarly, despite having separate law- Libel and Slander Act, the provision relating to defamation is included in this, which can be misused to charge people under criminal offense. Libel actually falls under civil law. Hence, it should be removed. Section 86 on 'vulgarism' of IT Bill again draw criticism as the word 'vulgarism' is subjective. This limits the contents of journalism, as anything can be judged as vulgarism.

22. *"The government is not serious about any of the recommendations it accepted regarding freedom of expression. Instead, it has introduced bills like the IT Bill and Media Council Bill, while it is misusing the already implemented Electronic Transaction Act. Clause 47 of this Act is being used to put journalists in custody. The police has so far registered 180 cases under clause 47 of this Act and in 178 cases either the person charged was released on bail or the cases were dismissed by the court. So, the rate of conviction is less than 1%. The IT Bill, if implemented, is a draconian law and is harsher than the Electronic Transaction Act when it comes to punishing journalists"* - Ujjwal Acharya, Researcher, Center for Media Research.

23. Rather than encouraging self-regulation, the government's attempts to regulate the media through the **Media Council Bill** is a worrying issue. Sections 5, 7 and 10, which mention the formation of a Media Council, clearly give the



government considerable latitude to control the media. In addition, the Media Council would be able to fine reporters and editors up to 1 million rupees for violating its “code of conduct” and sentence them to up to 15 years in prison in the event of non-payment<sup>4</sup>. Autonomy of the Media Council must be ensured by increasing the number and leveraging the status of representatives from the media, literature, and performing arts as well as reducing the number of government appointees.

24. **The Nepal Special Service Bill** incorporates the provision that jeopardises a free press. Section 10 (1) (2) (3) and (5) have allowed surveillance and interception of people's audio visual conversation, and has given power to state intelligence agencies to collect information from telecom service providers. These provisions are a serious threat to a journalists' right to receive and impart information and the right to privacy as guaranteed by the Constitution. It undermines the journalist's ability to protect news sources and foments self censorship. These are against any citizen's right to privacy that are guaranteed by the Constitution. Approval for surveillance or interception can be given only via court approval.

25. **Section 5 (1) of the Advertisement Act** has listed the contents that are banned for advertisement, which goes beyond the Constitutional provision on Freedom of Expression. Use of misleading and equivocal words, and granting excessive authority to the advertisement board (Section 8 and 15) on directing, regulating and monitoring advertisements on media only further increases government control of the media.

26. **Recommendation A.1.1: Ensure legal reform with amendments in the Constitution of Nepal and other laws in line with international principles of Freedom of Expression in accordance with international human rights law and standards, by redefining or deleting lengthy, vague and unnecessary provisos in the Constitution, specifically:**

- Articles 17 Clause (1 and 4)
- Article 19 (proviso)
- Article 27
- RTI Act: Section 3
- Mass Communication Policy: Section 3.7.2
- Criminal Code: Section 305-307, Section 121

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<sup>4</sup><https://rsf.org/en/news/nepal-rsfs-recommendations-amend-controversial-media-council-bil>

- Civil Code: Section 21 (d)
- IT Bill: Section 86, 88
- Media Council Bill: Section 5 and 7
- Nepal Special Service Bill: Section 10 (1,2,3 and 5)
- Advertisement Act: Section 5 (1), Section 8 and 15

27. **Recommendation A1.2:** Establish proper criteria in view of the federal set up for three layers of government- federal, provincial and local- on exercising their rights and authority to protect and promote citizen's right to freedom of expression and information and journalists' safety. The overlapping of authorities must be removed with while three governments exercise concurrent rights.

## **A.2 Continued efforts by government and political actors on different levels of government to suppress citizens and journalists through misuse of the Electronic Transaction Act**

28. Misuse of the law to curtail citizens, including journalists' right has been intensified in the recent years. Freedom Forum and the media fraternity in Nepal have long been decrying the misuse of the Electronic Transaction Act (ETA), but recently this misuse has been deepening.<sup>5</sup> Even recording artists have been the victim of ETA misuse. Two popular singers were arrested by the police in the name of moral policing, while a folk singer was also ordered to lift his song from YouTube with the pressure from the youth wing of the ruling communist party.

