



# FreeExpression

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A NEWSLETTER OF FREEDOM FORUM

## National Broadcasting Regulation, 2052

# Amendment intended to curtail free speech

**F**reedom Forum and rights defenders expressed severe concern over the amendment of 10 Rules of the National Broadcasting Regulation, 2052. They expressed such concern during a discussion organized jointly by Freedom Forum and Digital Rights Nepal in Kathmandu on March 7.

During the event, Executive Chief at FF, Taranath Dahal, welcomed the participants and spoke about the faulty provisions in the amendment. He said the Regulation had gone beyond the provisions of National Broadcasting Act. It therefore has no legitimacy at all. It has further created confusion whether it wants to regulate internet platform or broadcasting. “How can a Regulation explain various things without any base in Act,” he wondered, adding that it had intended to suppress citizen’s right to free expression online.

With the amendment, the government has made it mandatory for the internet-based broadcasting (videos) to get license, which would charge Rs half million, he shared. In terms of FoE, Rule 2 (C.6.) of the Regulation is highly problematic, Dahal observed.

However, the categorization of age for content viewing is positive side of the amendment, Dahal viewed. Serious lack of consultation before amending Regulation questions political and bureaucratic accountability.

Similarly, Chairperson of Digital Rights Nepal, Santosh Sigdel, said the amendment invited confusion and criticism due to vague wording.



“The objective of the amendment – to generate revenue, or to suppress internet users’ views or to regulate content is not clear,” he viewed, and argued it could be misused at any time to suppress free speech. Anything that comes under Regulation must be defined and determined by Act, which it lacked, according to him.

Sigdel also viewed there was only partial grievance mechanism. The provision of approval for franchise is also a kind of pre-censorship.

Advocate Sanjeeb Ghimire wondered why the Regulation was speaking on substantive law. The amendment of the regulation (related to FoE) is therefore subject to repealing. Free speech on internet cannot be licensed, he underscored.

Mass Communications and Journalism Teacher at Tribhuvan University, Prakash Acharya, said although there were problems in contents on online space, which could be treated with other

laws, licensing for free speech (videos online) is objectionable.

Other journalists and right defenders affiliated to online media spoke against the licensing provision to the ‘online television’.

Rule 2 (C.6.) mentions ‘Online Television (Internet TV)’ should be understood as the audiovisual materials produced by oneself and broadcast via internet.

Similarly, Rule 2 (C. 4.) mentions OTT, and Rule 2 (C. 5.) the VOD. As per the amended provision, ‘VOD’ should be understood as the scheme that provides programs, except television, to the consumers as per their demand by the firm that is licensed by the Ministry.

In the OTT, media streaming on the digital platform via internet is mentioned. For this, the use of DTH cable or satellite television should not be included, it adds. 🌱

## Message from Executive Chief

# Media watch for electoral integrity

With the May 13 local level elections round the corner, the political parties have intensified their campaigns across the country. Discussion and consultations are whetted for political grouping and alliance in a bid to secure victory in the election. It is the second election at local level following the enforcement of federalism with three-tiers of government in Nepal.

Election is not only a mega national event to elect new representatives but a moment of observation on political activities - whether political parties abide by the democratic principles while electioneering- from publicity to voting and result is matter of utmost public interest. Only free, fair and credible elections can pave strong foundation for functional democracy. Therefore, the activities of the political parties and government including constitutional body- Election Commission (EC)- warrant attention and observation. Fair competition among political parties and impartial role of EC are equally imperative to make elections acceptable and reliable. Their activities need transparency and accountability. In this connection, one of the pressing issues is the hefty election spending. Although the EC has fixed ceiling of spending, the election extravaganza clearly questions political financing. The non-transparent income of political parties on the run up to election evidently creates doubt over parties' electoral behavior. Once the undue influence and undisclosed funding impacts activities of political parties, it breeds manipulative thoughts and activities, which ultimately has bearing on electoral integrity.

To this, active role of civil society and media is expected. However, the media itself has not recovered fully from the effect of COVID-19. Many media houses which had curtailed their presence eg by reducing print pages, closing special editions, laying off staffs - have reinstated only some of them and full-fledged restoration of media activities yet to be realized. The closure of media during the COVID-19 had badly affected journalists. Both the media houses and journalists witnessed financial crisis. Especially the media run on small scale burdened the brunt. Many important issues were left unreported and underreported due to massive layoff of journalists at media houses. It also triggered journalists resorting to digital media. Currently, there are more than 3,000 online news portals running from across the country. The undue competition has dented news credibility. Although the reach of digital media is wider and can be run on comparatively lower investment, the migration of advertisement to digital space has further affected the sustainability of mainstream media. Another problem surrounding digital sphere is spread of fake news: misinformation and disinformation. The spread of fake news has not only drowned visibility of credible media, but also created chaos among public awareness and information regime. Citizens are deprived of right information at a time when the political and electoral activities have reached crescendo in the country. Spread of credible news must be amplified in order to reduce people's access to misinformation and propaganda.

Another problem media persons are facing for long is non-implementation of Working Journalists' Act. They have been denied the rights ensured by the Working Journalists Act. Even the minimum wage is not ensured to the working journalists, which may affect their professionalism. In a study report Freedom Forum prepared after the first wave of COVID-19, one of the serious points raised was- financially able media houses took the pandemic as excuse and exploited them. This problem is still continued, resulting into financial and psychological stress on the working journalists. Moreover, the role of free media was undermined by the State and media owners. Many journalists lost lives to coronavirus and several got infected, but the relief to them eluded.

Despite the role working journalists played in difficult times, the intimidation- death threats, attack, obstruction, verbal abuse, digital harassment-on them is continuous. As the political activities have been intensified on the run up to election, chances of further intimidation are high. So, active monitoring on journalists' safety during election is essential. Efforts from any side to silence free press can not be imagined.

The directives issued by the ministries from time and again in the name of security and social harmony are so vague and overbroad that they are intended to muzzle free speech. They have flatly ignored the provision of 'full press freedom' mentioned in preamble of Constitution, 2015 itself. Similarly, legal hassles are continued unabated. The harassment of journalists and citizens with the mis/use of Electronic Transaction Act has not stopped. Absence of legal reform is another worry.

Freedom Forum is however unfazed. It's untiring efforts are for creating atmosphere conducive to free speech, enabling professional journalism and free press and respecting their rights. Present is the time which seeks urgency of free press, and safe and active media persons to make election meaningful and overall state system accountable and democratic principles and values adhered. 🌱

- Tara Nath Dahal



## Nepali journo Pande jailed in Dubai with alleged collusion of Nepali Embassy

**A** Nepali journalist Umakant Pande is in police custody for one and a half month in Dubai, UAE. Pande was arrested on February 15, 2022 for his social media post critical to the Embassy of Nepal in UAE.

Pande, originally from Arghakhanchi district of Nepal and now working and doing journalism in UAE for some years, was not only imprisoned but also handed over the punishment of imminent confiscation of properties, deportation and fine.

According to Pande's friend in Nepal, Jeeban Bhandari, and Pande's family (which is in UAE itself) sources, he had made a social media post from Nepal about the problems regarding visit visas including anomalies inside the Nepal Embassy in UAE on January 7, 2022. Then, on February 22, the local administration at Abudhabi took him under control following the alleged complaint filed by one of the staffs at the Nepali Embassy, UAE at a local police.

Thereafter, on March 1, the UAE court sentenced three months imprisonment and penalty amount of AED 20,000 to journalist Pande. The court has also ordered the authority to deport journalist Pande and his family to Nepal after the completion of jail term. It is further learnt that Pande, bearing the passport number 06050350, is not allowed to use phone and make contact with family members and friends.

Freedom Forum came to know from the special source that the Nepali Embassy in UAE had role on his arrest and additional punishment to journalist Pande. The Embassy staffs sought the harsh punishment to journalist Pande just because of his social media post which questioned the bad service at Embassy.

Freedom Forum vehemently condemns the incident. Freedom Forum Executive Chief Taranath Dahal commented, "Instead of protecting the human rights of Nepalis abroad, Nepali Embassy's alleged role to mete out severe torture to a Nepali journalist there is sheer violation of human rights and freedom of expression. Freedom of expression is a frontier-less issue, a universal right. The Nepal government, and the Foreign Ministry, must take initiative to release journalist Pande and ensure justice to him. Together, the Embassy staffs involved in such harassment must be censured and urged how they could defend human rights."

