

Impact of the 2015 Universal Periodic Review on Press Freedom in Nepal



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Report by Ms. Meenal Thakur

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Executive Summary

This report has been commissioned by Free Press Unlimited (FPU) to examine the impact of the 2015 Universal Periodic Review (UPR) on the state of press freedom in Nepal and to recommend ways of creating an enabling environment for freedom of expression (FoE), access to information and safety of journalists (SoJ) in the country. The UPR is a unique mechanism of the Human Rights Council (HRC) aimed at improving the human rights situation on the ground of each of the 193 United Nations (UN) Member States. The research draws on the recommendations made by member states- Estonia, Ireland, Netherlands, France and Uruguay- regarding improving press freedom in Nepal which were accepted by the Nepal government during the second cycle of the UPR in 2015. These recommendations were made towards ensuring freedom of expression in law and in practice, creating a safe and enabling environment for journalists and investigating all cases of crimes and threats against journalists to bring justice to victims and end impunity.

Based on interviews with eight civil society organizations (CSOs) - which include organizations that have been active in advocating for press freedom, engaging in media policy oriented research, media development organisations, media training organizations, media outlets, press unions, and media monitoring and research organisations - the report draws attention to the fact that since 2015 the Nepali government has not acted on its commitments to ensure press freedom in the country. Moreover, the current media laws violate the Nepali constitution and do not adhere to international treaties that Nepal is signatory to. The research further reveals that instead of working towards press freedom, the new laws being introduced by the government are restricting freedom of expression and creating an unsuitable environment for journalists to operate.

Five key findings emerged based on interviews with relevant CSOs which highlight the failure of the transitional justice system and persistence of impunity, restrictions on press freedom by the newly introduced media laws, an unsafe work environment and othering of journalists, increased control over media due to the federal structure of the government and a fragmented civil society whose lack of proactive attitude cost some of these problematic media laws to be introduced in Nepal.

That said, some positive developments have been made towards press freedom in Nepal which can be attributed to both the government's efforts as well as advocacy done by civil society. A Right to Information Act has been adopted. In a bid to make the judiciary more responsive and active, the government held workshops last year to sensitize the judiciary at the provincial level on issues of media freedom and safety of journalists. Civil society organisations on the other hand successfully advocated for removing some problematic provisions from the Media Council Bill which restrict press freedom.

Given that the current state of press freedom in Nepal seems to be moving in the direction of creating a restrictive, unsafe environment for journalists with increased impunity for perpetrators, the report urges the Nepali civil society as well as international NGO's like FPU to play a pro-active advocacy role and to engage with local reporters and organizations through collaboration and capacity building. Key recommendations have been summarized below:

- Play a more pro-active role in advocating for press freedom and collaborate to build pressure on the government to address the failure of the transitional justice system, persistence of impunity and introduction of restrictive media laws which build an unsafe environment for journalists.
- Engage more with local reporters who also act as human rights defenders and have better knowledge of the ground situation yet are often at the receiving end of the unsafe and restrictive environment for journalists.
- Increase efforts of capacity building of journalists through trainings and financial means to facilitate editorial independence and freedom from political pressure.
- Journalists should also be supported by training them in digital security.
- FPU should explore, get involved and/or support platforms like the Inclusive Media Campaign and the Safe Media Network which have been set up as a result of collaboration between media-related CSOs in Nepal.
- FPU can collaborate with research and policy-oriented organizations like Media Action Nepal and Centre for Media Research as they could be potential knowledge partners.
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To be sure, the key findings and recommendations mentioned in the report should be read in light of the limitations of time, distance, language and representation of CSOs interviewed for the research. Nonetheless, efforts have been made to make the report accurate and reflective of the current state of press freedom in Nepal.

The views expressed in this report are those of the author and do not necessarily represent those of Free Press Unlimited. All interviewees have given their consent to be quoted in this report.

1. Introduction

The Universal Periodic review (UPR), is a unique mechanism of the Human Rights Council (HRC) aimed at improving the human rights situation in each of the 193 United Nations (UN) member states. Under this mechanism, the human rights situation of all UN Member States is reviewed every 5 years. 42 States are reviewed each year during three Working Group sessions dedicated to 14 States each. These three sessions are usually held in January/February, May/June and October/November. The review is based on three reports which evaluate the human rights situation in the state under review. These are produced by the state under review, civil society and national human rights institutes and the Office of the High Commissioner for Human Rights.

