



# FreeExpression

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A NEWSLETTER OF FREEDOM FORUM

## IT and Cyber Security Bill Draft Make Cyberspace FoE friendly

Some weeks back, the Ministry of Communications and Information Technology made public a draft bill on IT and cyber security in its website and sought feedback on it. Freedom Forum went through the draft bill and made initial observation. Although the bill is relatively progressive for it has included new issues, it has not yet been clear on how it could promote and protect human rights, especially freedom of expression, privacy and citizen's data online and cyber space.

The bill has been brought to regulate IT and cyber security. As the IT bill tabled in the parliament five years back drew wider criticism, it could not pass. Then development and IT committee under the House of Representatives had proposed comprehensive amendment on it. Similarly, the Ministry had brought Cyber Security Bill last year, which too could not move ahead. As these efforts went abortive, there no option but to formulate new bill on these sector.

With the IT regulation, the present bill covers data protection, cybercrime, cyber security, and privacy. The 47-page bill has 18 chapters, 60 clauses, and a schedule. In its observation, FF has found vague definitions. Chapter-1 (b) having definitions and later provisions have however unclear words as 'disrespect of labour', 'abetment of untouchability', 'indecent content.' In the definition, guarantee of 'free, secure and open internet' is missing in relation to internet freedom. Similarly, 'access' is also narrowed. The personal detail is also inconsistent with Privacy Act.

The public agencies are defined in a way they would be understood in a broad manner. The bill must ensure internet freedoms and human rights on cyberspace, but the provisions in it create doubt on it. Chapter 6 Clause 67 (5,6 and 7) mandates renewal of domain names, and registration of existing domain names within six months of the introduction of this



*Experts discuss provisions for foe on draft bills at a program.*

Act are hostile to software freedom. They will curtail citizen's access to internet.

Section 79 under Chapter 8 is quite problematic. It is challenging in terms of freedom of expression. Value and unclear terminologies including 'good relations among federal units', 'intention to commit illegal act', 'dignity', 'indecent content' will brew space for suppression, as these terms can be misused and misinterpreted for lack of clear definition. Similarly Section 79 (5) mentions 'other arrangement on it would be as per assigned/delegated' is highly likely to be misused. It will be misused in the way Section 47 of Electronic Transaction Act is misused.

There are several other points that promote surveillance at the cost of citizen's privacy and data, investigative journalism and free reporting. Privacy of public agencies/person and individual citizen are different. Public persons/agencies warrant accountability and transparency while common citizen do not need to be as equally accountable as public officials are.

It is good point that the Nepal government has been asked to set up a center for excellence for research and development of new technologies such as AI, machine learning, and blockchain. However, it is silent on what would be role and

**“Public persons/agencies warrant accountability and transparency while common citizen do not need to be as equally accountable as public officials are.”**

existence of existing mechanism as e-governance commission which is taking ahead digital issues.

Similarly, although the draft bill on IT and cyber security has sought transparent, accountable and safe use of artificial intelligence, machine learning, blockchain, and the internet of things (IoT), it has failed to defining these technical jargons.

As per bill, under data safety, none is allowed to disrupt harmonious relations among federal units, nationality or national unity, dignity, national security, sovereignty, and territorial integrity by the means of the electronic system. It is problematic for having vague and over broader terms 'dignity', 'national unity', 'relations among federal units'. There are similar other vague and broader terms that either needs to be defined properly or whetted thorough debate accordingly. 🌱

# Table media related bills

Currently, Nepal's federal parliament is conducting a winter session. This session is also called a bill session. The winter session is expected to bring the laws awaited for long. However, political wrangling among the ruling parties which surfaced again in the very beginning of this session resulting into the change in parties in the ruling coalition. It has cast doubt over the smooth functioning of the parliament to forward various bills related to implementation of federalism, and media and technology.

It has been almost eight years the country got new constitution, thereby institutionalizing the federal democratic republic. The present governments at all three tiers- local, provincial and federal- are running in second year following the second election held after promulgation of new constitution in 2015. But protracted formulation and enactment of laws has badly delayed the implementation of federalism. We have been watching continuously over the legislative business and unfolding developments on freedom of expression, right to information, right to communications and information technology and advocating for FoE friendly laws in the wake of revolution in IT and its impacts in society, especially on information and media ecosystem. Collaboration with line agencies to share knowledge and exchange views is also continued to foster atmosphere for free expression and its legal and institutional protection and promotion. But it is worrying that the changes in this sector are yet to be ensured and institutionalized.

The present session of the parliament needs to ensure existing Press Council Nepal as an autonomous media content regulator by augmenting it as a Media Council. For it to happen, the Media Council Bill should be forwarded for deliberation. It is awaited. Similarly, Public Service Broadcasting Bill has also been under consideration at a committee under the House of Representatives. We wish the passage of this bill from this very bill session of the parliament. A national mass communications bill mandated with autonomous regulatory authority on print, broadcasting and online had to enter the parliament, but is still at the Ministry of Communications and Information Technology. It is confusing whether Ministry is not able to forward or does not want to ward. It is however a pressing need to have an umbrella law on managing media sector. With the making of this law, old laws need to be scrapped so that conducive atmosphere would be created for professional, independent, and free media.

Moreover, either an integrated or sectoral law for the information technology sector has been felt long. The IT Bill which was under discussion in parliament for five years was rendered irrelevant before the second general election, while government has not tabled new bill on it in the parliament. The line ministry has recently made public the draft bill on IT and Cyber Security. It has mentioned the issues as cyber security, cyber crime, personal data protection and AI. However, the draft bill is problematic. It is discouraging to innovative IT use and control-oriented. Freedom Forum is studying minutely on it. It is urgent to pass it while comprehensive discussion is equally imperative. For the social networking sites, government had prepared separate draft bill, which is also worrying in terms of FoE, right to information and privacy, and civil space.

Therefore, it is time again for the civil society, private entities, researchers and all other stakeholders to work together and dwell on the pressing issues surrounding IT and free expression. Freedom Forum has close watch on such development and pressing from its sides so that wrong laws would not be made. Democracy will be threatened by the wrong laws. Rule by law is unacceptable, but rule of law. So, efforts will be continued to create atmosphere where democracy would thrive and citizens enjoy their rights unobstructed. 🌱

— Taranath Dahal



## Protect Civic space

Freedom Forum has been alarmed over the restriction government posed on people's free movement around significant places, including Singha Durbar, Maitighar and New Baneshwor.

Lately, the government even placed string fence along the footpath around Singh Durbar and New Baneshwor that has badly obstructed people's movement.

New Baneshwor is the place locating federal parliament building and Singh Durbar the central administrative complex of Nepal.

Some weeks back, the District Administration Office, Kathmandu extended the prohibitory order that barred people from gathering around New Baneshwor, Singha Durbar, Maitighar Mandal and Baluwatar. Baluwatar has the official residence of Prime Minister and Maitighar Mandal is a prominent public square used for peaceful protest for long.

Few aware youths have been regularly protesting peacefully- bearing placards and demanding back the public space- at a corner near Maitighar Mandal, a significant public square, which is near the Singha Durbar.