In addition to this, Freedom Forum calls on the international and regional organizations working in the sectors of human rights, press freedom and journalists' rights to pay heed to the situation and express solidarity to journalist Pande's rights and justice. 🌱

# Freedom of expression violations

## Province 1

### Arrest

Nepal Police arrested a reporter with <https://www.purbicommand.com/>, Samjhana Rai, along with two YouTubers while covering a protest in Biratnagar on March 15.

Talking to Freedom Forum, editor of the online news portal Saroj Basnet said that reporter Rai was taking video of a protest by the locals demanding justice to the

families of an 18-months old child who was raped and murdered few days ago.

Though the police had arrested the accused, locals were protesting and demanding compensation to the victim families and severe punishment to the perpetrators.

"I met reporter Rai in the District Police Office today (March 16) and requested the officials to release her as she was just reporting the event

but the officers said that they would instead file a case of public offense against the reporter and YouTubers for publishing news with names of the victim's parents", added Basnet.

Reporter Rai was released on bail on March 17.

NO OF INCIDENTS 01  
AFFECTED MALE 00  
AFFECTED FEMALE 01

## Madhesh Province

### Death Threat

Reporter with [www.pnews.com.np](http://www.pnews.com.np) Kailash Majhi was issued death threat through a letter for his reporting in Saptari district on February 15.

In a conversation with Freedom Forum, reporter Majhi shared, "I am a media person and an active Right to Information activist in the district. I have been using RTI to request for public information at Saptari district's municipalities, community schools and other public offices for long. I also use the received information as news stories to make citizens aware of the ongoing public issues. But early in the morning today, I saw a letter outside my house", he said.

The letter, as he informed, read: "You have been blackmailing local representatives and bureaucrats and reporting news critical to them for long. So, this is a final warning to you, if you ignore this letter and inform police or media then we will shoot you at your house."

Then, reporter Majhi informed the local police and administration, demanding his security. He further informed the Freedom Forum that Chief District Officer had ensured that the case would be investigated.

The case was still under investigation, according to the administration office.

### Attack

Reporter with [todaykhoj.com](http://todaykhoj.com) news portal, Shibendra Rohita was attacked while covering a protest in Janakpurdham on January 26.

According to Freedom Forum's representative at in Madhes Province, Rajan Singh, reporter Rohita was taking pictures of the protest of a political party.

Cadres of Janamat Party were protesting for the rights of farmers at different places in the city. Meanwhile, police persons started baton charge upon protestors and the reporter. Rohita had sustained minor injuries, while his mobile was also broken due to the attack.

Police persons on duty, however, claimed that the reporter was beaten also because he did not wear the PRESS Jacket, informed Singh.

### Obstruction

More than two dozen journalists were obstructed from reporting at Province 2 Assembly in Dhanusha on January 17.

NO OF INCIDENTS 03

AFFECTED MALE 31

AFFECTED FEMALE 01

One of the journalists, Manika Jha, shared with Freedom Forum that total 30 journalists, including her, were protesting against the obstruction caused while reporting on the ongoing election to decide the capital of Province 2 in front of the Province Assembly house. The

photojournalists present there also put their cameras down in protest.

“While we asked the reason for obstruction, one of the duty officers said that no journalists will be allowed to enter voting site due to the

risk of transmission of coronavirus infection,” said senior journalist at the Annapurna Post national daily Jha adding, “We even requested them to let us enter one at a time but in vain. We were there for more than three hours.” 🌿

## Bagmati Province

### Misbehavior

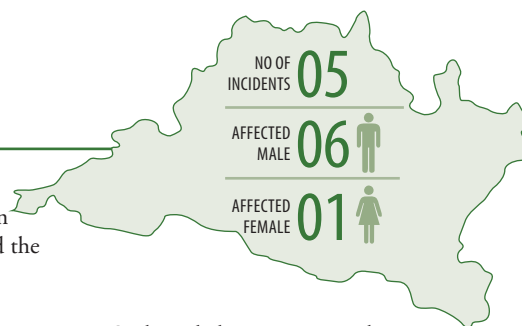
A police person verbally abused and intimidated media person at [www.ratosamachar.com](http://www.ratosamachar.com) Rajesh Thapa while reporting in Hetauda on February 8. Hetauda lies in Bagmati Province of Nepal.

Thapa told Freedom Forum that he was taking pictures of a highway blockade by the locals

protesting the death of a local following an accident. The police persons later resumed the traffic with the use of force.

“Meanwhile, traffic police on duty stopped me from taking the pictures and spoke foul on me. His misbehavior did not stop even after I shared that my identity as a media person”, he added.

Such misbehavior to journalists shows continued hostility to press freedom in Nepal. 🌿



## Digital harassment against rights activist and journalist Basnet

A noted journalist and rights activist Ms Babita Basnet was harassed for her article published on March 2.

Ms Basnet had written an opinion article, stressing the need of reviewing law on rape. It was published on [www.ghatanarabichar.com](http://www.ghatanarabichar.com) on March 2.

With its publication, campaign on social media (Facebook and Twitter) was launched in protest

of Basnet and her opinion. Even a coordinated campaign in Twitter was spread with a hashtag #BoycottBabitaBasnet, thereby meting out digital harassment on rights activist and journalist Basnet.

Talking to FF, journalist Basnet shared that the movement had seriously disturbed her. “I wrote the article based on one of my own case studies and it does not target any individual, group or gender. But, whatever I am facing now for practicing my right to free press and free expression

harassed me much. I think it is a deliberate move to ruin my career”, she observed.

To this, FF believes every citizen has the right to agree or disagree on anyone’s opinion. Both agreement and disagreement are their rights to free speech. But spreading harsh messages through coordinated campaign and boycotting the opinion writer is sheer instance of intolerance. Such intolerance not only harasses the opinion writer but also affects free speech atmosphere. 🌿

## Police intimidate journalist Shrestha

Umesh Shrestha, a journalist and noted blogger running [www.mysansar.com](http://www.mysansar.com) was harassed by the Nepal Police for his blog on February 23. The incident occurred in the federal capital of Nepal, Kathmandu.

According to the blog Shrestha published the same day, he was summoned to the cyber bureau of Nepal Police, to discuss some issues. “After reaching the bureau office, one of the officers threatened me for writing a blog. He shouted:

Who gave you the authority to write such a blog? Where did not you register your blog, and so on?” he wrote on his blog published after the incident.

Although he tried to persuade the officers stating that it was his right guaranteed by the constitution, they did not listen to him but threatened of detention.

Shrestha is also an editor at Nepal Fact Check and had published a blog about news published on several online media regarding the Millenni-

um Challenge Corporation (MCC) compact on February 21 which he stated were misleading and fake, thereby discrediting Nepali media and journalism.

According to Shrestha, police called him for this blog on the website spreading misinformation. Few hours later, a fellow officer came and said that there was misunderstanding between the police officer and editor Shrestha. Still, they suggested that he registered the blog. 🌿



## Attack

A. Reporters with different online television channels Dipesh Raj Pandey, Hari Prasad Pathak and Dasharath Bhandari were brutally attacked while reporting in Kathmandu on February 1.

Vice president at the Online Television Journalists Association Kushluy KC told Freedom Forum that the reporters were attacked while reporting on the complaints of the people duped by a human resource organization, Triple Star Manpower, at its office.

The organization's staffs and supporters attacked the reporters. The Manpower Company was complained of defrauding in the name of foreign employment.

The reporters sustained injuries and were treated at Green City Hospital, according to KC. KC added that they registered a complaint at the Metropolitan Police Office against the attackers.

Following this, the owner of the company was arrested on February 3.

B. Photojournalist at [www.makalukhabar.com](http://www.makalukhabar.com) Saroj Basnet was injured while reporting a protest in Kathmandu on February 16.

Basnet was injured on head while taking pictures of the protestors throwing stones at the police persons.

The incident took place outside the Federal Parliament Building at New Baneshwor, Kathmandu. The protest along with a one-day strike was called on by the leaders and cadres of different political parties against the government's decision to table the Millennium Challenge Corporation compact at the parliament. 🌱

## ARTISTIC EXPRESSION SILENCED

### Threat to popular singer Prakash Saput for his new song

Freedom Forum was alarmed by the threat issued by the youth leaders of Communist Party of Nepal (Maoist Center) to popular singer Prakash Saput for his new video song, 'Pir Diyo Timro Mayale Malai Pir Diyo'.

The video song represented the poor life of those who are left behind in miserable state despite their significant role in the Maoist's armed revolution. How a handful of leaders in the Maoist party, who were together in the revolution, grabbed the opportunities to elevate power and position while some were ditched to pathetic situation is vividly shown in the video song.