29. A young rapper V10 was arrested over allegedly promoting anti-social values. The police arrested rapper Samir Ghising, popularly known as V10, on charges of promoting 'anti-social values' in October 2019. Rapper Ghising had become phenom following the release of his song, 'Hami yestai ta ho ni bro'.<sup>6</sup>

30. For similar reasons, another popular singer Durgesh Thapa was also held by the police. And journalist Arjun Giri was charged in April 2019 under the Act for reporting on financial fraud.<sup>7</sup>

31. *"The Electronic Transaction Act was introduced to provide safety to the banking system but later it wasn't confined to the banking sector but was misused by the*

<sup>5</sup> <https://kathmandupost.com/national/2019/04/17/nepals-government-is-aggressively-pursuing-journalists-and-it-could-get-worse-under-a-new-legislation>

<sup>6</sup> <http://english.lokaantar.com/governance/13912/>

<sup>7</sup> <https://www.amnesty.org/en/latest/news/2020/01/nepal-information-technology-bill-threatens-freedom-of-expression/>

*authorities and dozens of journalists were arrested under this act. We had intensive dialogue with the government, but they didn't listen to our concerns. This Act has been grossly misused. We have asked government to clearly define the provisions of the law, but they do not agree to amend it and address our concerns [...] There are many media laws being discussed right now and they are quite confusing and arbitrary, and government is unwilling to incorporate our suggestions [...] The government is itself confused between social media and electronic news media and they come up with surprising logics. If we post the link of the news in social media (which was originally posted in online media) and if it becomes viral and if they feel offensive it, they arrest journalists in the pretext of posting comments in social media. They don't understand whether journalists posted comments or news links from online media. [...] Writing for an online news portal and posting comments on social media walls are two different things. Journalists must not be arrested for his or her news published. Authorities must be clear (they are not as of now) about the comments and link of the news." - Bimal Gautam, Editor, Lokantar.com*

33. Recommendation A.2.1: Clearly define the provisions within the Electronic Transaction Act or its replacement IT Bill in accordance with international human rights law and standards

### **A.3 Shrinking online space for Freedom of Expression and Access to Information**

34. Internet penetration has been increasing for some years in Nepal reaching 70 percent of the total population. Growing internet presence coupled with easy availability of smart phones has enabled citizens to access new platforms for exercising freedom of expression and information. Human rights defenders and other citizens have therefore been able to discuss and debate government policies and programs online and organize rallies to press for changes in policy. Wrongdoings by government actors are exposed quickly and through the use of social media, pressure can be created by the public to demand change. The increasing access to internet has enabled the free flow of information and has built a more informed citizenry and amplified the voice of the voiceless. It is estimated that there are 10 million Facebook users and 1 million Twitter users in Nepal.

*35. "Social media is an important space for Nepali journalists [and] community/citizen journalists. But if you talk about Freedom of Expression online then according to the new [IT Bill] a journalist could be put behind bars for posting*

*offensive content on social media. The bill hasn't been passed but the government is making guidelines to control social media. Government is thus introducing laws but not in the direction of Freedom of Expression," Meena Sharma, President, Institute of Human Rights Communication Nepal.*

36. In a worrying, negative trend, the government of Nepal has recently started to regulate, social media, especially Facebook and YouTube, in an attempt to stifle free expression on social media by introducing a bill on Information Technology<sup>8</sup>. The draft bill on IT, which is currently under discussion at a parliamentary committee of the House of Representatives - following much pressure from the CSO and media fraternity - mentioned a fine up to Rs 1.5 million and/or five years' of imprisonment for the people who post any 'improper content' online. Additionally, actual misinformation that is being spread through social media, as well as excessive or state actions against the posting or publishing of alleged misinformation, is seriously undermining access to reliable information of the public. Government action to stop media from publishing fake news is acceptable but a blanket approach to block sites will suppress freedom of expression.<sup>9</sup>

*37. Recommendation A.3.1: Establish a separate multi-stakeholder digital authority that undertakes interdisciplinary research and study according to criteria agreed through public consultation on broader issues of internet freedoms including Freedom of Expression online and that furnishes suggestions to the government and the public on themes such as misinformation and fake news with the aim to increase media literacy.*

## **SECTION B: ALARMING SITUATION CONCERNING THE WORKING ENVIRONMENT AND SAFETY OF JOURNALISTS**

### **B.1 Deterioration of Freedom of Speech, Press Freedom Situation and Journalist Safety**

*38. "The nature and intensity of threats against journalists has risen, especially at the local level. They are threatened by local police, provincial government officials*

