

Federal Democratic Republic of Nepal
ARTICLE 19 and Freedom Forum
Submission to the UN Universal Periodic Review

Tenth Session of the Working Group of the Human Rights Council, February 2011

1. ARTICLE 19: Global Campaign for Free Expression is a non-governmental human rights organisation that works globally to promote and protect freedom of expression and information. ARTICLE 19 was founded in 1987 and has observer status with ECOSOC.
2. Freedom Forum is an independent, non-governmental and not-for-profit civil society organization working for the causes of democracy, protection and promotion of human rights, press freedom, freedom of expression and right to information in Nepal.

Executive summary

3. Given the expertise and scope of activities of ARTICLE 19 and Freedom Forum, this submission focuses on Nepal's compliance with its international human rights obligations in protecting the right to freedom of expression and right to freedom of information. In particular the major issues of concern are:
 - Freedom of expression in the Interim Constitution and overall legal framework fail to meet international standards;
 - Regulation of the media fails to promote independence and transparency;
 - Journalists and media workers operate in an unsafe environment while impunity for perpetrators of human rights violations persists;
 - The Government has failed to give a full effect to the right to freedom of information;
 - Minority and vulnerable groups are largely excluded from the decision making process.

These concerns are outlined in a greater detail below.

Freedom of expression in the Interim Constitution and overall legal framework fail to meet international standards

4. The government of Nepal is currently drafting a new constitution due in 2011. While the Interim Constitution 2007 ("Constitution") in force today guarantees the right to freedom of opinion and expression, it fails to meet the international freedom of expression standards.
5. The Constitution (Article 12 para 3) and the Right to Information Act 2007 guarantee the right to freedom of expression and freedom of information only to citizens of Nepal, contrary to international standards that guarantee this right to everyone. This limitation is of particular concern in Nepal, where successive governments have used violent crackdowns, forced deportations, and pre-emptive arrests to silence peaceful protesters such as the Tibetan refugees in Nepal, on the basis that they are state-less and not citizens.
6. Restrictions on freedom of expression, freedom of the media and the right to information are not subjected to sufficiently stringent limitations. In particular, such restrictions should only be permitted to protect a narrow and clear list of overriding public and private interests.
7. The Constitution recognises the following grounds for restricting freedom of expression: sovereignty and integrity of Nepal; harmonious relations subsisting among the peoples of various castes, tribes, religion or communities; defamation; contempt of court; incitement to an offence; and acts contrary to public decency or morality. However:

- The restriction based on protecting “harmonious relations subsisting among the peoples of various castes, tribes, religions or communities” (Article 12 para 3 (1) of the Constitution, as well as in Article 14 of the Press and Publication Act 1991 and Article 15 of the National Broadcasting Act 1993), is problematic from the perspective of freedom of expression. While it is important to promote harmonious relations, this restriction is too broad and can undermine legitimate expression such as a frank discussion about the caste or ethnic discrimination which is a prevalent issue in Nepal.
- The restriction based on the grounds of national sovereignty and integrity (under Article 12 para 3 (1) of the Constitution as well as in Article 14 of the Press and Publication Act 1991 and Article 7 of the National Broadcasting Act) is overly broad. The provisions do not impose any obligation to establish close and causal links between banned statements and risk to national security, as required under international law. This lack of clarity has been abused in Nepal during the conflict and was one element in the justification for the widespread clampdown on journalists, media workers and human rights defenders.
- The restriction on the grounds of “defamation, contempt of court and incitement to an offence” (Article 12(3)(1) of the Constitution) are not permissible restrictions as they deal with different issues – protection of reputation and public order respectively, that require separate laws and scrutiny. ARTICLE 19 and Freedom Forum note that defamation is a criminal offence under the Defamation Act 1959, with penalty of up to two years of imprisonment and a fine of up to 50,000 NPR (700 USD). Whilst rarely employed in Nepal, criminal defamation is offensive and disproportionate to the guarantee of freedom of expression, often exploited to repress and create a “chilling effect”. Instead, civil defamation is a more adequate protection for reputation.

Regulation of the media fails to promote independence and transparency

8. Although the Constitution provides special protection for the media, prohibits censorship and safeguards against arbitrary closure, seizure, or cancellation, this protection is not reflected in the relevant Nepali laws.
9. Under the Press and Publications Act 1991, journalists are obliged to obtain government registration to carry out their work. This has resulted in a system that is wide open to abuse and the possibility that the government can withdraw permission based on a journalist’s reporting.
10. Regulation of broadcasting, the major source of information for most Nepalis, is also controlled by the Ministry of Information and Communication, rather than by a transparent independent body, as required by international law, resulting in the possibility for further abuse.
11. The statutory Press Council, responsible for both the press and broadcasters and established to promote the standards of a free press and settle complaints, also props up government control of the media by consisting of members appointed by the government in a non-transparent process.