The UPR gives member states being reviewed the opportunity to show the international community the actions they have taken to improve the human rights situation in their country. It also provides a space for interaction between the respective governments and civil society on pressing human rights issues. That said, the success of this dialogue depends on a number of factors including the constructive feedback provided by civil society: but importantly also the willingness of the state to **a)** make serious work on the follow-up of accepted recommendations and **b)** the willingness to engage with civil society beyond the Geneva process.

In light of this crucial role of civil society organizations (CSOs), FPU along with its partner organization, Freedom Forum (FF), conducted a research on the impact of the 2015 UPR on press freedom in Nepal and formulate recommendations to improve the same. In the joint report that the two organizations prepared, Freedom Forum researched on the impact of the 2015 UPR by studying the current media laws and made recommendations on how to create a more conducive environment for both freedom of expression and safety of journalists in Nepal and acknowledged that progress has been made with regards to the Right to Information. Free Press Unlimited on the other hand conducted interviews with relevant media related organizations active in Nepal. These interviews were then used to corroborate observations made by Freedom Forum and to further substantiate its recommendations based on the inputs and experiences of CSOs advocating for freedom of expression and safety of journalists in Nepal.

This report lays down the state of press freedom in Nepal and the impact of the 2015 UPR on press freedom in the country specifically based on the interviews conducted by Free Press Unlimited with Nepali CSOs. The first section lays down the research objective and research process where the methodology, typology of CSOs interviewed and limitations of the research are discussed. This is followed by illustrating the key research findings which analyse how Nepal has fared on the recommendations it accepted during the 2015 UPR. The last section of the report highlights the positive developments that have been made towards achieving an enabling and safe environment for journalists and ends with recommendations for local Nepali CSOs as well as international NGOs like FPU. The annex provides the questionnaire as well as a transcript of the interviews.

1.1 Research Objective

The overall objective is to research the effectiveness of the 2015 UPR in Nepal and its subsequent impact on press freedom in the country. This impact is expected to be influenced

by actions of the government of Nepal by following up on accepted recommendations and by advocacy activities of civil society organizations advocating for freedom of expression, journalist safety and access to information. This is an advocacy driven research project where the research and the subsequent report is aimed at exploring if the current media laws/policy in Nepal is effective in ensuring and promoting press freedom. If not, it will address loopholes in the current media laws which hinder press freedom in the country. The aim will be twofold: together with Freedom Forum, FPU will report on the state of press freedom and the media landscape in Nepal and formulate recommendations – in the form of a joint NGO submission for the next UPR cycle in November 2020. And second, based on the analysis of the role of civil society in the follow-up of recommendations of the previous UPR cycle, it may inform strategies for more effective civil society advocacy and coordination. To be sure, not all organizations that were interviewed were aware of or used the UPR mechanisms to monitor the Nepali government's efforts to improve press freedom in Nepal.

2. Research Process

This section discusses the methodology employed for the research, provides a timeline of the research, discusses the typology of CSOs interviewed and ends with highlighting the limitations the researcher faced which may have impacted the quality and accuracy of the research findings.

2.1 Methodology

Mixed methods for qualitative research were used to prepare the report and two methods were employed in this approach - desk research followed by semi-structured interviews. The desk research was two-folds- first, recommendations made regarding press freedom in Nepal during the second UPR cycle in 2015 were studied. This played a key role in designing the questionnaire used for interviewing. Second, research was done for identifying relevant civil society stakeholders in Nepal who have been active on issues of FoE, Right to Information (RTI) and Safety of Journalists in light of the previous UPR.

Once organizations were shortlisted, research was done to expand their profiles. The aim of this exercise was to see if any of them are employing the UPR mechanism to monitor press freedom. Additionally, this exercise looked into any lobbying and advocacy activities undertaken by these organizations focused on the above-mentioned issues, irrespective of the question if they are employing the UPR instrument. Having finalized a list of organizations, semi-structured interviews were conducted via email, skype and phone based on the questionnaire prepared during the desk research phase. The questionnaire, list of interviewees as well as the interviews have been attached to the document in the annex section. To be sure, the responses were used to corroborate Freedom Forum's draft report as the issues raised in the report were also reiterated by the CSOs interviewed by FPU.