<sup>8</sup><http://freedomforum.org.np/govt-pushes-it-bill-to-control-social-media/>; see also: <https://www.amnesty.org/en/latest/news/2020/01/nepal-information-technology-bill-threatens-freedom-of-expression/>

<sup>9</sup><http://nepalpressfreedom.org/main/post-single/274>

*[...]The government is trying to 'other' journalists as people against the government and against the development of the country. Projecting us as 'anti-development.' The environment is difficult for us as compared to early years of the 2010 decade,"*  
Ujjwal Acharya, Researcher, Center for Media Research

39. The Annual Media Report of Freedom Forum prepared in 2015<sup>10</sup> recorded 83 press freedom violations. In that year, a young journalist in Mahottari district, Rohan Chaudhari was killed in a police shooting during a protest. He was associated to Jaleshwornath FM. Journalists were at the receiving end of political protest that occurred during 2015 across the country.

40. Despite relative peace and a sharp decline in press freedom violations (25) in 2016<sup>11</sup>, no efforts were taken to address the impunity relating to crimes against journalists. Government efforts to conduct license exam for journalist and the directive on Operation and Management of Online Media drew huge criticism. The National Mass Communications Policy brought that year made mandatory provisions of registering internet-based media, thereby stifling freedom of expression.

41. Yet again, the number of press freedom violation grew in 2017<sup>12</sup>, reaching 66 with 230 media workers involved. The Criminal and Civil Code, introduced that year, incorporated provisions that allow for vague interpretation, leading to inconsistency with Constitutional rights and international standards of freedom of expression and journalists' right to free reporting.

42. The Annual Media Report 2018<sup>13</sup> painted a disappointing situation of media freedom, recording 98 press freedom violations which directly affected at least 223 media persons in Nepal. It included the new trend of criminal defamation and discredit to media and journalists and intolerance to healthy criticism which jeopardized the atmosphere for freedom of expression and information. For asking a critical question relating to Communication Minister's property details, a talk show presenter was sacked and his program shutdown at State-owned Radio Nepal in June 2018. During this year, four journalists were arrested under Electronic Transaction Act invoking Section 47.

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<sup>10</sup><http://freedomforum.org.np/download/annual-media-report-2015/?wpdmdl=1841&refresh=5f0324cf983311594041551>

<sup>11</sup> <http://freedomforum.org.np/publications/reports/annual-reports/>

<sup>12</sup>idem

<sup>13</sup>idem

43. The 2019 report<sup>14</sup> saw a more entrenched trend of suppressing journalists and Freedom of Expression and information atmosphere with formulation of regressive laws. The year saw a further increase in press freedom violation (104 the highest in seven years). Coordinated and systematic efforts have been made by the present government to silence Freedom of Expression practitioners, common citizens and journalists. It clearly indicated that the rule of law was being replaced with rule by law. In May 2019, the government of Nepal initiated a probe on three editors working at the national news agency, RSS, for translating and disseminating news relating to the Dalai Lama. In April 2019, a journalist associated to online news portal Tandav News, Arjun Giri, was arrested for cybercrime from Pokhara city for writing news on fraud involving a businessperson and sharing it on the online news portal.

44. Anti-corruption campaigner Gyanendra Shahi, who was scheduled to speak against corruption in Chitwan city was attacked in September 2019. The youth wing of the ruling political party was reported to be involved in this attack. Earlier, the youth wing had banned Shahi to enter Kaski district.<sup>15</sup>

45. *"If you look at the federal structure of Nepal the country was divided into 7 provinces and 753 local governments and one central government. The idea behind decentralization was to ensure that grassroot level government functions smoothly, but the reality is that when this happened and local governments were formed, we can see severe corruption rampant at the local governments. It is our duty to expose this and report on it and this is what we are doing in the last couple of years – mostly at local levels but also other two levels. Thus, none of the governments at all three levels are happy with us. They are not interested in creating a safe environment for us where we can work without fear or favour. This is the bitter reality of Nepal at the moment,"* Bimal Gautam, Editor, Lokantar.com

**46. Recommendation B1.1:** Intensify the process to implement the directive brought at the National Human Rights Commission (NHRC) in order for the protection of human rights of the journalists and rights defenders. The mechanism on safety of Freedom of Expression defenders, including journalists, should ensure representation of Freedom of Expression experts, security personnel, concerned Ministry representatives and NHRC officials.