Journalists and media workers operate in an unsafe environment while impunity for perpetrators of human rights violations persists

12. Nepal remains one of the world’s most violent places for journalists and media workers as political instability has created an increasingly perilous environment in which to work.
 - Following the formal end of the conflict, in the month after constituent elections in April 2008, at least five serious assaults on journalists and media workers took place across Nepal. On 10 May 2008, Tila Bhandari, a journalist for *Nepal FM* was

assaulted and threatened whilst investigating a strike in Surkhet, allegedly by activists from the Nepali Congress party. On 13 May 2008, journalists Bindu Kumar Chauhan and Kanhai Yadav received death threats, allegedly from police in Rupandehi whilst investigating police involvement in smuggling. On 27 May 2008, journalist Hemanta Paudel was assaulted in Kailali, allegedly by members of the Unified Communist Party of Nepal (Maoist), after reporting on their involvement with smuggling. On 28 May 2008, journalist Lucky Chaudhari was assaulted, allegedly by members of UCPN(Maoist) following a report on financial irregularities, and when people protested calling for a proper investigation, police opened fire on the demonstrators, killing three.

- In addition, political elites openly support the threatening of journalists and media workers. For example, on 30 May 2008, UCPN(Maoist) leader and former prime minister, Pushpa Kamal Dahal, alias Prachanda, addressed a warning in front of a public meeting to the Kantipur media company: *“Now we will no longer tolerate criticism as we have already been elected by the people.”* In the Tarai region especially, journalists and media workers are afraid to operate freely or travel outside the district capitals, stating that they will no longer investigate anything relating to criminal gangs or political corruption allegations and are either trying to leave the region or regularly self-censoring.
13. Impunity for violations is prevalent and very few perpetrators ever face justice as political backers give them protection from prosecution. ARTICLE 19 and Freedom Forum are not aware of any effective investigation into the cases mentioned above. Police openly state that even if they have sufficient evidence, political backers intervene and the perpetrator is set free. In the few cases where the UCPN(Maoist) admitted that its members were to blame, they refused to hand over the perpetrators to the police, and instead claimed to have carried out their own “justice”.
 14. The lack of effective investigation and culture of impunity has created a precedent whereby perpetrators see that attacks pass without consequence. The following cases are representative of some of the worst attacks that remain unsolved:
 - On 11 January 2009, Uma Singh, 26, became the first female journalist to be killed in Nepal. Uma worked in community radio in the city of Janakpur in the Tarai region, and was critical of members of the now named UCPN(Maoist) party and local criminal gangs, saying that they expected journalists to “dance to their tune”. A few days prior to her death she had named a senior UCPN(Maoist) in a report on extortion. Uma was killed by around 15 men who broke into the apartment she was staying in and stabbed her multiple times, mutilating her body. According to eyewitnesses, her last words were: “Why? What crime did I commit?” spoken on the way to Bardibas hospital. Following her death, certain groups have tried to feign that the killing was not due to her activist work, resulting in confusion amongst investigative organisations like OHCHR. A Tarai-based journalist stated in regards to Uma case: “If we cannot take this case to an end and win justice, there is no point in working here anymore.” Following this first attack on a female media worker, others have also come under attack. On 8 January 2009, Tika Bista almost followed Uma Singh by being the second female journalist to be killed in Nepal. Tika, who had already reported a series of death threats, was attacked on her way home by assailants who beat and cut her with razor blades. She was found unconscious inside a forest area and airlifted to Kathmandu where her life was saved. Similar to Uma, Tika’s reporting was critical of members of the UCPN(Maoist).
 - On 7 February 2010, Jamim Shah was shot and killed in Kathmandu by masked gunmen riding a motorbike. Jamim was a media entrepreneur and chairman of the *Spacetime Network* media house. Whilst the government were quick to form an

investigative commission and claim that criminal gangs were responsible, Jamim's killers have never been brought to justice. Following this attack on an influential media entrepreneur, others have also come under attack. On 1 March 2010, just weeks after Jamim's death, Arun Singhaniya was killed by masked gunmen riding motorbikes. Arun was a media entrepreneur and chairman of the *Today Group*, which owns two of the media outlets that Uma Singh worked for.