The song released on YouTube on 11 March had already garnered millions of views.

The CPN (Maoist Centre) is currently in the ruling alliance.

It is evidently the best form of artistic expression, exercise of the freedom of speech. Threatening over the song is sheer political intolerance.

To this, FF believes Prakash Saput's song is a vivid reflection of present society. The words and views are finely protected by the constitution. The threat is therefore against freedom of expression and creative expression. Government must ensure safety to free expression of art. Those giving threats must be booked.

It is worth noting here that similar political intolerance was shown by youth wing of then ruling Communist Party of Nepal (UML) to



the song by noted singer Pashupati Sharma some years back in Nepal. Sharma was forced to change some words in the song due to mounting pressure.

Singer Saput again uploaded the video of his song on [www.youtube.com](http://www.youtube.com) after few edits on March 19, 2022. 🌱

## Misuse of ETA Continues

Prakash Sedhain, a youth from Bhaktapur, was arrested for his pranks on the locals on February 15.

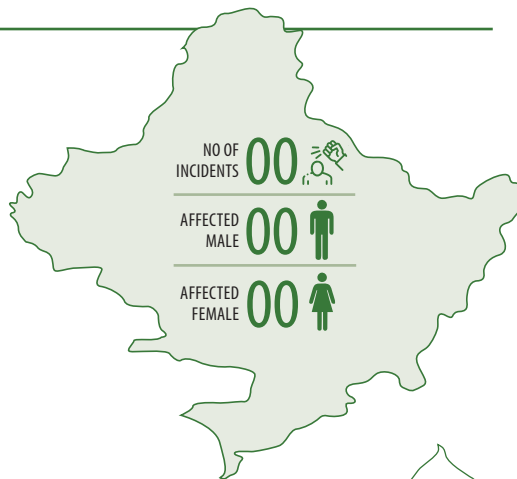
Sedhain was arrested for filming his pranks and uploading to his YouTube channel-Napali Prankster.

The statement issued by Cyber Bureau of Nepal Police states that Sedhai was arrested for physical and mental harassment to the citizens through his pranks at public places and charged under Electronic Transaction Act 2008.

Sedhain was under judicial custody for seven days for further investigation. Later, he was released on bail. Freedom Forum has been continuously advocating against the misuse of ETA. 🌱

# Gandaki Province

No incidents were recorded in Gandaki Province during this period.



# Lumbini Province

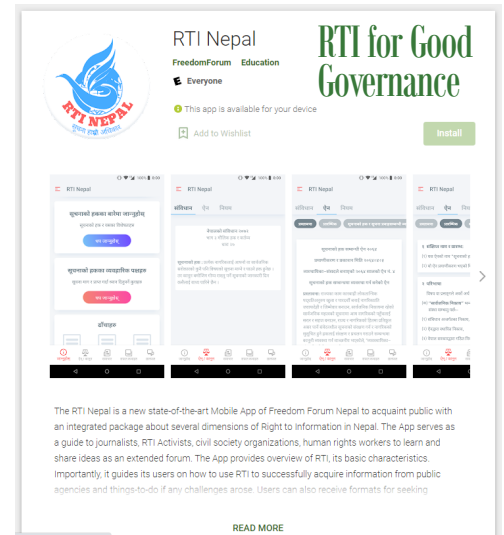
## Death Threat

A reporter with Butwal Today daily, Ram Avatar Chaudhary, received death threat while reporting in Butwal on January 28. Butwal lies in Lumbini Province of Nepal.

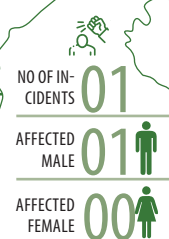
Reporter Chaudhary shared with Freedom Forum that he had reached a local brick kiln to report on varying prices of bricks and child labour on the day of the incident.

"After I saw many children working at the kiln, I tried to talk to the owner about it. The owner not only refused to answer my questions but also threatened to kill me in the kiln", added Chaudhary.

Thereafter, the reporter informed the local police about the incident and returned back.



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"On the next day, the owner was called at the police station where he apologized to us but we have demanded a written apology from him for security reasons", said Chaudhary.

# Karnali Province

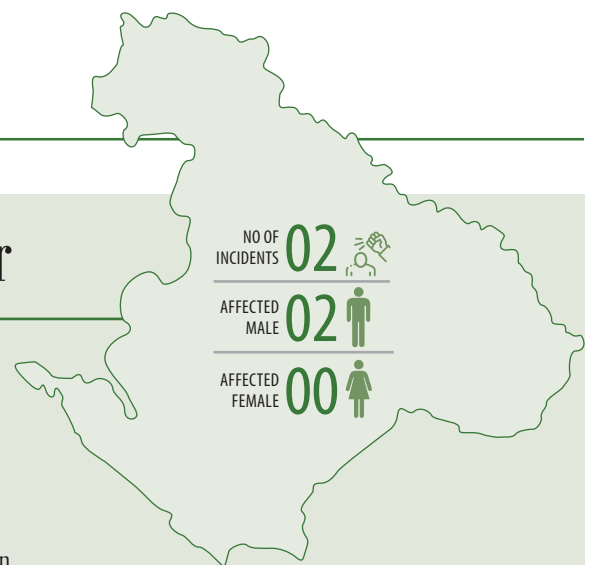
## Death threat for reporting on new minister

Surkhet based reporter at www.ukeraa.com Jagatdal Janala BK was issued death threat for reporting news about the newly appointed minister in Karnali Province on February 7.

Reporter BK told Freedom Forum that he had published news about appointment of a non-parliamentarian Chhiring Damdul Lama as a minister in Karnali Province government on February 4. Following the news publication, Lama's supporters started

to threaten reporter BK through calls and messages on his mobile phone, warning him not to publish such news or else bear consequences.

"On the day of incident, when I was on the way to home from office, few motorbikes followed me. I was scared. However, I did not stop, and contacted fellow journalists about the incident after reaching home", he shared. Few supporters of the minister also



wrote abusive messages on the social media page against the reporter. "I have not registered any complaint at the police station but I have informed them about the case", he informed.

## Threat

Surkhet based reporter for a news portal, [www.ratopati.com](http://www.ratopati.com), Pankha Bahadur Shahi received several messages of threat for reporting on January 1.

Talking to Freedom Forum's media monitoring desk, reporter Shahi said that he had

reported news entitled 'After setting up the late King Birendra's statue over a night' which was published online on December 30, 2021. Following its publication, several threats and abusive messages were written on social media pages targeting him. A message read, "How dare you write such news? I know you very well and will not spare you."

## Sudurpaschim Province

No incidents were recorded in Sudurpaschim Province during this period.



"I was also called through many unknown numbers but I did not receive those calls. Then, I called Chief District Officer and requested for security. The officer then, asked Nepal police to register the case", shared Shahi.

124. साइबर अपराध र डिजिटल कारोबार ऐनको कार्यान्वयन अवस्था

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## Joint press statement on amendment of Rules of National Broadcasting Regulation 2078

March 9, 2022

The stakeholders have been concerned over the amendment of the Rules of the National Broadcasting Regulation (Eleventh Amendment) 2078, for it has ambiguous and over-broad provisions, undermining the right to freedom of expression, right to broadcast and principle of open internet. The amendment of the Regulation has also gone beyond the provisions in the National Broadcasting Act and breached the principle of comprehensibility of law, while the government egregiously ignored the consultation before amendment.

Supremacy of law prevails while formulating laws. The Acts are made in accordance with the provisions of constitution, and regulations as per the Act. Statutes lay the legal principles and prescribe the substantive provisions, pursuant to which, procedural aspect is dealt by the Regulations. The Regulation and control of broadcasting through the internet medium, an issue

not envisaged by the National Broadcasting Act, 2049, by amending the Regulation to add new issue based on "other communication mediums" as per Section 5 has raised serious question over the legality of the regulation.

Legal definitions need to be clear and concise. But, the definition of terms like "Over the Top" (O.T.T.), "Video on Demand" and "Online Television" are vague and ambiguous, which evidently invite ambiguity and confusion in the future. Similarly, the definition of "Online Television" seems to have adhered to social media (platforms) that is vital for freedom of expression. Therefore, this amendment appears as a weapon to limit and restrict freedom of expression and open internet, affecting the constitutional and legal rights of the citizens. It is not clear whether the objective of the regulation is to collect revenue or regulate contents broadcasted, or register platforms run via internet. The prescribed fee for licensing and prior approval is not practical and justified either.