Table I: Research Timeline

November 2019	Desk Research: mapping the relevant recommendations made by member states to Nepal and identifying organisations monitoring and
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	advocating for press freedom in Nepal either by using the UPR mechanisms or otherwise.
December 2019	Outlining the research objectives based on the first draft of the report prepared by Freedom Forum so FPU knows where and how to contribute to the research. Reach out to shortlisted organizations to fix interviews
January 2020	Conduct interviews
February 2020	Report Writing and submission

2.2 Typology of CSOs interviewed for the research

The civil society organizations chosen to be interviewed for this research include organizations active in advocating for press freedom, organizations engaging in media policy oriented research, media development organisations, media training organizations, media outlets, press unions, and media monitoring & research organisations. The researcher interviewed officials from 8 such organizations which work at the local, provincial and national level in Nepal. It is to be noted that Freedom Forum was not approached for an interview given the fact that they are a FPU partner organization and FPU is already partnering with them for the NGO submission for the UPR. Therefore, their inputs would not have provided FPU with more insights about the impact of the UPR on press freedom in Nepal.

To be sure, not all organizations were aware of or used the UPR mechanisms to monitor the Nepali government's efforts to improve press freedom in Nepal and see that the UPR recommendations are being implemented. However, the work they do amounts to creating an enabling environment for journalists and ensuring press freedom in Nepal. Below is a list of organizations- along with a brief description- who were interviewed for this research:

Media Action Nepal (MAN): works closely with the Nepali government- National Human Rights Commission (NHRC), Ministry of Information and Information technology- judicial bodies, UN bodies, academic institutions, national and international media advocacy groups to advocate press freedom. This media rights organization is also involved in policy research and analysis. The organization also focuses on building the capacities of media professionals in Nepal. They are also the ground partner of Article 19 in Nepal and a member of Inclusive Media Campaign¹. MAN also has a mechanism to register media rights violations which can be done by reporting the incident on its website.

Federation of Nepali Journalists (FNJ): is a professional representative body of more than 13,000 media persons working in all areas of modern media- print, electronic and online-

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Established in 2008, Inclusive Media Campaign is a network of media related civil society organizations active in advocating media pluralism and inclusive media content. Led by Rem Bahadur Biswokarma of Jagaran Media Center, IMC includes Federation of Nepalese Indigenous Nationalities' Journalists (FONIJ), Working Women Journalists (WWJ), Muslim Journalists Association (MJA), Madheshi Journalists Society (MJF), Association of Differently Able Journalists (ADAJ) and Media Action Nepal (MAN) as its board members. IMC has launched a national inclusive media advocacy campaign from 2012 to 2014 that resulted into government declaring high level media commission to formulate inclusive media policy in Nepal.

across the country. FNJ works at the local, provincial, national-with government bodies and parliamentarians- and international level- it is a member of member of International Federation of Journalists (IFJ) and International Freedom of Expression Exchange (IFEX)- to promote and protect freedom of the press in Nepal. The organization has been involved in consultation processes when the Nepali constitution was being written and it collaborates with governments for drafting media related laws. Other than that, FNJ also organizes training workshops for the Press Council as well as journalists and also tracks and produces reports on press freedom violations in the country.

Working Women Journalists (WWJ): is an organization of professional women journalists working in different media in Nepal which advocates and lobbies for issues related to women journalists. It also works towards capacity building of women journalists in Nepal. WWJ also collaborates with other organizations like Federation of Nepali Journalists, Freedom Forum, Nepal Forum of Environmental Journalists (NEFEJ), Sancharika Samuha to advocate for press freedom and work towards capacity building of journalists.

Centre for Media Freedom (CMF): collaborates and closely works with government bodies- including holding meetings with lawmakers, as well as national and international media advocacy groups. The organization however depends on reports prepared by other organizations for its work and it also does not monitor issues of FoE, SoJ and other media-related issues by itself. However, it works in collaboration with organizations like Freedom Forum promote linkages among state agencies, civil society organisations and media, and for capacity building of journalists. The organization is also working towards sensitizing local CSOs and journalists on the new media bills introduced by the government.