Maitighar Mandal has been used by the public as a strategic public place to show their concern over government actions and exert pressure for correction on policy and action.

The recent fence barrier on footpath in the name of security has further narrowed space for common people in the capital city. The government decision came in the wake of usury victims' march to the parliament building in New Baneshwor to pile pressure on lawmakers and seek immediate address to their problems.

It is worth noting that the victims of loan-shark and cooperatives from across the country have gathered in the federal capital seeking cooperation from government to resolve the crisis they are facing.

To this, Freedom Forum Executive Chief Taranath Dahal observed, "It is not only a breach of civic space but has direct impact on citizens' rights to free speech, peaceful assembly and peaceful protest. The government's action has showed authoritarian mindset, which is harmful to democracy. Citizen's rights must be respected and ensured, not suppressed." Freedom Forum demands government to immediately lift the barriers on public spaces and guarantee citizen rights. 🌱

# Freedom of Expression Violations

## Koshi Province

### Manhandle

**A.** Reporter with [kapurineews.com](http://kapurineews.com) Rashmi Pradhan was manhandled while reporting on January 1 in Sunsari.

According to reporter Pradhan, she was reporting using her mobile phone on the ongoing preparations for Dharan Day at a public school.

"I heard public dispute at the place and tried to report on it. But, Dharan Sub metropolitan executive member Bikash Bhati spoke foul on me and seized my mobile. Another person named Ratan Limbu also threatened of attack stating it was their personal issue", she shared.

Reporter Pradhan filed a complaint at the Area Police Office, Sunsari on January 2.

Evidently, it was a public issue and dispute occurred at public place, so it deserved to be reported.

On January 5, Bhati, however, apologized later to reporter Pradhan in the presence of police and promised not to repeat such behaviour with anyone in future.

**B.** Managing Director at Pakhribas FM and editor at Pakhribas weekly published from Shankhuwasabha, Prem Niraula, was manhandled while reporting on February 22.

Freedom Forum talked to journalist Niraula about the incident. Niraula said that he was manhandled while reporting at Chainpur-6 Mini Fair organized by the youth clubs. "I had published news about a memorandum submitted by a local Asal Sashan Club to the local administrative authority on the possible gambling practices in the fair. As before, we wanted to make the authority aware of such bad practices in the fair", he added.

On February 22, I went to the fair to take photos of people playing games but suddenly the organizers team came to me and pulled

my clothes saying why I published news in the weekly. They took away my jacket, sweater and mobile phone. They also chased me away while I was returning home", Niraula shared.

Niraula did not receive his belongings for long. He was seeking support from fellow journalists and Federation of Nepali Journalists, Sankhuwasabha, to get his mobile phone back.

FF also talked to the Area Police Office, Chainpur Inspector Baburam Karki. Inspector Karki however said that the case was not registered yet in the police station.

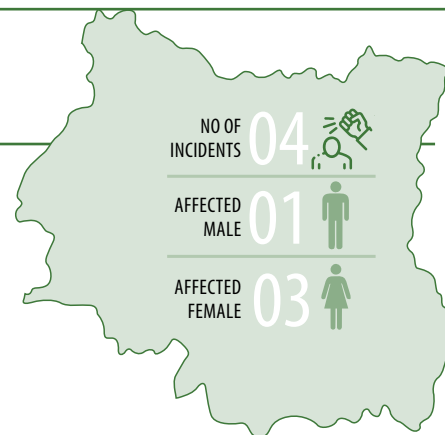
Later, FF's representative Bikram Niraula informed that the youths agreed to return back journalist's Niraula's mobile phone. The process was facilitated by FNJ, Sankhuwasabha chapter on February 26.

**C.** Correspondent at [shilapatra.com](http://shilapatra.com) Krishna Prasad Bhattarai was manhandled while reporting in Itahari Sub-Metropolitan City on March 14.

Freedom Forum talked to reporter Bhattarai about the incident. Bhattarai shared that he had reported a news story about malpractices of the municipality office a day before. The next day, he was manhandled while reporting for the follow-up story in the municipality. As he reached the site, he started taking video of dispute among municipality police and local transport driver.

"Meanwhile, around 14 officers encircled me and one of them pushed me and took away my mobile phone. I showed them my press identity card but they did not stop", reporter Bhattarai said, "They also told me to behave as a journalist. However, they gave me my mobile phone back after some time."

He went to the local police station to file a complaint under public offense but they refused to register my complaint, he said, adding that police had informed him that the metropolitan authority had also registered a counter-complaint on March 15 and that they would issue an arrest warrant soon.



"Though fellow journalists are discussing with the municipality on the incident, we have not reached any agreement yet", reporter Bhattarai informed.

### Threat

Editor at <https://www.ijalas.com/> Pradeep Pariyar received threat of attack for covering news on January 2 and 6 in Jhapa.

Talking to Freedom Forum, journalist Pariyar shared that Birtamod Chamber of Commerce and Industry's President Prakash Shiwakoti spoke abusively with Pariyar during his speech at a public program on January 6. Shiwakoti also said that journalist Pariyar wrote fake news about him and he has been spreading fake messages in media. Pariyar had published two news critical to Shiwakoti on the news portal a year ago.

"Recently, on January 2, my colleagues also informed me that Shiwakoti had threatened of attack upon me using his goons. I have shared about the incident with my colleagues and local police station", said journalist Pariyar.



# Madhesh Province

## Attack

Rautahat-based reporter for Madhyanha national daily Krishna Tiwari was attacked while reporting on February 6.

Reporter Tiwari shared with Freedom Forum that he was reporting on sugarcane farmers' complaint about the sugarcane mill owner's low pricing of their product. Tiwari was called by the farmers on the site to report. While the reporter started taking video of dispute among farmers and mill owner in the presence of Sugarcane Farmers Association's Chairperson, few people arrived and seized his camera. They shouted- why are you recording?

As Tiwari refused to delete the video, they hit Tiwari with sugarcane sticks. They not only damaged his camera but also thrashed him on floor and kicked him brutally. Senior Sub-Inspector Arun Kumar Singh rescued Tiwari from the incident and took him to a nearby clinic for treatment. Tiwari had bruises over his body and is undergoing treatment at Surya Hospital, Birgunj.

Area Police Office, Garuda's Deputy Superintendent of Police Om Prakash Khanal informed Freedom Forum that one of the attackers was arrested and kept in detention. "We are waiting for the victim's First Information Report to further investigate the case", he said.

## Misbehaviour

Reporter to the Moonlight Television's Madhesh Province bureau, Mewalal Yadav, was misbehaved while registering Right to Information application on February 9. The incident took place in Rautahat, Madhesh Province.

According to reporter Yadav, he went to the Provincial Hospital, Gaur to register his application, requesting information using RTI. Hospital's Medical Superintendent Murari Thakur and Management Committee Chair verbally abused the

reporter for requesting information at the hospital. They also denied registering the application first, said Yadav.

"However, the Information Officer registered my application and asked for 14 days' time to deliver the requested information after I told them that I was there also as a service seeker", informed reporter Yadav. Yadav has not received any information from the hospital. "The administration has not responded to my application yet", said Mahato on March 18.