Although the provision on age categorization and self-regulation of the content broadcasted by O.T.T. platforms are commendable, the provisions are incomplete and need further explanation.

We therefore would like to draw the attention of the government to immediately stop the implementation of National Broadcasting (Eleventh Amendment) Regulation 2078, reasoning its vague and problematic provisions, and to implement it only after the amendment or repeal the problematic provisions by conducting necessary coordination and consultation with the stakeholders. Similarly, we believe that the move of present government to restrict the citizen's freedom of expression with the amendment of Regulation assaults the constitutional spirit and raises grave concern regarding the political and governance accountability.

- Freedom Forum - Digital Rights Nepal

## REPORT ON

## Human rights status in Nepal

Federal legislation limiting the rights to freedom of expression and privacy remained pending, while provincial governments drafted new bills threatening media freedom. Protesters were detained and security forces continued to use unnecessary and excessive force to disperse protests. The government failed to deliver justice, truth and reparations to victims of the 1996-2006 conflict. Thousands died of Covid-19 amid a severe shortage of vital infrastructure and lack of an adequate response by the government. Gender-based discrimination continued in law and practice. The authorities failed to carry out credible and independent investigations into several deaths in custody, mostly of people from marginalized communities.

## Background

Amid disputes within the ruling party, Prime Minister Oli dissolved the lower house of the parliament in May. Calling it an “unconstitutional move”, in July the Supreme Court reinstated the dissolved lower house and ordered the appointment of Sher Bahadur Deuba as the new prime minister.

In October, unseasonal rainfall linked to climate change led to floods and landslides, resulting in more than 100 deaths and displacing more than 1,100 families. The rains affected farmers’ livelihoods and threatened food security, destroying more than 325,000 tonnes of paddy crops, the highest losses on record. The government’s mitigation and relief support was inadequate.

## Freedom of expression and assembly

The authorities continued to use the Electronic Transactions Act 2006 to arbitrarily detain individuals, including journalists. They particularly targeted those critical of the government and of the leaders of the ruling party.

In February, the Ministry of Communication and Information Technology drafted social media guidelines that would give the government sweeping powers to regulate social media content and criminalize users’ activities, including the ability to hold people liable for liking, sharing and commenting on posts. Several bills threatening the rights to freedom of expression and privacy remained pending in the federal

parliament, and the provincial governments in Bagmati, Gandaki and Lumbini provinces drafted bills that would limit freedom of expression, especially media freedom.

In May, the Office of the Registrar of the Supreme Court summoned two journalists, pressuring them to divulge their sources and to apologize for reporting on an alleged meeting between Prime Minister Oli and Chief Justice Cholendra Shumsher Rana.

In June, 20 civil society leaders were arrested while peacefully protesting against political interference in the Medical Education Commission.

In October, police detained 13 activists who were peacefully demanding impartial investigations into the death of one woman and the disappearance of another in Banke district. Ruby Khan, one of the protesters, was detained by police on trumped-up charges of “polygamy” before the Supreme Court ordered her release.

Also in October, four men died when security forces opened fire to evict protesters in Rupan-dehi district.

## Right to truth, justice and reparation

The government continued to fail to deliver truth, justice and reparations to tens of thousands of victims of crimes under international law and other grave human rights violations committed during the 1996-2006 conflict. The Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons, which had respectively collected more than 60,000 and 3,000 complaints from victims, failed to resolve a single case. By the end of the year, the government had still not amended the Investigation of the Enforced Disappeared Persons, Truth and Reconciliation Commission Act of 2014, as ordered by the Supreme Court in 2014 and 2015, to bring it in line with Nepali and international human rights standards. In July, the government extended the terms of the two Commissions.

## Right to health

The second wave of Covid-19, which began in April, caused the collapse of the country’s

fragile healthcare system, resulting in more than 7,000 deaths. The situation was exacerbated by a severe shortage of vaccines, medical facilities and vital hospital supplies including oxygen, ventilators and other life-saving medical equipment, and a lack of adequate preparation by the government. People from marginalized groups such as Dalits and people living in poverty, including daily wage earners, were also hit by the worsening socio-economic situation resulting from the pandemic and related restrictions.

## Torture and other ill-treatment

Torture and other ill-treatment were widespread in pretrial detention to extract “confessions” and intimidate detainees. By the end of the year, there had yet to be any convictions under the 2017 Criminal Code, which criminalized these practices.

Several deaths in custody were reported during the year – mostly of detainees from marginalized Dalit and Madhesi communities. No independent investigations were carried out.

In July, Paltu Ravidas was found dead in the toilet of the Dhanusha District Police Office after being detained by police. In August, a police officer on duty at the time of Paltu Ravidas’ death was suspended for six months. In September, Bhim Kamat died in the custody of Morang District Police. In October, Mohammad Hakim Sah and Dhan Bahadur Rana died in the custody of the Sunsari and Kailali District Police Offices respectively.

The government failed to implement the National Human Rights Commission’s (NHRC) recommendations to hold those responsible for human rights violations to account. In July, the government promoted a police officer whom the NHRC had recommended for prosecution over an extrajudicial killing.

## Indigenous peoples’ rights

The government failed to reform the National Parks and Wildlife Conservation Act 1973, which does not meet international standards. Indigenous people, evicted from their ancestral lands during the establishment of national



parks and conservation areas, remained landless and continued to live in informal settlements facing risks of further forced evictions. The authorities failed to allow their return, or provide them with alternative land and livelihoods, compensation, or access to protected areas for fishing, grazing and gathering food, medicinal herbs and firewood. Farmers whose lands came within the boundary of the Bardiya National Park as a result of the Geruwa river changing its course continued to be denied access to their lands some three decades later.

## Gender-based discrimination

Gender-based discrimination continued, and the government did not reform constitutional provisions which denied women equal citizenship rights. The restrictive provision for statutory limitations for rape in the Criminal Code continued to allow impunity for perpetrators.

In February, the Department of Immigration proposed introducing a policy requiring women below the age of 40 to obtain permission

from their families and a recommendation from the local government before travelling internationally. Following widespread public backlash, the Department of Immigration issued a clarification stating that the provision, which had been suggested to prevent trafficking, would only apply to women travelling to the Gulf and African states for the first time. The policy had not come into force by the end of the year. 🌱

(Source:AmnestyInternationalNepalChapter)

## PUBLICATION

# Inappropriate approach to cybercrimes in Nepal

**F**reedom Forum has published a research report titled, "Inappropriate Approach to Cybercrimes: A Critical Review on Investigation, Prosecution and Adjudication of 100 Cybercrime Cases in Nepal" in March.

The research was conducted with the objective to analyze the investigation, prosecution, and adjudication of cybercrimes under Electronic Transaction Act, 2008 amid its rise with the increased internet penetration.

The research was qualitative one, employing a case study method. Random and convenience sampling methods were employed to select 100 sample judgments (Kathmandu District Court - 85 and Appellate Court Patan - 15) from the period of 2010/11 to 2020/21. The sample size for the research was more than 10 percent of total cases registered over that period in the respective courts, as per the annual report of Office of the Attorney General.

The data extracted from the judgments were categorized under different level and, further sub-categorized under three theme for analysis, i.e. (i) cybercrime prevalent in Nepal, (ii) adjudication of the cases, and (iii) punishment and compensation, to draw conclusion. The finding of the study shows that women are more vulnerable to cybercrime, while men are mostly involved as perpetrators of such offenses. The crimes

against women are mostly associated with sexuality, like disseminating nude and intimate pictures and videos without consent, morphing pictures to make it obscene, derogatory and obscene remarks, etc.

Similarly, cyber-enabled crimes are mostly prosecuted under ETA as cybercrimes; it mainly involves offenses like defamation, privacy breach, annoyance, fraud, etc.

The court has issued bailment orders in majority cases by asking guarantee deposits up to Rs. 150,000. In majority cases (31 cases) it ranged up to Rs. 25,000. In 70 percent cases, the accused are convicted by the court. Among these, imprisonment was sentenced in 67 percent cases, while penalty in 90 percent cases. In which, imprisonment up to one month was sentenced in 20 cases, and the maximum sentence of 2 years was in 3 cases only. The trend of court's punishment rebukes the need for hefty punishment under the Information Technology Bill which is under consideration in parliament.

The study has found that section 47 of the ETA is misused by law enforcing authorities to suppress criticism of public personalities and institutions. The said provision has been used to initiate malicious prosecution against offenses other than relevant law. These prosecutions have the effect of punishing through the process. There is poor investigation of cybercrimes by police and prosecutions are based on fragile evidence by the prosecutors. The court seems



reluctant to provide proper compensation to the victims. Appeal over judgments of the KDC is mostly filed by the prosecution side. The exclusive jurisdiction of KDC to try cybercrime cases is a major challenge for the victims and accused.