Institute of Human Rights Communication (IHRICON): mainly works to improve the rights of women and children in Nepal and with human rights defenders. However, their work becomes relevant as the organization has also been active in capacity building of journalists at the local level who also work as human rights defenders. Currently the organization is working with FNJ to create a network called Safe Media Network- a platform where media professionals will gather once a month and discuss their concerns and share their experiences about press freedom in Nepal. The network will be set up in all 7 provinces of Nepal. Other than that, the organization is also working with Freedom Forum on the Civil Society Mutual Accountability Project (CSMAP)²

Center for Media Research (CMR): is an autonomous, research and policy-oriented, not-for-profit non-governmental policy think tank that works to advocate, support and lobby for freedom of opinion and expression on every platform, ethical and professional media, and press freedom. CMR also develops and conducts skill development trainings, workshops and seminars for journalists on topics ranging from mobile journalism, data journalism to media freedom and media literacy. Organizations like FNJ rely on CMR's research for their advocacy efforts. The research material is also shared with local organizations who do not have the capacity to undertake in-depth media research. Their research is funded by international organizations like Open Society Foundation, Interlink Academy in Germany and Digital Fund

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The Civil Society: Mutual Accountability Project (CS:MAP) works to foster an accountable and resilient Nepali civil society that is capable of advancing the public interest. Through CS:MAP, FHI 360 provides grants, technical assistance and mentoring to civil society and media organizations to strengthen their capacity.

UK which is managed by Access Now. Recently they collaborated with Digital Empowerment Foundation in India to work on fake news.

Sancharika Samuha (SAS): works around mainstreaming gender in the Nepali media. Its work includes raising awareness by conducting public outreach programmes, research, media monitoring and media campaigns. While SAS mainly works towards strengthening the capacity of female journalists through the improvement of their professional skills and their access to the Nepalese media, it also works towards ensuring press freedom in Nepal.

Human Rights Alliance (HRA): is a coalition of Nepali non- governmental human rights organisations dedicated to the cause of freedom, human rights, social justice, and peace in Nepal. HRA's work includes monitoring human rights, research and policy review, capacity building of Human Rights defenders, lobby and advocacy on human rights and post conflict justice. HRA also collaborates with various CSOs and journalist associations to advocate for press freedom.

2.3 Limitations of the research

Representation of CSOs: The researcher reached out to 15 CSOs out of which 8 responded. A background check of these organizations had directed the researcher to approach them. However, during the course of the interviews it was observed that some of these CSOs do not have the resources and/or capacity to employ the UPR mechanisms to monitor press freedom in Nepal. In fact, some had limited knowledge of the UPR cycle. However, the work they do- mostly in collaboration with bigger organizations- amounts to building a safer environment for journalists and ensuring freedom of expression in Nepal.

Time and distance: While the research was done in a time period a little over three months, only one month was available for interviewing which was not sufficient. The time difference between Nepal and Netherlands also made availability of respondents a bit difficult. The biggest challenge, however, was coordinating and conducting interviews without physically being present in Nepal. Technical glitches during skype interviews, call drops and difficulty in asking follow-up questions when interviews were held via email influenced the responses. It is also difficult to establish a good rapport with the respondents especially when it comes to sensitive questions where building trust between the interviewer and interviewee is important to get accurate responses.

Language: While most of the respondents had a working knowledge of English, language did become a barrier while conducting the research especially in the phase where the researcher was reaching out to organizations to get in touch with relevant people. The researcher tried to communicate in Hindi (as it is a bit similar to Nepali) but some inputs by the respondents were lost in translation. An effort was made to ensure that the language barrier does not influence the quality of the inputs.

3. Research Findings

The first part of this section lays down the recommendations made by member states during the 2015 UPR which guided this research. This is followed by a summary of the research findings based on the interviews held with Nepali CSOs.