## Arrest

Nepal Police arrested two youths for pasting pamphlets as a sign of protest at various places of Janakpurdham on March 13.

According to Freedom Forum's representative for Madhesh province, Rajan Singh, Pankaj Jha and Manish Purve were arrested for pasting doctored images of Prime Minister and Deputy Prime Minister. Police arrested them under National Penal Code 2017- Section 118 Prohibition of Indecent Conduct.

Representative Singh quoted the Police Chief for District Police Office, Dhanusha as saying they will present Jha and Purve at the court next day for extension of date for 10 more days for further investigation. Jha and Purve are in police custody since the day of arrest.

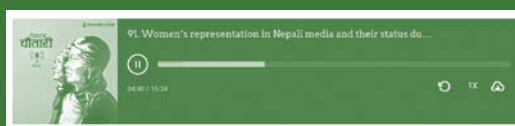
Meanwhile, police also arrested activists from Maitighar mandala, Kathmandu for protesting on March 15. Activists including members of a political party Bibeksheel Sajha Party were arrested while protesting against the government's decision to declare a public space Mandala as 'prohibited area'. They were, however, released a few hours later.

## Threat

Reporter at Radio Dhadkan FM 91.8 Shiv Kumar Mahato was issued threat for his reporting on February 28 in Sarlahi. Reporter Mahato shared that he had published a news story- Madhes Province's Health Minister Birendra Singh's brother Surendra Singh was found guilty in a corruption case on February 27- on the web portal of radio <https://dhadkanfm.com/>. "Following its publication, a person unanimously called me and threatened to break my legs if I write such news again. He also Mahato said that he was in contact with Tripathi before so he recognized Tripathi's voice on the phone call. Even the message on messenger further confirmed it.

He also informed FF that he had filed an application requesting security at the local administration office on February 29.

"The administration has not responded to my application yet", said Mahato on March 18. 🌿



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# Bagmati Province

## Obstruction

**A.** Reporters Chino Saru Magar and Arjun Shrestha were misbehaved while reporting in Dhading on February 3.

Reporter Magar is associated with pabilnews.com and Reporter Shrestha is associated with Naya patrika daily and nepalpath.com.

Reporter Shrestha said that he and fellow journalists reached the site of the opposition political party CPN-UML's district convention to report on the clash among cadres during a closed session.

The cadres obstructed journalists from entering the venue and abused them saying- 'You You-Tubers, leave journalism and YouTube. If you want, this is my mobile, take my video.'

"We could see the public and few journalists taking photos and videos without any obstruction in the place but they knowingly obstructed and pushed us forcefully out of the gate", shared reporter Shrestha.

**B.** Economic bureau chief at Himalaya Times national daily Lekhnath Pokharel was barred from reporting at Ministry of Finance on February 12. The ministry is located in Singha Durbar, Kathmandu.

Journalist Pokharel told Freedom Forum that after he entered into the program hall of the ministry to report on the half-yearly review of budget for the current fiscal year 2023/24, minister's security restricted him from entering and taking photo. The program was organized by the ministry.

"As I was about to enter the hall, personal security officer of the Finance Minister stopped me. Even after I informed him about news coverage, he asked me not to use camera and keep even the mobile phone outside. I showed him my press identity card. But, he didn't allow", shared journalist Pokharel.

**C.** Around 20 journalists were barred from reporting a function organized to celebrate the National Democracy Day in Kathmandu on February 19.

According to media reports, the photojournalists from different media were stopped at the

gate of Army Pavilion, Tundikhel.

Photojournalist from [www.setopati.com](http://www.setopati.com) Nabin Babu Gurung said that the security officers asked them to show invitation cards instead of their press cards. "Though we showed them our press identity cards issued by the Department of Information and Broadcasting, they did not let us enter reasoning order from the Home Ministry", informed journalist Gurung.

"Thereafter, we downed our cameras as a sign of protest for an hour, we returned without reporting", he added.

**D.** Editor at <https://www.jhilko.com/> Phanindra Phunyal's opinion article was removed immediately after publication from the web portal on March 14.

Talking to Freedom Forum, editor Phunyal shared that he authored an article critical to a ruling political party which was published on the portal on March 14. The article was deleted after an hour from the portal.

"I was neither informed nor asked about the deletion of article. As I am well-known about the ownership of the news portal, I was not surprised to see my article removed", Phunyal added, "I feel intimidated as this act has strictly violated my rights as a journalist and an editor."

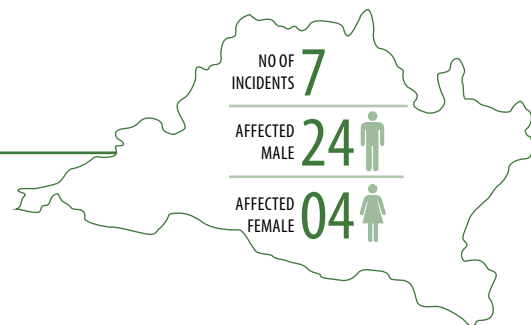
He further informed that the media had also forcefully dismissed him while he had not resigned as an editor yet.

## RTI Activist Harassed

A ward chairperson verbally denigrated right to information activist Shiva Prasad Adhikari for requesting information on February 20 in Kathmandu.

Activist Adhikari shared with Freedom Forum that he had filed an RTI application at Tarakeshwor Municipality, seeking information on ongoing development projects and their proposed budgets.

"I received incomplete and unclear information when I filed an RTI application at the municipality two months back. But, as I did not get any response, I filed an appeal at the National



Information Commission", he said.

On the day of appeal, Adhikari received a call from a ward chairperson of the municipality Shyam Krishna Sapkota asking to meet him. "As I met him, he asked abusively why I did not reach anti-graft body in case of any proof of aberration rather than requesting information again and again and troubling the government staffs", Adhikari shared.

## Brief Control

Executive Editor Tekman Shakya and reporter Sunita Gautam at [www.nepalsetimes.com](http://www.nepalsetimes.com) were taken under control for some hours while reporting on February 21. The incident took place in Kathmandu.

Editor Shakya shared with Freedom Forum that he and reporter Gautam were taking video of the people demonstrating at Department of Foreign Employment. The people were defrauded in course of foreign employment and protesting at the Department.

"Meanwhile, police officers came to me and asked why I was taking videos. As we showed them our press identity cards issued by the Department of Information and Broadcasting, one of the officers said that the card could be bought anywhere", said Shakya. "Thereafter, the officers forcefully took us under control for at least three hours in a nearby police station. They also seized our mobile phones and camera", he added.

Later, a senior police officer came and released them, according to Shakya.

## Attack

Chief editor at <https://pranmancha.com/> Padam Prasad Pokharel was brutally attacked while reporting in Kathmandu on February 28.

According to journalist Pokharel, he was reporting on a clash among street vendors and metropolitan police persons in Sundhara, Kathmandu. He was taking video of the police

baton charging the vendors to remove them from street.