The report makes recommendations to the government, court, prosecutor, police and public on the basis of its findings. Among other recommendations, the government has been urged to promulgate a comprehensive cyber law criminalizing cyber-dependant crimes in accordance with international cyber jurisprudence. Police, prosecutor and the court are respectively asked to register and investigate crimes, prosecute, and adjudicate the crimes as per relevant law only. 🌱

The report is available at: <https://freedomforum.org.np/download/inappropriate-approach-to-cybercrime/?wpdmdl=4978&refresh=626514ad88b161650791597>

## IBP COVERAGE ON FF

# How one civil society organization is using the right to information to champion open budgets

**C**hampioning better access to information comes naturally for Taranath Dahal. The chief executive of Freedom Forum, a leading civil society organization in Nepal working on government accountability, Dahal has been involved in social activism for decades. As a journalist across print, radio, and television since 1988, he knows firsthand the power of narrative to affect deep social change. Dahal and a handful of colleagues translated that knowledge into action in 2005 when they founded Freedom Forum. “Liberal democracy, the right to information, and free media is my main mission in life. Promoting transparent, accountable, and effective democratic governance is my vision,” Dahal said.

The organization’s work has been anything but easy. Nepal’s score of 41 on IBP’s 2019 Open Budget Survey places it among South Asia’s least transparent countries. Yet the country was an early adopter of right to information (RTI) legislation, first recognizing it in the 1990 constitution and then formally enacting RTI laws in 2007. This was a memorable moment for Dahal and Freedom Forum, as they were one of the main campaigners on the issue. Nevertheless, moving from the law to transparency in practice has been an ongoing battle.

## I. Fighting for the Right to Information

Chief among the budget challenges in Nepal is securing high-quality budget data from the government, which is why Freedom Forum’s primary work concerns campaigning for the right to information. While Nepal has strong local, provincial, and federal governments, this can be a double-edged sword because civil society groups have multiple channels through which to direct their requests but also more levels of government from which to secure information. Nepal has 761 different units of government, 753 of which are local. “The Central Bank of Nepal has improved the quality and accessibility of data it gathers but other parts of government

still do not produce good data,” Krishna Sapkota, policy adviser to Freedom Forum, explained.

The connection between RTI and public finance is a strong one. According to Dahal, RTI is a key part in creating transparent and participatory public finance and can contribute significantly to exposing and reducing corruption and misuse of public resources. “If a country has no RTI laws, we cannot achieve the goals of open budgets and open government,” he said. “Such laws are also necessary to ensure the public has access to the data and information needed to be informed and active citizens.”

But the success of the RTI laws was short lived, as Dahal and his team quickly realized that RTI alone is not enough to ensure government accountability and transparency. Nepal’s complex government system makes it hard for people to access the information they need to follow the money and ensure it reaches those who need it most. Information on paper is simply not enough in Nepal.

So, Freedom Forum turned to the media; a sector Dahal knew well. Through collaboration with media organizations, Freedom Forum realized that collective work and training was the best way to push for accountability and achieve results. What began as RTI requests transformed into a plan to build up reform allies who could shine a spotlight on the information and ensure follow through, including the media and oversight actors like the public accounts committee and national audit office.



The plan has proven successful, especially with media partners. As part of its efforts to increase RTI, Freedom Forum has worked closely with journalists to uncover stories. The organization’s strategy for generating media stories from RTI requests is to act as an intermediary. Freedom Forum handles the RTI requests and analysis, and then works with media organizations to get the story out to the public.

## II. Building Civil Society’s Budget Advocacy Skills

Dahal also knew they needed more groups to join and sustain efforts to fight for accountability. Globally, including in Nepal, few people understand how budgets work, yet this is key when asking the government the right questions and using that information to hold authorities accountable. To bolster understanding of public finance among civil society, members of Freedom Forum participated in 10 weeks of budget training with IBP to create a cohort of 35 robust accountability actors from 20 civil society groups who use budgets in their advocacy work. Sapkota, the organization’s pol-

icy advisor, was a co-facilitator of the capacity building and training.

“Our primary challenge is human resources,” said Sapkota. “There are a limited number of people in the country who understand budget processes. Through our work on the Open Budget Survey and the budget trainings, IBP has helped us build local capacity and increase our resources for civil society organizations. The Open Budget Survey, in particular, has provided us with a framework to expand our advocacy on budget accountability,” Sapkota said.

### III. Covid-19 Changes the Narrative

Throughout the world, the COVID-19 pandemic has laid bare the challenge of governments mismanaging vital public funds. These dynamics were on clear display in Nepal, where the government formulated and executed COVID-19 fiscal and policy responses with virtually no citizen participation. This challenge, however, also emboldened the growing movement of groups seeking more open and accountable budget practices in Nepal, including Freedom Forum.

In June 2020, a group of youth activists launched the Enough is Enough movement and took to the streets with non-violent protests demanding spending information and accountability from the government in its handling of the COVID-19 crisis. The grassroots movement quickly galvanized public opinion using social media platforms to rally large numbers of people in demands for public accountability. More than 200,000 people joined the group’s Facebook page.

Enough is Enough and its supporters leveled allegations at the government of irregularities around COVID procurement. The pressure resulted in the government agreeing to disclose the requested details and launching an investigation into the mismanagement of funds. The parliamentary public accounts committee opened a formal investigation into potential corruption over allegations that government officials procured essential medicines and health products at inflated prices, taking advantage of the COVID-19 pandemic. The committee set out to check mismanagement and fiduciary risks and to safeguard against irregularities going forward.

The PAC set up a subcommittee to take on the case and the PAC then wrote to the

Ministry of Health and Population to ask for clarity on the process by which a specific controversial procurement contract awarded to Omni Business Corporate International had been handled, including available documentation. The PAC encountered some obstacles in the form of limited information provided by the Ministry of Health and Population (some relevant documents intentionally failed to reach the PAC), but allies from the media were able to collect the documents from informal sources and share them with the PAC Secretariat. The PAC found that even though the Minister of Health and higher-ranking officials had been assigned the power to purchase, they had not been involved in the process. Instead, the chief advisor to the minister had negotiated and authorized the purchase, which was against protocol. The PAC also investigated whether the quote for the goods had been acceptable, which they concluded was not the case. A preliminary report by the committee implicated Health Minister Bhanubhakta Dhakal and chief advisor Dr Khem Karki in irregularities in the procurement process. This investigation is now in the courts and the Commission for the Investigation of Abuse of Authority will issue recommendations to the PAC when a verdict has been reached.

To date, the PAC’s investigation has resulted in a recommendation to the Ministry of Health and Population (and the government in general) that if a fast-track procurement process is to be used, a minimum set of rules and procedures must be followed to ensure that the quality of goods is assured and prices are not inflated. The committee has ordered the same ministry to immediately correct its procedure to ensure competition among prospective suppliers. The PAC has given direction to the PPMO to strictly adhere to the procurement act and regulations when goods are purchased during emergencies. Meanwhile, a report by the office of the auditor general, “Special Audit Report on Covid-19 Management”, was published in August 2021. It confirmed the PAC’s findings of irregularities in the procurement procedures in relation to the contract awarded to Omni Business Corporate International.

“Enough is Enough was a landmark moment for civil society because it showed that citizens



can make demands of the government and be heard,” Dahal said. This moment is an example of the positive results that can be achieved when civil society, the media, supreme audit institutions, and public accounts committees work together to hold governments accountable for their promises.

### IV. Buoyed by Success

Enough is Enough demonstrated the power of civil society organizations to create change, and Freedom Forum’s legacy paved the way for that to happen. Perhaps for that reason, Sapkota speaks of a “mood of opportunity” in Nepal and remains optimistic that Freedom Forum will continue to teach new generations of civil society actors how to constructively engage with government, demand better data reporting, and ensure that public funds are spent in the most equitable way possible.

For his part, Dahal is optimistic when he speaks about the future. The emerging partnership between the media, civil society groups, and oversight actors is playing a role in holding the government to account in Nepal. As more people become involved, a deeper understanding of budget information can be leveraged to drive change.