Table II: Recommendations made by member states during the second UPR cycle:

Estonia	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.	Accepted by Nepal
Ireland	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	Accepted by Nepal
Netherlands	Take measures to guarantee that all outstanding allegations of crimes are investigated and to ensure that perpetrators of human rights violations are brought to justice in proceedings which meet with international standards	Accepted by Nepal
France	End the impunity of law enforcement authorities	Accepted by Nepal
Uruguay	Make necessary efforts to investigate crimes under international law or human rights violations that have occurred, protecting victims of such violations and guaranteeing them access to justice and full and effective reparations	Accepted by Nepal

3.1 Highlights of research findings

1. Failure of transitional justice system and persistence of impunity:

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. According to Human Rights Watch³, as of February 2018, the TRC has received 60,298 complaints of human rights violations, and the CIEDP has received 3,093 complaints of enforced disappearance. 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.

According to the interviewees, 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 judgements of the Supreme Court of Nepal

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<https://www.hrw.org/news/2018/02/13/nepal-transitional-justice-proving-elusive>

reflects lack of political will to provide justice and end impunity. Both commissions continue to face shortage of human and financial resources. To be sure, 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. However, 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.

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 25th, 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](#), and without amending the legal framework to make it consistent with international human rights law and Supreme Court of Nepal rulings'.⁴

Perspectives from civil society organisations

"The Truth and Reconciliation Commission (TRC) and Commission on Investigation of Enforced Disappeared Persons (CIEDP) have become puppets in the hands of the government. They didn't even have commissioners to head them even though their terms have been extended. This is because the government wants to appoint someone who promotes their interests and agendas. The current government is represented by the merger of two big communist parties who were involved in committing human rights violations during the conflict era. Even the cases where pro-Maoist journalists who were killed by security forces during the 10 years long conflict are not being heard. They [the government] do not want to end impunity," Laxman Datt Pant, Chairperson, Media Action Nepal.

"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 anything 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

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

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.

2. New media laws are being introduced without consultation effectively curbing press freedom

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 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 26th, 2019, the Committee to Protect Journalists 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.⁵

Perspectives from civil society organisations

“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.

“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 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

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<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>

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.

“Government has done nothing regarding recommendation of decriminalization. Nepal police crime branch looks after the implementation of Electronic Transaction Act (Clause 47) and if the proposed IT Act gets passed, it further escalates this situation as there is a provision for registering Youtube and Facebook. Then it will become difficult to give opinions online. According to clause 47: If find guilty of his or her expression they can be charged with defamation with fine and imprisonment or both,” Laxman Datt Pant, Chairperson, Media Action Nepal.

“Social media is an important space for Nepali journalists especially an important tool for community/ citizen journalists. But if you talk about Freedom of Expression online then according to the new bills [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.

3. Unsafe work environment and othering of journalists

Respondents expressed their concern that the environment in which they are operating has become more unfavourable, unsafe and challenging over the years. Negative attitude of the government which views them as ‘anti-development’ and calls them out for reporting malpractices, exclusion from consultations regarding media laws and an increase in threats especially at the local level are some concerns raised by the respondents. Fear of threats and restrained access to government subsidies has also led some media groups to practice self-censorship. Thus, the government is restricting press freedom in the country through policy and practice, backed by its absolute majority in the parliament. According to Reporters Without Borders, ‘another disturbing development is the “anti-media rhetoric” which government representatives have begun using and which has been widely reproduced in the government’s newspapers, radio stations and TV channels. With the threat of prosecution and continuing violence in the field, the environment for journalists working for independent media outlets has been extremely difficult⁶.’ Under the current government, Nepal has dropped 6 places on the World Press Freedom Index.

Perspectives from civil society organisations

“The nature and intensity of threats against journalists has risen, especially at the local level. They are threatened by local police, provincial government officials [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 “If we compare the press freedom situation now with that of the Maoist insurgency the overall situation is better. However, there is still some unwanted pressure from the government and

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other bodies. For example, we face pressure from contractors who are hired by government to build roads, hydropower projects etc. We have been reporting about how projects are not completed on time as well as misuse of funds- we wrote 3 stories on why contractors close to the Maoist government are doing their work inefficiently. We wrote about a contractor who is very close to the former Maoist party. We exposed all his wrongdoings, mala fied intensions and his corrupt practices and he issued threats against us and other media houses. Similarly, we wrote some stories about misuse of government property- like vehicles- and procedural flaws while giving contracts to suppliers who work for the government ministries. Government authorities were unhappy with us. We had even filed applications under the RTI Act to get relevant documents, but they denied access. National security, sovereignty and right to privacy are some of the reasons they give but this is a grey area and is open to interpretation. So, there is pressure from government authorities, businessmen, middlemen, contractors etc. There is a nexus with political leaders and issue threats. Other times they issue physical threats- terrorize us by saying we know everything about your family- and we report to the police when this happens. We also report the unknown phone numbers to the police which are used to issue threats,” Bimal Gautam, Editor, Lokantar.com.