Suddenly, a dozen of police persons started attacking Pokharel with their batons. Journalist Pokharel showed his identity card and asked not to attack him but they ignored him and threw his mobile, laptop, camera and other belongings. They also kicked him.

"One of my friends took me to a nearby National Trauma Hospital for treatment. There

were several bruises all over my body and my leg's ligament was torn. I was discharged from the hospital after treatment the other day", Pokharel informed.

Journalist Pokharel staged a protest against metropolitan police demanding justice along with fellow journalists after the incident. Responding to the protest, Kathmandu Metropolitan City (KMC) administration formed an investigation committee and informed Pokharel

that they will reveal their findings with journalist on March 22.

Thereafter, journalists stopped their protest. Later, Pokharel got his mobile phone back on March 18. National Human Rights Commission is following the case.

Lately, KMC office has been barring street vendors while implementing city laws and regulations. 🌱

## Gandaki Province

### ATTACK

Editor at eparinews.com, Bijay Rana, was attacked while reporting in Baglung on January 6.

According to Freedom Forum's representative from Gandaki Province, Rajan Pokhrel, police persons severely beat Rana while reporting at Baglung Festival. They also seized his mobile phone.

FF also talked to a fellow journalist Taranath Acharya. Journalist Acharya shared with Freedom Forum that on January 6, journalist Rana was taking video of policepersons baton-charging public after the festival was over at around 9:30 pm. Meanwhile, they tried to attack journalist Rana. However, Rana's display of identity card as a journalist minimized the hostility.

"The main police officer seized Rana's mobile

and beat him severely. Due to attack, Rana got deep bruises on his left hand and body parts. He received treatment in Dhaulagiri hospital and is under medication at his home on January 7. Police have not returned his mobile phone either. We demand action against the police officer assaulting journalist on duty", said journalist Acharya.

The police officer was later punished by the department and Rana got his mobile back on January 7.

### THREAT

Kaski-based reporter to Gorkhapatra National daily Fanindra Adhikari was issued threat for reporting on March 29.

Reporter Adhikari shared with Freedom Forum that he had written news about a case filed by Forest Division Office Kaski at the District Court



against 22 people who encroached upon the forest in Pumdibhumdi, Pokhara. The case was filed on March 26. One of the accused Mekh Bahadur Kshetri called on Adhikari's mobile and sent threatening messages on his mobile.

Kshetri not only threatened me but also called on my wife's mobile and accused me of writing news for money. He also threatened me of attack. 🌱

## Lumbini Province

No incident of press freedom violation was recorded this quarter in this province. It is welcome in deed that journalists and media houses did not face any obstruction, threat and intimidation. 🌱



## Karnali Province

No incident of press freedom violation was recorded this quarter in this province. It is welcome in deed that journalists and media houses did not face any obstruction, threat and intimidation. 🌿



## Sudurpaschim Province

### Journalists arrested on cybercrime charge released

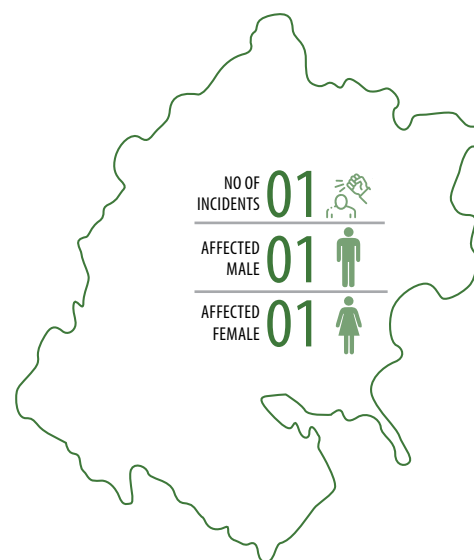
Nepal police arrested journalists Pushkar Bhatta and Aishwarya Kunwar for their news reporting on February 10 in Kanchanpur. Reporter Bhatta is associated with Mountain Television and Kunwar is reporter at Avash Kunj daily.

Freedom Forum's representative for the province, Min Bam, said that reporters duo were arrested for reporting on mismanagement in the District Police Office, Kanchanpur. "News about mismanagement at DPO were published in local media earlier," Bam added. Freedom Forum also talked to the Superintendent of Police Kamal Thapa about the case. SP Thapa

however informed FF that police arrested the reporters under Cybercrime charge citing Electronic Transaction Act 2007 as per the order from District Court. He added that the arrest warrant was issued after a female victim's complaint.

"As per complaint, news and social media posts of the reporters duo have defamed her personally and professionally. The case is under consideration at the district attorney office," he said. The journalists were released on February 14 owing to pressure from fellow journalists and civil society organizations. They were released late night on a condition that they will be in contact for further investigation.

The case was sub judice at district attorney's office which was later ended with mutual understanding and agreement among victim journalists and police officer. 🌿



## FF provides inputs to Ministry on Mass Communications Bill

Freedom Forum has submitted its inputs to the Ministry of Communications and Information Technology for the correction in the Mass Communications Bill (draft).

The Ministry is made aware on selecting one model- either communications authority or press registrar. Selecting one

would be practical for implementation later. It helps reduce unnecessary burden of new mechanism. Similarly, proper delineation of rights among three tiers of governments should be mentioned in relation to the regulation of broadcasting, print, online, journalist, which would be as per spirit of federalism. Its mention with addition of separate chapter is desirable. More clarity is

needed on community and public media. Accreditation of news agency, State's responsibility for journalists' physical safety have also been missed. FF also suggested to wipe out other redundancies and provisions in the bill to make media free. Labour Act should be clearly stated in Section 53. Old Radio Act, 2014 needs cancellation and two clauses added about it. 🌿

# South Asian RTI activists for fostering RTI regime

**T**he south Asian activists and campaigners of right to information (RTI) vowed to work together and called for broader collaboration among them so that RTI regime would be expanded.

A discussion Freedom Forum organized as part of the World Social Forum 2024 in Kathmandu on February 18 witnessed approximately 100 participants ranging from Information Commissioners, RTI activists, civil society representatives to general citizens, where the speakers underlined the need to strengthen south Asian networking to keep alive RTI movement and dismantle push back against RTI in the region.

Opening the session, FF's general secretary Sanjeeb Ghimire said RTI is a powerful tool of good governance. "Despite having RTI Act in most of the South Asian countries, its implementation is disappointing," he said, arguing non-compliance of obligations by the public agencies is a huge problem facing RTI. Collaboration at regional level can function as catalyst for effective implementation, according to him.

Executive Chief Taranath Dahal moderated the session. He introduced the panelists in the session. Panelists were noted RTI activists- Anjali Bhardwaj and Amrita Johri from India, Information Commissioner Kishali Pinto-Jayawardena and a social activist Sherine Xavier from Sri Lanka, civic activist Shaheen Anam from Bangladesh and Chief Information Commissioner Mahendra Man Gurung from Nepal.

Sharing that the south Asian countries were facing challenges on use of RTI, they hoped collaboration and network building in this sector could help build knowledge and experience for effective RTI campaign. They viewed expansion of RTI regime was imperative to hold authorities accountable and to guarantee people's participation in governance and decision-making.