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<sup>14</sup> idem

<sup>15</sup><https://kathmandupost.com/province-no-3/2019/09/29/anti-corruption-campaigner-gyanendra-shahi-attacked-in-chitwan>

## **B.2 Failure of the transitional justice system and inaction to end impunity relating to crimes against journalists**

47. The Truth and Reconciliation Commission (TRC) and Commission of Investigation on Enforced Disappeared Persons (CIEDP) were established on February 10, 2015, through the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014 to investigate cases of human rights violation during the decade-long Maoist conflict (1996-2006). The two-year mandates of the TRC and CIEDP expired on February 9, 2017. Since, the government has been extending the mandate of the two commissions repeatedly but up to the date of this research, not a single case has been recommended for prosecution. Though the commissions have stated that they have initiated investigations into some of these cases, there are serious concerns about the quality of these investigations, and to date, not a single case has been recommended for prosecution<sup>16</sup>.

48. A mere extension of the tenure of these commissions without amending the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014, in line with international standards and the judgments of the Supreme Court of Nepal reflects lack of political will to provide justice and end impunity. Both commissions continue to face shortage of human and financial resources. However, still amnesty can be provided to perpetrators even for serious crimes under the current legal framework. Taking note of this, the Supreme Court had directed the government to exclude the provision of amnesty for human rights violations, striking them down as unconstitutional and against international law in 2015. Nevertheless, the amnesty provisions included in the TRC Act have not been amended to comply with the Supreme Court's directives which only entrench impunity further in the justice system of the country.

49. Moreover, both the commissions had been without members since the previous commissioners' terms expired in April 2019. It is only in January 2020 that the government formed a five-member committee to recommend names for commissioners for the two commissions. The committee submitted its nominations despite demands by civil society to first amend the transitional justice legal framework and with very little meaningful participation by civil society. On January 25<sup>th</sup>, 2020 the International Commission of Jurists (ICJ), Amnesty International, Human Rights Watch, and TRIAL International 'expressed concern about the decision to appoint commissioners to the two transitional justice commissions without adequate consultations<sup>17</sup>, and without amending the

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<sup>16</sup> <https://ifex.org/images/nepal/2018/07/24/freedom-forum-newsletter-june-2018.pdf>

<sup>17</sup> <https://www.aljazeera.com/news/2020/01/victims-unhappy-nepal-revives-transitional-justice-process-200113082330798.html>

legal framework to make it consistent with international human rights law and Supreme Court of Nepal rulings'.<sup>18</sup>

50. "Currently I am working with the Home Ministry, I am their drafting committee member to draft a national action plan as per UN Security Council Resolution 1325 and 1820. We are making a national action plan on these two resolutions and I am working as a gender expert. Now we are in the process of making the second draft and I have raised issues of such cases multiple times and they [the government] tell me not to worry as we have the TRC (truth and reconciliation commission) which will take care of everything. Especially when it comes to resolution 1820 we talk about violence against media personnel and young girls and women. The government said that I should not say anything or that they cannot introduce any[...] new law as there is already a mechanism that they committed to in our comprehensive peace accord and that the TRC will take care of it so we don't need to bother about the violations of media personnel's rights that happened during the insurgency period. The TRC as well as the Commission on Investigation of Enforced Disappeared Persons (CIEDP) will look after this so I was asked not to bother. The reality however is that the government is not ready to touch the issue of impunity during the conflict era as the home minister is also from the Maoist party and they have to save their own party people who were involved in these crimes," - Meena Sharma, President, Institute of Human Rights Communication Nepal.

**51. Recommendation B2.1: Actively enhance and build capacity of the transitional justice mechanisms (TRC and CIEDP) with sufficient human and financial resources and legal and political support**

**52. Recommendation B2.2. Amending the legal framework of the TRC and CIEDP to make it consistent with international human rights law and Supreme Court of Nepal rulings**

### **B.3 Failure by the government of Nepal to acknowledge the right to access to information and journalists' safety in sustainable development goal SDG 16.10**

53. The sustainable development goals (SDGs) warrant meticulous plans and policies with multi-stakeholders involvement to achieve its results. National baseline, indicators and target need to be set for each category under the SDG framework. Freedom of Expression and Access to Information are pressing

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<sup>18</sup> <https://www.amnesty.org/en/latest/news/2020/01/nepal-recent-steps-undermine-transitional-justice/>



issues in Nepal. Nevertheless, the National Planning Commission of the Government of Nepal did not present any specific targets relating to SDG indicators 16.10.1 and 16.10.2 in its report *Sustainable Development Goals. Status and Roadmap: 2016-2030*<sup>19</sup>.