“The new laws and policies are restricting press freedom and go against the constitution. With these laws, many cases of journalist arrest have come up. Government is in majority and want us to subscribe us to their ideology. There are small things like in a case where journalists were barred from going to the president’s office, once they were not allowed to enter the airport to report a story and when international events are held in Nepal very few journalists are provided passes and are usually handpicked. The environment is of restricting journalism, through policy and practice. We would actively work with the government, advising them on framing laws. For example, during the transition period FNJ was actively consulted during the constitution writing process especially on issues of FoE and Right to Information (RTI). In 2017 we had submitted a model mass communication act to the government and told them to take a look at it whenever they draft media laws. But now it has all stopped after the new government came to power. We were not consulted or called for discussions when the government was framing the IT Bill and Media Council Bill. None of the parties are friendly with media and have a specific perception of media organizations. Hiranya Joshi, Program Manager, Federation of Nepali Journalists

“There is no systematic attack as such but there is self-censorship on part of journalists. Especially for subsidies for advertisement, subsidy to establish small community-based media, subsidy to journalists and unions for infrastructure etc. But most importantly it is advertisements- we call it Lok Kalyankari Vigyapan (public service advertisement). Then media houses can be compelled to write in favour of government or practice self-censorship,” Laxman Datt Pant, Chairperson, Media Action Nepal.

4. Federal structure of the government manifests in more control over media

Restructuring of Nepal into federal states after the constitution came into effect in 2015 has had an impact on press freedom. Respondents opined that while laws like the Information Technology Bill and Media Council Bill have been introduced at the national level, some provinces are introducing media laws separately at the provincial level which has led to a tighter grip over media. The challenge therefore is to ensure that these laws are compatible with the Nepali constitution and international laws and treaties that Nepal is party to and they facilitate press freedom rather than restrict it. On January 16th 2020, Amnesty International expressed its concern and stated that: '[s]ection 115 of the bill envisions an "Information Technology Court" in each of the seven provinces around the country, with the mandate to deal with all issues under the bill, including criminal liability. As the bill authorizes the government to appoint the members of the court bypassing judicial council, this poses serious concerns on the influence of the executive over these courts, the independence of the judiciary and fair trials guarantee in such courts'.⁷

Perspectives from civil society organisations

"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.

"The nature and intensity of threats against journalists has risen, especially at the local level. They are threatened by local police, provincial government officials," Ujjwal Acharya, Researcher, Center for Media Research.⁸

5. Fragmented civil society

A robust and active civil society is of utmost importance to keep the government accountable, especially in a democracy. However, the research revealed that the current state of press freedom in Nepal can be attributed to some extent to the lax attitude of civil society to oppose restrictive legislations. Respondents stated that the restrictive provisions of some legislations- like the

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

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After the interview, the Ujjwal Acharya was asked if he could substantiate his claim. He shared the following links: <http://pressfreedom.fnjnepal.org/> (for English, check top right corner); <http://freedomforum.org.np/publications/reports/annual-reports/>

Criminal Code⁹- could have been dropped when it was being introduced but the civil society was inactive. CSOs working on advocacy for press freedom and safety of Nepali journalists have also been criticized by organizations conducting research on media laws in Nepal for not following-up on the UPR recommendations which manifested in the government introducing even more restrictive legislation to curb press freedom. The civil society also seems to be struggling when faced with a government which has an absolute majority and which views CSOs as either 'with us or against us'. Human Rights Watch and CIVICUS have flagged a new NGO law and restrictive legislation that could weaken civil society. According to Human Rights Watch, 'under the current government, the [Home Ministry](#), which is otherwise responsible for internal security and law and order, has been taking over the regulation, registration, and supervision of social organizations'.¹⁰ Moreover, the political affiliations of some CSOs tend to come in way of their advocacy efforts towards freedom of expression and safety of journalists which are then viewed as activities done to undermine the opposition parties.