Prominent RTI activist from India, Anjali Bhardwaj, said, "As long as citizens are deprived of their access to information, democracy does not function well." She, shared her experience of working for the



rights to people in slum in India. The marginalized communities, who faced severe problems in India, were ensured rights with the use of RTI, Bhardwaj informed.

Also a Co-convenor of RTI campaign in India, Bhardwaj, added that RTI is effective to hold public officials accountable and expose corruption. But its implementation has been weakened in the name of data protection after recent amendment of RTI law, she regretted.

Executive Director at Manusher Jonno Foundation of Bangladesh, Shaheen Anam, expressed worry over declining number of RTI applications in Bangladesh, she added, "Currently, information commissioner's appointment process has raised questions on autonomy of the commission. Hence, all sides' cooperation is expected to reinforce RTI regime in south Asia."

Similarly, Information Commissioner of Sri Lanka, Kishali Pinto Jayawardena, shared that RTI Act was brought after long struggle in Sri Lanka and informed that the Information Commission had issued thousands of orders in the past seven years to the government. Data Protection Act is a challenge before RTI in Sri Lanka, its implementation is also under threat, according to her.

However, Executive Director at The Social Architects in Sri Lanka, Sherine Xavier, blamed that RTI campaign was still an elite movement in Sri Lanka. RTI movement is yet to reach the vulnerable people. Culture of secrecy is entrenched in Sri Lanka that is weakening RTI enforcement. Civil society could play role to

popularize RTI in south Asia, she suggested.

Similarly, Chief Information Commissioner at National Information Commission, Mahendra Man Gurung, appreciated FF's initiation to this regard and briefly highlighted how RTI evolved in Nepal. He stressed meaningful participation of people in governance, for which RTI is essential. He argued that some of the challenges of RTI in Nepal are – high RTI illiteracy, non-compliance to RTI, non-cooperation from bureaucracy, reluctance of political parties, and the digital manipulation of information.

Working committee member of the National Campaign for People's RTI from India, Amrita Johri, said RTI deeply reflects the health of democracy. "Push back against RTI in the region could be taken as opportunity to work together and keep RTI alive. "Rejecting people's RTI appeal over minor error by information commissioner in India is a worrying trend," she shared.

Freedom Forum Executive Chief Taranath Dahal commented that RTI is lifeline of democracy. "The RTI movement must not be weakened, but reinforced to ensure participatory democracy," he said, expecting that the session would foster regional collaboration and national initiatives to take forward the RTI movements so that CSOs would contribute to good governance.

The WSF 2024 was held in Kathmandu from February 15 to 19, where thousands of organizations from over 90 countries had attended. 🌱



# UN Cybercrime Convention must not be tool to undermine int'l human rights standards

February 8, 2024  
Your Excellency,

Our organizations – spanning civil society, industry, and the technical community – wish to urgently draw your attention to critical flaws in the latest draft of the UN cybercrime treaty. While we have diverse perspectives and often do not agree on a range of other policy issues, we share profound concerns over these critical shortcomings. As members of the multistakeholder community we could only support developing a treaty that would effectively address cybercrime and foster international cooperation in accordance with international human rights law and the rule of law in general. While we understand that the text is an attempt to synthesize the views of negotiating states, the result is a draft treaty that would make cyberspace less secure for everyone. The organizations signing this letter, who come from across the multistakeholder community, are deeply concerned by the adoption of such a flawed treaty without major changes.

Serious flaws of the latest draft include an unclear and overly broad scope, vague criminalization provisions and definitions, lack of meaningful human rights safeguards and effective gender mainstreaming, missing protections for good-faith cybersecurity researchers and others acting in the public interest, and overly broad provisions for real-time interception of content and traffic data that go far beyond what can reasonably be justified to fight cybercrime.

Particularly concerning is that the draft treaty authorizes states to conduct intrusive cross-border data collection without prior

judicial authorization, without oversight, and in secrecy. Service providers would be unable to notify users or inform anyone about data collection being ordered. Civil society and individuals would not know when their data is being accessed, making it impossible for them to challenge arbitrary requests and protect their privacy. Given these flaws, this process is at real risk of producing an instrument that can be used to conduct broad data collection on a global scale under the guise of fighting cybercrime.

If adopted without major changes – changes we have consistently advocated for throughout the process – the risks of this treaty far outweigh its potential benefits. Notably, some elements of the treaty do not include any human rights safeguards at all, while other provisions would allow states considerable latitude to implement these safeguards. Allowing individual states to arbitrarily define what activities fall under the treaty's scope would also inevitably lead to human rights violations and criminalize legitimate activity.

Individuals, including political dissidents, journalists, human rights defenders, and those at risk of discrimination on the basis of their personal characteristics would face the risk of being subjected to investigations leveraging the procedural measures of this proposed treaty without notice, potentially resulting in extradition and prosecution for exercising fundamental human rights while using digital technology. Such an outcome – facilitated by an instrument adopted by the UN General Assembly – would damage UN credibility and legitimize state behavior that undermines the rule of law while eroding respect for human rights.

To make matters worse, the proposed treaty would weaken global cybersecurity and make both individuals and institutions less safe and more vulnerable to cybercrime, thereby undermining its very purpose. Expansive concepts of what activity may be subject to this treaty – and its significant procedural powers – create an unpredictable legal environment that will discourage critical security research. It may also subject good-faith security researchers, IT professionals, and journalists to criminal prosecution for cybersecurity work that keeps us all safer. The resulting environment would make it easier for malicious actors to create and exploit weaknesses in the digital ecosystem. This could, in turn, lead to an increase in the common harms suffered in connection with cyberattacks, such as unauthorized disclosure of personal information and the disruption of access to important networks and systems, including critical infrastructure.

Furthermore, the increased risk of this treaty facilitating broad government data collection without strong privacy, due process and human rights safeguards may deter individuals and groups from exercising their rights to free speech and expression. This climate of self-censorship will have a negative effect on democratic discourse and civic participation. In essence, instead of serving one of its goals, the protection of private personal information from cybercrime, the treaty would paradoxically increase the risk of such violations and undermine human rights in the process.

A UN treaty that authorizes broad government data collection, creates an uncertain legal landscape for legitimate cybersecurity research, and facilitates greater online censorship, without sufficient guardrails as a global standard is deeply concerning. Ultimately, such a treaty would significantly erode trust and cooperation among all stakeholders, whose joint efforts are essential to address the growing global scourge of cybercrime.

Given the broad-based and fundamental concerns from stakeholders, we urge governments to consider withholding support for the treaty in its current incarnation.