54. Although the **Right to Information (RTI) Act Section 3** has created a positive atmosphere for citizen's right to information, it only provides RTI to Nepali citizens. As individuals have a universal Right to Information, it needs to be ensured to all people<sup>20</sup>, including refugees in Nepal. Furthermore, the Right to Information Act, 2007 has not been reformed since its introduction. Access to government data is increasingly becoming available in digital format.

55. **Recommendation B3.1:** Set a baseline, indicators and targets by developing a monitoring mechanism to monitor government actions contributing to SDG indicators 16.10.1 and 16.10.2 and set up a multistakeholder body assigned to critically assess government actions towards this end.

56. **Recommendation B3.2:** Ensure stakeholder participation in media policy development and law making that contribute to SDG goal 16.10.

57. **Recommendation B3.3:** Amend RTI Act to

- Ensure Right to Information to all people by broadening its scope beyond citizens
- Devise institutional and legal mechanism at provincial and local governments to implement right to information
- Ensure information sharing/disclosure in open data format

#### **B.4 (Self)-Censorship and online harassment**

58. The two main trends, described in this report, the deteriorating enabling environment for the media and the alarming situation concerning the working environment and safety of journalists, ultimately culminate in a situation in which journalists face the choice to either self-censor themselves, see their articles censored, or press on with pursuing the truth with the risk of becoming a target of disgruntled power-holders and their supporters.

59. With one single political party dominating in all three-layers of government, independent and professional journalism increasingly is under pressure. Misuse of media is highly likely to fuel spreading misinformation, and protecting

<sup>19</sup> [https://www.npc.gov.np/images/category/SDGs\\_Report\\_Final.pdf](https://www.npc.gov.np/images/category/SDGs_Report_Final.pdf)

<sup>20</sup> See <https://forcedmigrationforum.com/2017/04/06/the-right-to-information-expanding-access-for-refugees/>; and: <https://www.article19.org/data/files/pdfs/publications/freedom-of-information-humanitarian-disasters.pdf>

government irregularities. Former journalists working as advisers or press coordinators of government institutions are withholding information and stifle news as a 2018 media mission conducted by Freedom Forum has shown.<sup>21</sup>

60. State-owned media have received instructions from government level to produce counter-narratives in response to critical news items regarding the Nirmala rape-and-murder case and agitation waged by Govinda KC at the end of 2018<sup>22</sup>.

61. Of late, individuals close to the government have discredited, belittled and criticized journalist Binu Subedi for her critical reporting about the government and ruling party<sup>23</sup>. It is evident in social networking sites as Facebook and Twitter, but also offline<sup>24</sup>. Anyone writing critically on the government's handling of the COVID-19 pandemic and associated irregularities faces quickly online reactions with invective. This trend of government and ruling party representatives and its supporters insulating the government from critical reporting through assailing those exercising their right to freedom of expression and dissent, is a deeply worrying trend.

**62. Recommendation B.4.1:** *The government of Nepal should should transform the government owned media to a public service media, while ensuring editorial independence.*

**63. Recommendation B.4.1** *Adopt comprehensive national legislation in order to ensure media pluralism and protect independent media*

**64. Recommendation B.4.1** *Investigate and stop state-sponsored trolling and cyber-bullying against journalists and dissenting voices*

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<sup>21</sup> <http://freedomforum.org.np/download/media-mission-2-2018/?wpdmdl=3412&refresh=5f0345426deb01594049858>

<sup>22</sup> <https://kathmandupost.com/national/2018/11/29/minister-orders-state-media-to-muzzleand-counterdr-kc-nirmala-news>

<sup>23</sup> <http://nepalpressfreedom.org/main/issue-single/1175>;  
<https://twitter.com/subedibinu/status/1260852834662100992>

<sup>24</sup> <https://rsf.org/en/news/nepalese-journalists-threatened-attacked-and-censored-over-covid-19-coverage>