Perspectives from civil society organisations

"The Criminal Code came into effect in 2018. It has many problematic clauses which should have been debated and ideally removed to ensure press freedom in the country. However, nothing was done as the civil society was not at all active," Laxman Datt Pant, Chairperson, Media Action Nepal.

"I agree that our constitution is relatively new, and the transition period takes time. However, the direction in which we are going in terms of media freedom is wrong. There is a fundamental problem with the way media laws are being framed. Moreover in the last few years, civil society has also become disintegrated. They have become divided on political lines – and government views them as either with or against us. For example, the government recently organized an oath taking ceremony, administered by the Maoist Party chairman where journalists from across the country were invited and swore to do better journalism. The problem is the way it was organized in front of party leaders. Why was there no objection? Civil society is very weak now. They were sleeping when these draconian laws were being introduced and discussed. For instance, no one objected when the Criminal Code Act, 2017 was being discussed **and passed in the Parliament** but they protested when it was **about to be implemented**. The CSOs are not pro-active. Some CSOs also have political linkages which overshadows their work", Ujjwal Acharya, Researcher, Center for Media Research

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The government's new Criminal Code and Criminal Procedures Code, expected to reform the country's legal system by replacing ages-old 'Muluki Ain', came into effect in 2018 amid fears that the new privacy provisions outlined in the codes would hamper free press in the country. A number of provisions in the Criminal Code say violation of any individual's right to privacy would result in up to three years imprisonment and fines in thousands of rupees. The new law also says listening to or recording a conversation between two or more people, or photographing any individual, without consent is a criminal offence. Anyone found violating these rules faces one year in prison and a fine of Rs10,000 or both.

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<https://monitor.civicus.org/updates/2020/03/23/activists-concerned-about-plans-new-ngo-law-and-other-restrictive-legislation-nepal/>; <https://www.hrw.org/news/2019/11/14/nepal-new-ngo-law-should-protect-rights>

4. Positive Developments towards press freedom in Nepal

Despite the grim situation of press freedom in Nepal with the government introducing restrictive legislation two positive developments to make the environment safe for journalists and ensure freedom of expression have come as a welcome step. First, is sensitization workshops organized by the central government to train judiciary members at the provincial level regarding issues of press freedom and second is the striking down of some restrictive provisions from the Media Council Bill by the upper house of the parliament after advocacy efforts by CSOs.¹¹

1. Action to make the judiciary more responsive

In what is being seen as a positive development and “a baby step” towards a more responsive and active judiciary, the government held workshops to sensitize judiciary regarding issues of media freedom and safety of journalists in 2019.

“A few actions were taken like workshops and orientation programs were held with judiciary members at the provincial level. There were talks on Freedom of Expression and discussions with judiciary on how to make media environment safer. They were organized by central government for courts at provincial level to sensitize them to handle cases related to media. These are baby steps, but I am not aware of the outcome or the reach. A friend of mine who is a district court judge told me that this is the first time that a workshop was held around media and how to address such issues and create a safe environment for journalists to raise their issues. USAID and UNDP provided technical support for this [in 2019]. ,” Meena Sharma, President, Institute of Human Rights Communication Nepal.

2. Removal of some problematic provisions of Media Council Bill

In another positive development, the advocacy efforts of organizations including Federation of Nepali Journalists led to removal of problematic provisions of the Media Council Bill which restrict press freedom. The National Assembly, upper house of the federal parliament, has passed the Media Council Bill by removing the provision of hefty punishment and license exam for journalists. This also comes as a step towards press freedom as the proposed Council now facilitates the complainant and journalists in case of complaint.