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Signatories supporting the letter:

- Access Now
- Afghanistan Journalists Center (AFJC) (Afghanistan)
- Albanian Media Institute
- ARTICLE 19
- Association for Progressive Communications (APC)
- Cartoonists Rights Network
- Committee to Protect Journalists (CPJ)
- CyberPeace Institute (CPI)
- Cybersecurity Tech Accord
- Derechos Digitales – América Latina
- Douwe Korff, Emeritus Professor of International Law, London Metropolitan University
- Državljan D / Citizen D
- Electronic Frontier Foundation (EFF)
- European Center for Not-for-Profit Law (ECNL)
- European Digital Rights (EDRi)
- epicenter.works – for digital rights
- Föreningen för Digitala Fri- och Rättigheter (DFRI) – Sweden
- Free Media Movement – Sri Lanka
- Freedom Forum (Nepal)
- Global Partners Digital (GPD)
- Human Rights Watch (HRW)
- IFOX/Initiative for Freedom of Expression-Turkey
- International Chamber of Commerce (ICC)
- International Association of Women in Radio and Television (IAWRT) Kenya
- International Press Institute (IPI)
- IT-Pol Denmark
- Media Watch Bangladesh
- Media Institute of Southern Africa (MISA) Mozambique
- Mizzima (Global/Myanmar)
- OpenMedia (Canada/United States)
- Palestinian Center for Development and Media Freedoms (MADA)
- PEN International
- Politiscope
- Privacy International
- Red en Defensa de los Derechos Digitales (R3D)
- Reporters Without Borders (RSF)
- Somali Journalists Syndicate
- South East Europe Media Organisation (SEEMO)
- TechMagTV
- The Alliance of Independent Journalists
- The Syrian Center for Media and Freedom of Expression (SCM)
- United States Council for International Business (USCIB)
- Vigilance for Democracy and the Civic State
- Vrijschrift.org
- Zimbabwe National Editors Forum
- 7amleh – The Arab Center for the Advancement of Social media 🌱

## FF representatives called for province network on FoE

A virtual meeting was organized January 12, 2024 to discuss among the province representatives on the activities to be conducted in provinces to build Freedom of Expression network for free and safe civic space. It was also a reconnection and refresher meeting with the representatives on their contribution to the province network.

FF Executive Chief Taranath Dahal described in length the province level safety mechanism/network of National Human Rights Commission guided by Directive relating to the protection and promotion of freedom of expression. The directive was (being) amended and NHRC's decision for its implementation awaited. Soon after NHRC makes its final decision its province level safety mechanism will also come into function. This mechanism involves participation from both the government and civil society sectors. Thus, FF aims to actively involve in the mechanism through its province representatives. Currently, FF is working in collaboration with NHRC to bring this mechanism into effect where FF will work as a facilitator to connect government bodies and civil society organizations- a multistakeholder approach in deed- for

press freedom and freedom of expression.

This network will be important to keep an eye upon activities related to journalists' safety and freedom of expression. It will also actively advocate and lobby for FoE friendly laws and policies in the provinces. Regular meetings will be held, joint investigation will be made on sensitive cases.

Hence, FF as a pioneer organization working for press freedom and freedom of expression expects its participation in the network through the province representatives, said Mr. Dahal.

On the occasion, Bikram Niraula, Koshi Province Representative, welcomed the initiative, expressing belief that it would help make FoE protection efforts more participatory. He also sought FF suggestions on Mass Communication Bill at Koshi Province Assembly.

Madhes Province's Representative, Rajan Singh, said that the concept of forming FoE network in the province was praiseworthy as it will make the representatives' tasks on the issues surrounding foe more convenient and result-oriented.

"Earlier we used to collect data on FoE and press freedom individually, which would now

be a shared work," Rajan Upadhyaya, Gandaki Province Representative said, adding it will be important for us to advocate upon emerging issues including FoE on cyber space in the provinces in future.

Lumbini Province Representative Sudeep Gautam also shared excitement that it would be good collaboration with human rights commission's province chapter and human rights defenders to protect FoE in the province. He said that while working closely with the constitutional bodies like NHRC, it will not only whet our skills but also continue constant vigil upon on anti-FoE elements.

Karnali Province's Representative Laxmi Bhandari shared her experience of working with similar human rights defenders network in the province. "As I have been working with such network for two years, it will be easier for me to form a new network dedicated towards freedom of expression advocacy in the province in coordination with the NHRC province chapter." 🌱

# FoE warrants respect in Cyber-related laws

**F**reedom Forum organized a roundtable discussion on “Freedom of Expression Issues and Implementation of National Cyber Security Policy” in Kathmandu on February 4 in a bid to garner information from the government and stakeholders especially on the FoE issues and concerns surrounding cyberspace.

On the occasion, FF Executive Chief Taranath Dahal initiated the discussion, shedding light on objectives of the event. He spoke on the delayed policy making process in Nepal.

“As the winter session of the federal parliament is to begin next day, the discussion is held to build shared perspective on FoE issues on cyber,” he said, reminding that government’s previous efforts as on information technology bill had failed to ensure FoE. Thus, activism and critical discussion on the issue is pertinent, he underlined.

Following the context setting, Joint Secretary at Ministry of Communications and Information Technology Netra Prasad Subedi informed the participants about pending bills at the parliament and the bills in drafting process. While Media Council Bill and National Mass Communication Bill are in priority for discussion, Information Technology and Cyber Security bill is also being drafted, he said, adding that Social Media Regulation Bill is most challenging at present to build unified stand, he said.

“We believe the Social Media Regulation Bill should be contextual so we expect feedbacks on it,” Joint Secretary Subedi marked.

Chairman at Nepal Digital Leads, Ananda Raj Khanal, expressed dissatisfaction towards policy drafting process. For drafting policy, one should understand its ecosystem and components very well, platform analysis is also important. “I would suggest to merge IT and Cybercrime Bill and start from ‘zero’ by addressing concerns from stakeholders,” Khanal said.

Tanka Aryal from Digital Rights Nepal presented a brief review of the National Cyber Security Policy and Social Media Regulation Bill (draft). “Thirty-five civil society organizations jointly submitted a memorandum on the draft bill to the Ministry. The bill aims at regulating contents and FoE online where there is our strong



reservation. It is okay to regulate platforms but while regulating contents citizen’s right to FoE must not be curtailed,” he viewed. The bill also contains criminalizing provisions which are already addressed by other laws so this may be dual threat to citizens, Aryal argued.

FF Chief Executive Dahal chipped in that criminalizing FoE practice using state power is a major of serious concern in the draft bill. It is detrimental to democracy.

Asserting to Dahal’s comment, Center for Media Research’s Ujjwal Acharya claimed law making process in Nepal is anecdotal, it is not evidence-based. “I simply urge the government to at least address our concerns and recommendations in the bills during discussion sessions to make us accountable and responsible in policy making process. Also please let me know which provision in the bills show state’s accountability”, Acharya remarked.

“We are backward in policy making process, policy-level experts should map the legislative process with wider stakeholders’ consultation. Introspection is required in law making process- whether the concerned law is required in developing nation like Nepal”, said Chairperson at Media Action Nepal Laxman Datt Pant, “I would say principally the Social Media Regulation Bill should be nullified.”

Moreover, Anujraj Dhungel from [www.technologykhabar.com](http://www.technologykhabar.com) added, “While the Nepal Telecommunication Authority is regulating online contents these days, the government is

preparing the draft bill to amend NTA Act but who is drafting it and how is yet to be known.”