Since 2020, IBP has worked with Freedom Forum through the Collaborating for Open and Accountable Budgets initiative, which aims to strengthen the capacity of civil society groups to actively engage in budget processes and advocacy to build the conditions for transparent, inclusive, and accountable public budgeting. 🌱

(Source: <https://story.internationalbudget.org/moving-beyond-transparency-to-accountability-in-nepal>)



# Closing the COVID accountability gap: Rapid reaction by the Public Accounts Committee in Nepal

- By Linnea Mills

In 2021, the International Budget Partnership published an assessment of 120 countries' management of COVID relief, which found that too many governments were using the excuse of urgency to avoid being as transparent, accountable or inclusive as they could be. These shortcuts and limitations, however, are neither necessary nor inevitable. IBP's report showcased notable instances in which governments acted swiftly to put in place adequate transparency around their policy responses, where accountability institutions — such as legislatures and supreme audit institutions (SAIs) — stepped up to provide effective oversight, and civil society organizations contributed information on the needs of the most vulnerable. In a series of briefs, we have taken a more in-depth look at these good practices

— delving into government objectives in implementing the practices, the impacts achieved, and lessons that can be drawn from these practices for their replication in other countries. The main goal of these briefs is to provide governments with information on good practices in fiscal openness and accountability that they can incorporate into their own policies, to be implemented during periods of crisis and beyond.

This brief looks at the response by the Nepalese Parliament to COVID-19 funding, in particular at the rapid reaction of the Public Accounts Committee (PAC) to alleged irregularities in COVID-19–related public procurement during the early stages of the pandemic. The PAC is the parliamentary oversight entity in Nepal, one of three institutions tasked with ensuring public financial accountability in the country<sup>1</sup>. The other two are the auditor general as a constitutional oversight entity and the Public Expenditure and Financial Accountability (PEFA) secretariat as executive agency (Dhungana, 2019). The PAC in Nepal is not considered a strong institution by international standards. In

cross-country comparative assessments, Nepal scores below average on legislative financial oversight. It received a score of 33 out of 100 on legislative oversight of the annual audit report as well as participation by the supreme audit institution in legislative hearings in the 2019 Open Budget Survey (International Budget Partnership, 2020<sup>2</sup>).

As in many other countries at the beginning of the COVID-19 pandemic, there was confusion within the government of Nepal about how to deal with the developing crisis — specifically, how to acquire the necessary health equipment that was not available in the country. The Ministry of Health and Population set up a fast-track process for procurement based on consultation with health-care professionals, government agencies and domestic business sector representatives. At the time, there were existing procurement guidelines, rules and regulations in place that included a fast-track process. However, as the crisis unfolded the rules and regulations were not followed.

In April 2020, at the onset of the pandemic, media in Nepal started reporting on irregularities concerning a contract given to a company called Omni Business Corporate International. On March 25, 2020, as Nepal recorded its first COVID-19 cases, the company was awarded a government contract to supply a variety of medical equipment from China — personal protective equipment, reagents and more. This company had no prior experience with the importation of medical goods, nor did it have documents to show it was tax compliant (Pradhan, 2020a).

Concerns were reported in the media that the correct public procurement processes had not been followed: that the company had received favorable treatment to enable it to win the contract, despite quoting higher prices than market conditions dictated and despite supplying

COVID test kits of substandard quality (Shrestha, 2020; Poudel, 2020).

The government of Nepal responded to media reports by canceling the contract on April 1, 2020. But by that point, Omni Business Corporate International had already purchased and imported the goods into the country (Poudel, 2021). The government accepted the goods — as they had no alternative given the emergency — but did not pay the company. Omni has taken the government to court for breach of contract; the matter has not yet been settled.

Meanwhile, there was a widespread belief among citizens that the contract was corrupt and that it had been canceled as a cover-up. This widespread distrust in the government's handling of the pandemic has been amplified by the large youth protests that have taken place under the auspices of the Enough is Enough campaign. The campaign, begun in June 2020, has continued throughout the pandemic to demand accountability and a better response from the government (Bhattarai, 2021; Aryal, 2021).

## Scrutinizing the controversial contract

The PAC in Nepal makes decisions about the issues it will consider based on the work program of the office of the auditor general (the supreme audit institution) and on leads from the public and media concerning irregularities in matters of public finance. Since the office of the attorney general only audits selected cases in the following year, this path does not enable the PAC to be agile and respond to potential irregularities as they are occurring. The same constraint does not apply to those cases that are selected by the PAC based on leads from the public and the media.<sup>3</sup> Thus, this brief concerns an investigation initiated by the PAC that was based on alleged irregularities reported in the Nepali media.

<sup>1</sup> Specifically, the mandate of the PAC is to “check the unsettled amounts referred to in the Annual Report of the Auditor General submitted to the Legislature-Parliament and study and decide on the activities of the Auditor General and decide on whether or not the actions and activities conducted by the concerned bodies on the report of the Auditor General are as per the laws and are carried out in meaningful manner and check the public accounts of other public bodies, and introduce report to the House before submission of the annual estimates.” (Nepal Law Commission).

<sup>2</sup> This compares to an average of 44 out of 100 across the 117 countries that were included in that edition of the Open Budget Survey. These findings are based on an analysis of the survey data undertaken by the INTOSAI Development Initiative in the summer of 2020.

<sup>3</sup> Individuals and institutions can submit complaints directly to the PAC Secretariat, addressing the chair. Leads from media are simply information found in media outlets that the PAC decides to follow up on.



The PAC decided to act on the Omni Business Corporate International allegations and commence an investigation. The PAC chose to study this case in detail for reasons in addition to media attention. COVID-19 was a major new issue for the country, and this particular contract was not only sizable in terms of budget but had also been issued in the context of a public emergency. So the Omni contract functioned as a test case for the PAC to check mismanagement and fiduciary risks and to safeguard against irregularities going forward.

The PAC set up a subcommittee to take on the case.<sup>4</sup> The PAC then wrote to the Ministry of Health and Population and asked for clarity on the process by which the controversial contract had been handled, including available documentation. The PAC encountered some obstacles in the form of limited information provided by the Ministry of Health and Population (some relevant documents intentionally failed to reach the PAC), but collaborators from the media were able to collect the documents from informal sources and share them with the PAC Secretariat. The PAC found that even though the Minister of Health and higher-ranking officials had been assigned the power to purchase, they had not been involved in the process. Instead, the chief advisor to the minister had negotiated and authorized the purchase, which was against protocol. The PAC also investigated whether the quote for the goods had been acceptable, which they concluded was not the case (Pradhan, 2020a).

Following these findings, the PAC invited Ministry of Health and Population officials involved in the contract to a meeting; they apologized and explained that the purchase had been made in good faith. The PAC was not convinced and decided to initiate a full investigation (Pradhan, 2020b). To do so, the PAC solicited the help of the Public Procurement Monitoring Office (PPMO), which is the only authorized office for the monitoring of public procurement. The PPMO, in turn, set up a team to study the Omni Business Corporate International case in detail and then submitted a report to PAC. Based on this report, the PAC concluded that fraudulent activities had occurred and should be investigated in full. In December 2020, the PAC asked the Commission for the Investigation of Abuse of Authority (CIAA), the country's anti-corruption commission, to proceed with a corruption investigation (Himalayan News Service, 2020). This investigation is now in the courts and the CIAA will issue recommendations to the PAC when a verdict has been reached (Shrestha, 2021a).

To date, the PAC's investigation has resulted in a recommendation to the Ministry of Health and Population (and the government in general) that if a fast-track procurement process is to be used, a minimum set of rules and procedures must be followed to ensure that the quality of goods is assured and that prices are not inflated. The committee has ordered the same ministry to immediately correct its procedure to ensure competition among prospective suppliers. The PAC has furthermore given direction to the PPMO to strictly adhere to the procurement act and regulations when goods are purchased during emergencies.

Meanwhile, a report by the office of the auditor general, "Special Audit Report on Covid-19 Management," was published in August 2021.<sup>5</sup> It confirmed the PAC's findings of irregularities in the procurement procedures in relation to the contract awarded to Omni Business Corporate International (Shrestha, 2021b).

## PAC's engagement during the early pandemic

By the time the PAC turned its attention to the government's contract with Omni Business Corporate International, that particular contract had already been canceled. But the PAC's response resulted in other, longer-term impacts.<sup>6</sup>

By scrutinizing procurement procedures and resultant contracts in the early part of the pandemic, the PAC helped the government to course-correct, strengthening procurement processes and likely helping avoid other controversial fast-track contracts. In the event of future emergencies, the government will be aware of what constitutes acceptable procurement practices.