15. The state of impunity has also allowed media companies to come under regular attack. On 28 May 2010, members of the UCPN(Maoist) burnt copies of the newspapers *Nagarik* and *Republica*, which contained allegations of Maoist involvement in kidnapping. On 18 April 2010, activists from the Hindu Yuva Sangh, an extremist Hindu group, burned copies of *Kantipur* and *Annapurna Post* newspapers. On 23 August, members of the political party, Madhesh Terai Forum burned copies of *Kathmandu Post* and *Kantipur* newspapers claiming that they are banned due to their use of the Nepali language. On 7 December 2010, a criminal gang captured radio station Ramaroshan for two days due to reports that smuggling was taking place. On 16 November 2008, a gang of 10 people broke into the magazine *Himal Khabar Patrika* and burned copies of the publication. A few weeks later *Himal* came under attack again as 50 UCPN (Maoist) supporters surrounded the media house, ransacked the offices, and assaulted journalists and editors.

Failure of the Government to give a full effect to the right to freedom of information

16. Article 27 of the Constitution guarantees the right to freedom of information. The Right to Information Act was brought into force on 21 July 2007, followed by the establishment of the National Information Commission in May 2008. Whilst the Act is broadly in compliance with international standards, the monitoring body, the National Information Commission is not independent of government and the Information Commissioner is a political appointment rather than an independent adjudicator. Since being established, the Act has not been effectively implemented. Various independent studies show that only 10% of the population are aware of it, most associating it only with journalists. Public bodies are not proactively publishing information nor making the application processes open and accessible. At zonal and district levels, the government has been slow to train civil servants in their responsibilities and the procedures for accessing information.
17. The lack of freely available information has resulted in public bodies becoming more corrupt over the past three years, and studies show that Nepal is now the most corrupt country in the region.
18. Absence of freely available information has also become a major component of vulnerable groups' sense of exclusion resulting from the government's failure to provide information on entitlements, services, procedures to access resources, opportunities for civic participation, legal rights, and channels to demand change. Surveys show that there remains a very strong sense that local elite groups control information flows.

Minority and vulnerable groups are largely excluded from the decision making process

19. Political and social exclusion in Nepal is entrenched, limiting and suppressing minority and vulnerable groups from voicing their opinions and affecting decision-making from the lowest to the highest levels. The needs of minority and vulnerable groups are often not addressed due to a lack of consultation and an absence of representation within decision makers. For example, when the government attempted to introduce legislation giving grants to men marrying widows, widespread complaints from widows exposed the fact that no widow had been able to voice their

opinion within the decision-making process and the move was later blocked by the Supreme Court. Overall, only 11% of the council of ministers, 9% of civil servants, 2% of the judiciary, 1% of the army, and 12% of the media are female. Similarly, despite being roughly 40% of the population, indigenous groups make up only 8% of the judiciary and 4% of high-level bureaucracy. Dalits, who form 13% of the population, make up 0% of the judiciary and 0% of the high-level bureaucracy. The lack of representation of the minority groups within the executive bodies is likely to reduce their ability to access information and voice their opinions in the development of policies that will eventually affect them.

20. The Constitution is however a vast improvement over previous constitutions by introducing ‘samaveshi siddhantalai’ and ‘sakaratomak bibhed’, the principles of inclusiveness and positive discrimination, under Articles 63(4) and 35(14), establishing a constitutional requirement stipulating that: “women, Dalits, oppressed communities/ indigenous peoples, backward regions, Madhesi and other Classes” must be represented in decision making bodies in order for them to express their opinions and affect change.

Recommendations for action by the State under review

21. ARTICLE 19 considers the problems described above to amount to breaches of the right to freedom of expression as guaranteed under international law. We call upon the Human Rights Council to urge the government of Nepal to carry out the following:

- The next Constitution of Nepal, due in 2011, must adequately protect the right to freedom of expression in line with the international standards, in particular by defining restrictions and limitations that match international requirements.
- The government must amend the Press and Publication Act and the National Broadcasting Act to adequately protect the right to freedom of expression in line with international requirements and the protection of media guaranteed in the Constitution.
- Where regulation of the media must exist, the government must create regulatory laws according to international standards and establish regulatory bodies that are independent from government and that operate transparently.
- The government must create a safe environment for journalists and media workers and protect them against violent attacks.
- The government must conduct effective, impartial and speedy investigations into attacks on journalists and media workers, addressing political interference, and bring perpetrators of violence to justice. In particular, the government must conclude the investigations into the killings of Uma Singh, Jamim Shah and Arun Singhaniya, and prosecute the attackers.
- The government must implement the Right to Information Act and Regulations effectively, make the National Information Commission and Information Commissioners independent from government, and ensure that all people are aware of and able to realise the right to information.
- The government must continue to mandate representation of minority and vulnerable groups in decision making bodies to ensure that their voices are heard in all levels of decision-making.