“One should keep in mind the international commitments on FoE and human rights while drafting bills, UNESCO’s guidelines for governance of digital platforms is also a good reference”, said Prabesh Subedi, President at Digital Media Foundation. He further added that though TikTok is banned in Nepal, at least 40% to 50% users are active invisibly. “So, how will the state regulate this platform”, he questioned. Thus, the government should be open in policy making process.

Noted investigative journalist and columnist Namrata Sharma said that the government, corporate sector and concerned authorities should be held accountable in policy making process. The process should also address concerns of victims, survivors and vulnerable groups.

Similarly, Chairperson at NEFEJ Roshani Adhikari stressed that policy level experts should be capable and well acquainted to contemporary changes.

Advocate Ram Maya Lamichhane asked the authorities to clearly define hate speech while preparing bills. Its definition is ambiguous.

Chairperson at Jagaran Media Nepal Samjhana Pokharel opined that instead of drafting for long-term, policies should be drafted in a phase-wise manner to address changing contexts.

Journalist Rajan Kuikel said that recent moves of the government from banning TikTok to drafting cyber security and social media regulation bills depicts authoritarianism which kills civic freedoms.

FoE scholar Dr. Narayan Kandel shared that in western principle the provisions which do not have serious harm should not restrict citizen's FoE. Gatekeeper principle in law making should be adopted in Nepal too. Krishna Sapkota, Chairperson of VDRC, mentioned that law making process should be multi-disciplinary including needs of vulnerable and marginalized population. Pre-legislative scrutiny is equally important where CSO's responsibility should also be more structured.

Technology expert Chiranjibi Adhikari complained that the government brings policies at last hour lacking multi-stakeholders' consultation, resulting into ignorance to concerns and recommendations. Under Secretary at Federal Parliament Secretariat, Numaraj Khanal, shared practices of policy making and policy discussion processes in the parliament. He expressed concern over lack of CSO participation in pre-legislation period. Similarly, he said that while the government prepares policies, implementation depends upon bureaucracy. Sometimes, a law may have one spirit and its

implementation may have different effect, which brings conflict, he underscored. Secretary at the Federal Parliament, Nirmala Devi Lamichhance, seconded Khanal that wider multi-stakeholders' participation is essential in the whole policy making process- from pre-legislative to legislative to post-legislative.

Summarizing all the participants' voices, media educator Dr. Shree Ram Poudel commented that Nepal adopts reverse trend of policy making process from constitution to policies. Analog mindset of lawmakers should be changed to identify current policy standards, need of hour and public mandate. The emerging policies should be in line with new evolving dimensions.

FF Chief Executive Dahal further argued that FF's major concern is that MoCIT should develop standard format for protection of FoE in all the bills in line with Nepal's Constitution Articles 17, 19 and ICCPR principles.

After listening to all the participants' comments and feedbacks on the bills, Information Ministry Spokesperson Subedi called the floor to provide appropriate suggestion to the ministry in future so as to make the policy making process more effective. He also expressed commitment to increase stakeholders' consultation in the legislative process.

Concluding the discussion, FF's Chairperson Hari Binod Adhikari reminded the government that inclusive and participatory law making process is the essence of democracy. The program was attended by representatives from MoCIT, Federal parliament secretariat, civil society organizations, media educators, advocates, FoE experts, journalists and researchers. Total number of participants were 41 including 12 females. 🌱



## Performance audit on health insurance program

Citizen auditors (CPAs) from Freedom Forum (FF) successfully participated on audit of "Status of Implementation of Health Insurance Program" as part of citizen participation in performance audit for FY 2080/81. It was initiated after the agreement between Freedom Forum and Office of the Auditor General (OAG) in January this year. The audit was conducted in accordance with the work plan and questionnaire provided by the OAG. The questionnaire focused on the services provided by the concerned hospitals and primary health centers and service recipients' experience. It sought answers regarding the status of the services provided, difficulties encountered, and the facilities provided. Even the problems faced by the insurance service providing hospitals and primary health centers were incorporated by the study. It was conducted at 13 health centers and hospitals located in Kathmandu, Lalitpur and Bhaktapur districts. The major health facilities included in the audit survey are Bir Hospital, TU Teaching Hospital, Bhaktapur Cancer Hospital, National Trauma Center, Maternity Hospital, Patan Hospital and BP Eye Hospital. Likewise, municipal hospitals of Gokarneshwor, Madhyapur Thimi, Mulpani and Kritipur as well as public health centers of Badegaun and Lubhu of Lalitpur were included in the survey. A total of 145 feedback forms were collected and submitted along with the observation report to the OAG. Four auditors- 3 females and 1 male- participated in this study on behalf of Freedom Forum- Subash Dahal, Nanu Maiya Khadka, Aruna Adhikari, and Manju Dahal. Freedom Forum is continuously engaged and involved in performance audit as part of its advocacy for promoting Citizen's Participation in Audit. 🌱

## Journalist safety networks in seven provinces

**S**afety network/mechanisms for protection and promotion of free expression and journalists' safety have been formed in provinces in Nepal. Freedom Forum mobilized its province representatives to institute the multi-stakeholder network to make FoE protection and journalists' safety a shared responsibility

The network/mechanism is a 7-member team formed in each province comprising

representatives of National Human Rights Commission (NHRC) Province Office, Federation of Nepali Journalists (FNJ) Province chapter, High Court Bar Association, Human Rights Cell at Nepal Police in province, Office of the Chief Minister and Council of Ministers, Province Attorney Office, and Freedom Forum Province representatives.

Freedom Forum provided coordination and logistics support during the formation of the

networks. The networks for having NHRC as the coordinator of the province mechanism, where FF facilitates the meetings. The networks will hold regular meetings to discuss contemporary issues on journalists' safety, media rights, freedom of expression online and offline. It will also function as quick response team to rescue needy journalists, monitor and investigate incidents of free expression violations in the provinces. 🌱