In addition, the PAC's handling of the situation helped raise the status of the PAC within Parliament as well as among citizens. Members of Parliament now wish to join the PAC to raise bigger and bolder issues. The fact that the PAC is chaired by a member of the main opposition party — whereas most other parliamentary committees are chaired by members of the ruling party — also raises hopes that the committee can provide effective oversight. For members of the ruling party, the need to defend the government is an incentive to take an active role in the PAC. Citizens have also seen how the Ministry of Health has come under scrutiny and been held to account by the PAC, and as a result more citizens have submitted applications to suggest issues.

## Lessons from Nepal

Several lessons can be learned from the PAC's handling of COVID financing in the early part of the pandemic that can provide food for thought for PACs in other countries.

First, the PAC in Nepal was able to play an active financial oversight role at the start of the pandemic because the committee had the ability to start scrutinizing government action of its own accord and did not have to wait for action to be taken by the office of the auditor general. Autonomy in choosing what to investigate is an important prerequisite for a PAC to play an active oversight role during an emergency.

Second, cultivating good working relationships with other institutions can strengthen a PAC's position and help it carry out its functions. The media is one such institution. As mentioned earlier, the media was an important ally for the PAC in Nepal when the committee began its investigation into Ministry of Health and Population procurement and the ministry then tried to stall the flow of information. As a result of this kind of fruitful collaboration, the media is now allowed to live-cast what is happening in the PAC in Nepal; this transparency is seen as beneficial to the PAC. Other actors and institutions — including other oversight bodies, such as the CIAA and PPMO — and civil society organizations can help strengthen the PAC by providing important expert opinion and technical suggestions.

Third, a lesson that emerged in interviews with an official at the PAC in Nepal concerns the ability of a PAC to adapt its approach to oversight during times of crisis. According to this official, the purpose of a PAC making early investigations during an emergency situation should be to help the government correct mistakes quickly; this requires a collaborative approach and the continuous exchange of information between the PAC and government authorities.

Finally, according to the same official, in emergencies it is crucial that stakeholders unite in pursuit of a common goal. For the PAC in Nepal, this meant putting party politics aside and speaking with a unified voice. To achieve this, the PAC chose not to conduct any voting during the emergency, so as not to divide members into partisan positions. 🌱

Source: <https://internationalbudget.org/wp-content/uploads/IBP-Rapid-Reaction-by-the-Public-Accounts-Committee-in-Nepal.pdf?fbclid=IwAR2ZScqdb11BDOByK-KegphA-3EFF1KqInNvrA9gHJtgJwWZPXjiY19NBjg>

<sup>4</sup> This is common practice at the PAC in Nepal. Subcommittees are formed to probe into specific cases. They produce a report with findings and recommendations that are subsequently discussed in the full PAC meeting (International Budget Partnership, 2020).

<sup>5</sup> The audit report is available in Nepali language at: <https://oag.gov.np/menu-category/940/ne>

<sup>6</sup> The discussion about impacts from the PAC's work on COVID-19-related procurement is primarily based on information obtained in interviews with an official of the PAC in Nepal.

# Youth perspective on free speech paints bleak picture in Nepal

- By Suraj Ray

Free Speech is a value more than legal right. Nurturing free speech as a value is a better way for its protection and promotion in society. The history of recognition of free speech as a legal right is rooted in the British Parliament struggle for freedom to debate freely. Since then it has been carried forward as a legal right, to address the power imbalance in society. However, mere recognition of right or commitment of state to respect free speech is not enough. It needs to be cherished by the members of society to strengthen it and reap benefit accordingly.

The support among public for free speech matters. If public are in favor of free speech, atmosphere conducive for its existence is created. The struggle for free speech continues even in autocratic regime but in struggle and shadow.

With this in the mind, the author conducted a study to meet his academic requirement of 9th Semester, B. A. LL. B. program at Nepal Law Campus, among 250 youths (age group of 18 to 40 years) of Nepal to understand their perspective on freedom of expression. It is further aimed to understand future of free speech in Nepal. The youths participated in the online survey by filling questionnaire with 23 multiple choice questions. The respondents of the survey were educated youths from all seven provinces.

The research find that only half of the youths have conceptual knowledge about Freedom of Expression (FoE). The knowledge of youths was ascertained by their understanding on scope and nature of the right, knowledge about its remedy, and where to seek for the remedy.

Conceptual knowledge on FoE is essential for better understanding of the right. Being unfamiliar with that, one cannot know what the freedom extends to, when freedom is violated, where to go for remedy or what are the potential threats to it. Due to poor understanding of the right, youths are lacking scientific temperament in their argument for free speech debate.

A major reason behind poor understanding on free speech among youths is scant focus

on FoE in our schools curriculum. According to Review of School Curriculum and Text Book on Safe Use of Computer and Internet by Freedom Forum, the syllabuses up to high school barely cover the issues of FoE. It is taught as a fundamental right which is subject to some limitations. It fails to convey what are the scopes of FoE, why it is important, what are reasonable restrictions and how to ascertain that the restrictions are legitimate.

This unfamiliarity with theoretical aspects of free speech has influenced the exercise of right among youths. The study shows that 79 percent of youths are aware of legal remedy available on violation of freedom of expression. However, 56 percent also believes that there is no need for remedy or have never thought of it on violation of thereof.

Right is always accompanied with remedy. Without remedy, rights have no value. The de-motivation among the youths to exercise remedy for violation questions its relevance as a fundamental right. The attitude of youths is also a reflection of Nepalese society on FoE. This reluctant tendency toward remedy has the bearing on incitement of violation of free speech.

Similarly, the study finds that majority (79 percent) of youths support freedom of expression as very important to live a dignified life as social and political being. Further, half of the youths feel free to express themselves, while other 40 percent feels free only sometimes – based on the issue. The respondents who feel free have interest in politics.

The findings also point out the difference in exercise of free expression by the political and non-political individuals. In Nepal, the degree of free speech exercised by a political actor or non-political individual is different. Here, a sitting minister continues enjoying protection of state despite her hate speech provoking mass slaughter, while a general citizen has to face painstaking punishment for memes of President and Prime Minister. The legal framework on freedom of expression is making chilling effects on youths. Government in the past few



years has tried to muzzle free speech with the attempts of several harsh laws and regulations. The laws with vague and over-broad terminologies and hefty punishment have been a challenge for free speech. In the survey, 57 percent of the youths feel that the laws imposing reasonable restriction on freedom of expression is unclear and vague. Similarly, around 55 percent of youths fear law and police actions while exercising the right.

Hence, it shows that to foster free speech culture, among others, state on its behalf, needs to make FoE-friendly law. It should extend its commitment to free speech in action. Political leadership and law enforcing agencies need to come tolerant to critical statements.

At the end, the survey has discovered challenges faced by youths in exercise of free speech. The fears to disappoint friends and family, online trolling and to be made ashamed for expression are causing self-censorship among the youths.

The study reflects a grim picture of youth perspective on freedom of expression in Nepal, which is worrying concern indeed in a democratic country. Undoubtedly, future of democracy rests on the youth's attitude of freedom of expression. The lack of understanding among educated youths, reluctance to seek remedy on violation of the right, and the intolerance of state in the form of laws and police action are alarming signs. 🌱

# FF's review on Information Technology Bill

Development of information technology has brought tremendous opportunities to the human civilization. In addition to making our life easy and comfortable, it has also created an open space for exercise of free expression and free speech. In Nepal too, online spaces often referred to as digital space or cyber space, especially social media platforms, have been convenient platform for expressing views, opinions and criticizing government's faulty policies and actions. However, the platforms have also become threat to citizens for exercising their fundamental rights.

Current practices of curtailing human rights on online space have raised severe concerns all over the world. Against this backdrop, Nepal government brought Information Technology Bill to regulate cyber space and minimize cybercrimes. The bill which was brought to replace Electronic Transaction Act 2008 has problematic provisions and is yet under consideration in the parliament. In this view, Freedom Forum published a policy analysis paper reviewing the bill and its provisions. The paper also provides recommendation for the amendment and improvement of the bill, addressing freedom of expression and protection of human rights on internet.

In the analysis, IT bill was reviewed in line with Nepal's constitution, existing laws, international instruments on human rights (UDHR, ICCPR, etc.) and the Budapest Convention. The paper presents section-wise analyses of the bill. Sections 19 to 37 under chapter 5 which mentions provisions for controller and certifying authority includes several provisions which are already addressed as criminal offense. Especially Section 33 provisions controller's access to data and information systems which gives the controller equal authority as that of crime investigating authority. Hence, the paper recommends removal of section 33 from the bill.