“FNJ got a written agreement signed by the parliamentary head of the party in the upper house which was also co-signed by FNJ chairperson in Sep-Oct 2019. Here it was agreed that MPs of ruling and opposition parties will register the amendment proposals for Media Council Bill,” Hiranya Joshi, Program Manager, Federation of Nepali Journalists

However, the provision of 80 percent of government officials and nominees in the Council's structure still warrants concern because it will reduce the council to an extension of the Information Ministry. The lack of diversity of the appointees- none from the field of art, culture, literature, media

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It should be reiterated here that the Government of Nepal has made important strides towards the Right to Information, although Freedom Forum is critical about the section 3 of the extent that provides RTI to Nepali citizens rather than to all people. RTI however was not discussed during the interviews.

may lead to government highhandedness and control. Similarly, the fact that the Council is to give priority to the government's suggestion on media issues still remains problematic. Now, with the passage of Media Council Bill from the upper house, the bill goes to the House of Representatives, the lower House, which can also make amendments¹².

5. Recommendations

Given that the current state of press freedom in Nepal seems to be moving in the direction of creating a restrictive, unsafe environment for journalists with increased impunity for perpetrators, the report urges the Nepali civil society as well as international NGO's like FPU to play a pro-active advocacy role and to engage better with local reporters and organizations through collaboration and capacity building. The report recommends:

- Local CSOs should play a more pro-active role in advocating for press freedom and collaborate to build pressure on the government through meetings, protests, lobby and advocacy activities. They should highlight the failure of the transitional justice system and introduction of restrictive media laws which build an unsafe environment for journalists. They should also work towards ensuring that the new laws meet international standards and are within the purview of the constitutional provisions of press freedom.
- Local CSOs as well as FPU should engage more with local reporters who also act as human rights defenders and have better knowledge of the ground situation yet are often at the receiving end of the unsafe and restrictive environment for journalists. Efforts should be made to facilitate their work by way of capacity building and taking them onboard advocacy activities at the local and national level.
- There should be increased efforts of capacity building of journalists through both- trainings and financial means. The aim should be to facilitate greater editorial independence by building capacity of media houses to resist political pressures.
- Having access to new technologies or platforms to publish news doesn't necessarily translate into empowered journalists. Journalists should also be supported by training them in digital security.
- FPU should explore, get involved and/or support platforms which have been set up as a result of collaboration between media-related CSOs in Nepal.
- FPU can consider collaborating with other research and policy-oriented organizations like Media Action Nepal and Centre for Media Research which research on media laws and the state of press freedom in Nepal as they could be potential knowledge partners.

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After the interview, Freedom Forum was approached in March 2020 to ask about the status. They said that the lower house of the parliament is to discuss the media council bill, but no date has been fixed yet.

Annex I: Questionnaire

1. Nepal accepted the recommendation of Estonia regarding right to freedom of expression. What has been done and by whom since to ensure Freedom of Expression online/offline in law and practice?
2. Nepal accepted the recommendation of decriminalizing defamation, what is the status of the [Libel and Slander Act, 2016 \(1959\)](#)?
3. Is the government introducing new legislation to promote press freedom? Or is the government introducing new legislation to curb press freedom?
4. Nepal accepted the recommendation to investigate all cases of threats and attacks against journalists. What has been the progress made on this front, and what has been done by government and/or other actors?
5. Nepal accepted recommendations made by Ireland to create, in law and practice, a safe and enabling environment in which journalists and media workers can operate free from hindrance and insecurity. To what extent has this been achieved and what has been done by government and/or other actors?
6. Given the complex geo-politics of South Asia, do you think that the neighboring countries of Nepal have any influence on the press freedom in the country?
7. Nepal accepted the recommendations made by Uruguay, France and Netherlands regarding ending impunity. How has the judiciary responded to these and what has been the progress in ending impunity for crimes against journalists?
8. Does your organization also work on advocacy for press freedom and safety of journalists? Are you participating in protests, signing petitions, meeting with the government? Or are there any other activities you have adopted?
9. What is the level of government at which your organization works?
Local, provincial, national, international?
10. Do you meet and exchange information with government actors on press freedom issues?
If Yes: what kind of exchange?
11. Do you collaborate with other organizations?
If Yes: what kind of collaboration is it? Do you work together in monitoring press freedom, training, campaigns and advocacy for press freedom etc? Please elaborate.
12. Is there knowledge exchange with other organizations?
If Yes: what type of knowledge exchange happens, please elaborate.