# Self disclosure update

<b>Type and Nature of Organization</b>	NGO working for Democracy, Right to Information, Freedom of Expression, Fiscal Transparency and Open Data, Media Policy and Law, Internet Freedom		
<b>Legal Status</b>	Registered at District Administration Office Kathmandu. DAO Registration Number: 127/062/63, SWC Affiliation Number: 18518		
<b>Location</b>	Adarsa Marga, Prasuti Griha Road, Thapathali, Kathmandu		
<b>Staffs and Roles</b>	<b>Taranath Dahal:</b> Executive Chief, coordinates overall organizational and administrative affairs		
	<b>Aruna Adhikari:</b> Finance and Administration Officer, looks after accounting and administrative affairs and performs responsibilities as the Information Officer.		
	<b>Nanu Maiya Khadka:</b> Media Monitoring Officer, responsible for monitoring updates on freedom of expression, media rights and right to information		
	<b>Aditya Dahal:</b> RTI App and website operator		
	<b>Manju Dahal:</b> Front Desk Assistant, <b>Ganga Kumari Gurung:</b> Office Assistant		
<b>Consultant/Researchers</b>	<b>Krishna Sapkota, Narayan Ghimire, Subash Dahal</b>		
<b>Ongoing Project Information</b>	<b>Project Name</b>	<b>Supporting Agency</b>	<b>Date of start of project</b>
	Open Budget Survey	International Budget Partnership (IBP)	1st January 2023
	To strengthen free and safe digital civic space for protection and promotion of freedom of expression	IFEX	1st November 2023
<b>Services and Activities</b>	Research, capacity development and policy advocacy including media monitoring, trainings on RTI and journalism, meetings, workshops, seminars and other campaigns to promote issues of democracy, RTI, FoE, fiscal transparency, human rights, local governance. It also provides legal aid to journalists, media and information seekers.		
<b>Responsible Authority</b>	<b>Chairperson:</b> Hari Binod Adhikari, <b>Executive Chief:</b> Tara Nath Dahal		
<b>Decision Making Process</b>	<b>General Assembly:</b> Making policies, rules and regulations of organization <b>Executive committee:</b> Formulation of action plans as per constitution of organization, rules and regulation <b>Management team:</b> Running projects and daily operational affairs and reporting timely to the Executive Committee.		
<b>Past/Current Activities</b>	Please follow the link: <a href="http://freedomforum.org.np/content/category/activities/">http://freedomforum.org.np/content/category/activities/</a>		
<b>Information Officer</b>	Aruna Adhikari		
<b>Financial Information</b>	Freedom Forum received grants amounting <b>Rs. 514894/32 (January to March 2024)</b>		
<b>Official Website</b>	<a href="http://www.freedomforum.org.np">www.freedomforum.org.np</a>		
<b>Publications of Freedom Forum</b>	Freedom Forum has over 50 Publications (printed) Please Follow the Link: <a href="http://freedomforum.org.np/content/publications/">http://freedomforum.org.np/content/publications/</a>		
<b>Annual Report</b>	<a href="http://freedomforum.org.np/content/publications/reports/annual-reports/">http://freedomforum.org.np/content/publications/reports/annual-reports/</a>		
<b>Information Dissemination</b>	Websites- <a href="http://www.freedomforum.org.np/">http://www.freedomforum.org.np/</a> ; <a href="http://www.nepalpressfreedom.org">www.nepalpressfreedom.org</a> , and Newsletter-Free Expression		

## FF in International Forum

A. Freedom Forum's Executive Chief Tara Nath Dahal participated in a four days long discourse, 'ARISE Retreat' among global south civil society leaders on Platform Accountability and responsive internet governance in Rift Valley, Kenya from January 22-25, 2024. The program was mainly focused on how the big tech companies and digital platforms can be made accountable towards their users/ common

citizens. The program was helpful to share ideas among civil society leaders and to plan for future strategies of Global South Civil Society. In the retreat, leaders also declared 'ARISE' community for vibrant civil society global movement for Platform Accountability.

B. Executive Chief Mr. Dahal participated in a Regional Conference for regional network to discuss on current trends and techniques

in journalism in Negombo from February 13-17, 2024. The conference was organized by Sri Lanka Press Institute in partnership with Free Press Unlimited (FPU), Netherlands. In the conference, participants built a regional network for collaborative action on safety of journalists in Asia. The network members also committed to contribute in their respective field of expertise towards building safe atmosphere for journalists. 🌱

# UN Cybercrime Convention still deeply flawed after seven sessions

"Even after seven sessions of negotiations, there is still no consensus on the basic scope of the Convention or its safeguards against misuse" - ARTICLE 19

This statement was originally published on [article19.org](http://article19.org) on 15 March 2024.

In our most recent comments concerning the UN Cybercrime Convention, ARTICLE 19 continues to express deep concern about the latest Draft Text produced by the UN Ad Hoc Committee following the concluding session of the negotiations in New York in February 2024. Even after seven sessions of negotiations, there is still no consensus on the basic scope of the Convention or its safeguards against misuse. ARTICLE 19 argues that the failure of the process to sufficiently provide for human rights safeguards is fatal for the Convention's future as an instrument that can be trusted to comply with international freedom of expression standards. We urge the States negotiating the Convention to reject the Draft and to oppose calls to extend the Committee's mandate.

Since the Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes (the Convention) was first proposed, ARTICLE 19 has been sceptical of the need for such a Convention. Seven negotiating sessions later, we remain gravely concerned about the fundamental vagueness of the Convention's scope, numerous content-based offences, and underlying conflict of the Convention's plain text with human rights standards. Lack of consensus on foundational provisions on the scope of criminalisation and international coopera-

tion has led to the suspension of the session. The continuation of negotiations is now dependent on a proposal to the UN General Assembly and available resources.

ARTICLE 19 once again commented on key issues in the most recent Draft Text. Glaringly, the Convention fails to sufficiently incorporate broadly-supported human rights protections or due process safeguards. Judicial review, effective remedies, or international oversight, for example, are nowhere required – no matter how far-reaching or severe the underlying law enforcement powers or actions, and even though cybercrime laws are regularly abused by States to persecute vulnerable groups based on their expression, beliefs, religion, or identity.

In Article 35, which covers general principles of international cooperation, the Convention also provides for the 'collecting, obtaining, preserving and sharing of evidence' of 'any serious crime', defined by the Draft Text as any offence punishable by four or more years' imprisonment. To use this blunt classification — which measures 'seriousness' by the severity of a State's penalties rather than by any objective determination — to their advantage, States need only to create a domestic offence with a heightened penalty to be able to 'legitimately' trigger the serious crimes provision and the use of heightened procedural powers. The Convention's provisions similarly allow for broad cross-border surveillance and police powers, unconstrained by any explicit data protection safeguards.

Though we have raised this concern previously, the Draft Text also still contains numerous content-based offences, some of which are



Photo Illustration by Pavlo Gonchar/SOPA Images/LightRocket via Getty Images

cyber-enabled rather than cyber-dependent, placing them firmly outside the scope of a cybercrime treaty. We also note that criminal laws prohibiting dissemination of content are by definition restrictions on freedom of expression, so must be analysed according to the tripartite test under Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR), which stipulates that restrictions must be provided for by law and be necessary and proportionate. The content-based offences in the Convention fail this test and risk criminalising those — like survivors of online gender-based violence and children — they are purported to help.

ARTICLE 19 has repeatedly highlighted the danger of the potential for abuse of such a Convention, and that it risks perpetuating many of the repeated and existing rights violations we have seen in 'cybercrime' laws around the world. We urge States to reconsider the value and necessity of continuing to invest in a process that has had more than enough opportunities to achieve consensus and failed. 🌱

Source: <https://ifex.org/un-cybercrime-convention-still-deeply-flawed-after-seven-sessions/>



Freedom Forum is an independent, non-governmental and not-for-profit civil society organization working for the cause of social accountability, democracy and human rights focused on press freedom, freedom of expression and right to information in Nepal. Incepted in 2005, Freedom Forum has emerged as a prominent national organization in promoting access to information and freedom of expression through dialogue, research, training, public advocacy and campaign and programme implementation. Currently, the organization is working on the issues of public finance management, budget transparency, open data and aid governance, political and parliamentary accountability, freedom of expression online and open government partnership (OGP) based on its on-hand experience and learning.

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