Similarly, the paper urges to amend section 58(1) of the bill in line with the ICANN's rules. It further suggests removing section 62 which requires government's permission to register domain names. Again, the paper recommends revising sections 75 to 78 in coherence with articles 2 (illegal access), 3 (illegal



obstruction), 4 (data interference), 5 (system interference), and 6 (misuse of instruments) of the Budapest Conventions. According to the analysis paper, provisions related to damage and obstruction to digital information, privacy breach, data theft, etc in those sections are at odds with the standard norms and practice. The paper further states the provisions on the mentioned convention's articles should be considered as basic indicators while drafting national laws related to cyber security and cybercrime.

Moreover, the paper also suggests removing sections 83, 85, 87, 88, 91, 94, 100, 102, 115, 116, 117, 118, 119, and 129. These sections include provisions on cyber security, sexual violence/ abuse, cheating, illegal activities

using technology, use of technology to disturb social, cultural and religious harmony, national sovereignty and promoting hate speech. Most of the provisions in these sections are already criminalized under civil and criminal code.

Furthermore, Sections 91 to 94 speak about provisions on social media use which directly affects citizen's right to freedom of expression. Also, most of the crimes included under this provision are already criminalized by the existing laws. The paper also suggests removal of sections 115 to 119 which contain provisions relating to IT court. It says those crimes mentioned in the bill can be prosecuted through district court as per the existing relevant laws. Hence, there is no need for establishment of specialized court.

In this way, the policy analysis paper discusses about problematic provisions on the IT Bill through human rights perspectives. The bill which has been brought to regulate the digital space should always ensure safe and secure cyberspace where citizen's can safely exercise their right to freedom of expression. It is believed that the policy analyses paper will contribute to the debate of internet governance in Nepal and urges the government and policy makers to abide by human rights principles while introducing and enforcing the laws and policies on IT and digital spaces.

The review can be accessed at: [https://freedomforum.org.np/download/नीति विश्लेषण पत्र](https://freedomforum.org.np/download/नीति_विश्लेषण_पत्र)

*“The bill which has been brought to regulate the digital space should always ensure safe and secure cyberspace where citizen's can safely exercise their right to freedom of expression. It is believed that the policy analyses paper will contribute to the debate of internet governance in Nepal and urges the government and policy makers to abide by human rights principles while introducing and enforcing the laws and policies on IT and digital spaces.”*



# Report on National Strategy & Action Plan for Citizen Engagement in PFM submitted

Freedom Forum formally handed over the National Strategy and Action Plan for Citizen Engagement in Public Financial Management in Nepal to PEFA Coordinator Mr. Than Prasad Pangyani in a meeting at PEFA Premises in Anamnagar on March 6. The submission includes the National Strategy & Action Plan for Citizen Engagement in Public Financial Management in Nepal (English & Nepali) for all three tiers of governments in Nepal along with the Monitoring and Evaluation Plan and Diagnostic Report in Citizen Engagement in PFM in Nepal.

Speaking at a handover program, Mr. Taranath Dahal, team leader for this consultation, expressed his gratitude towards PEFA Nepal for this opportunity

and hope that PEFA would take this forward for effective implementation in all three tiers of governments and ensured PEFA of Freedom Forum help and assistance on this endeavor of execution of this nation wise strategy of citizen engagement in public finance management in Nepal.

Accepting the documents, PEFA Coordinator Mr. Pangyani thanked Freedom Forum for the completion and design of the strategy and action plans. He further added that PFM improvement is very essential for Nepal and Citizen Engagement will promote Citizen Ownership in the development of the country. In closing, Mr. Pangyani ensured that PEFA would work towards the execution of this national strategy & action plan across all levels of government.



Four other officials of PEFA and two members of Freedom Forum were present in the submission meeting along with Mr. Than Prasad Pangyani and Mr. Taranath Dahal. The Reports on National Strategy & Action Plan for Citizen Engagement in Public Financial Management in Nepal (English & Nepali) can be accessed at PEFA Nepal's official Website both in English and Nepali.

## 95 citizen auditors produced to enhance civic participation in performance audit

A training program "Citizen Participation in Performance Audit", conducted by Freedom Forum in collaboration with the Office of the Auditor General of Nepal, was successfully completed in Biratnagar and Nepalgunj. The training program had produced 95 active citizen auditors as well as facilitated the process of forming a nationwide informal network of civil society organizations (CSO) working in the field of performance audit. On the occasion, representatives CSOs working for improve transparency, accountability and civil rights had expressed their commitment to take this issue forward in the coming days.

As many as 47 CSO representatives from Province-1, Madhes Province and Bagmati Province were trained in Biratnagar-based training from April 20 to 22 while 48 representatives from Gandaki Province, Lumbini

Province, Karnali Province and Sudurpaschim Provinces took part in the training held at Nepalgunj from April 24-26. Among the participants were 36 women i.e. 39 percent. The three-day training program covered diverse topics such as audit cycle and performance audit, definition, principles, objectives, scope, benefits and practice of citizen participation in audit. Similarly, training was conducted in various sessions on Institutional Management of Citizen Participation in Performance Audit, Grievance Management Mechanism, Selection and Subject of Citizen Participation in Performance Audit, Citizen Support, Qualification and Selection Process of Civil Society Organizations and Social Accountability Tools. In addition, the results and suggestions of the performance audit conducted in various thematic areas of



Nepal were also presented. Participants also provided participatory feedback on the challenges and improvements in increasing citizen participation in performance audits.

The training program was facilitated by Deputy Auditor General of the Office of Auditor General, Netra Khatri and Humnath Subedi, theme experts Taranath Dahal and Krishna Sapkota, former Deputy Auditor General of the Office of Auditor General of India Anupam Kulshrestha and other experts managed by the Ernst & Young India.



# 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> Gender Monitoring Officer, responsible for monitoring media content on gender perspectives		
	<b>Aditya Dahal:</b> RTI App and website operator		
	<b>Manju Ojha:</b> Front Desk Assistant, <b>Ganga Kumari Gurung:</b> Office Assistant		
<b>Projects</b>	<b>Krishna Sapkota-</b> Driving Audit Accountability (Consultant/ OBS Researcher), <b>Narayan Ghimire-</b> MAINSTREAMING HUMAN RIGHTS IN CYBERSECURITY AND CYBERCRIME POLICY (CONSULTANT), <b>Subash Dahal -</b> DAA		
<b>Project Information</b>	<b>Project Name</b>	<b>Supporting Agency</b>	<b>Date of Signing the Contract</b>
	Contributing to create atmosphere for free expression and reduction of impunity on crimes against journalists	IFEX	30th November 2021
	Driving Audit Accountability : Audit Reports for Collective Action to Strengthen Government Responsiveness (DAA)	IBP	30th September 2019
	Mainstreaming Human Rights in Cybersecurity and Cybercrime Policy	Global Partners Digital	15th March 2021
	Open Budget Survey, Support to IBP in Developing Capacity Building Materials for civil Society Organizations	IBP	14th June 2021
	Training on Citizen Participation in Performance Audit	PSRD	24th December 2021
<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 Rs. 16,37,157 (January to March 2022)		
<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		

# Government internet shutdowns are changing. How should citizens and democracies respond?

- By Steven Feldstein

Internet shutdowns exist on a spectrum and include everything from complete blackouts (where online connectivity is fully severed) or disruptions of mobile service to throttling or slowing down connections to selectively blocking certain platforms. Some internet shutdowns last a few days or weeks, while others persist for months or even years.

Inherent in the definition of internet shutdowns is that they are timebound and contain fixed start and end dates. But in many countries, short-term internet disruptions are morphing into longer-term controls, bringing definitional confusion as to whether these restrictions still qualify as shutdowns or whether they are more properly understood as permanent limitations on internet access.

This underlines a growing trend: internet blackouts, where governments order internet service providers (ISPs) to fully disconnect online access for a particular geographic region or throughout a country, will become decreasingly common in the future. Instead, governments will use more precise blocking methods to deny access to specific websites, internet services, or communications platforms, while avoiding widespread service disruptions.

Activists and politicians have called for the United States to deploy satellite internet or floating Wi-Fi balloons to restore internet access during other countries' shutdowns, such as during Cuba's 2021 internet blackout. Unfortunately, these tools are rarely practical nor workable for both technical and political reasons. But other tools are available to citizens that bring a high degree of effectiveness:

Virtual private networks (VPNs) are protocols that allow users to access many blocked sites by providing internet service based outside of a censored country using a proxy server. Users can download popular free VPNs from app

stores, directly from product websites, or through Android application packages (APK files) sent by email or messaging apps. These services are most useful during targeted internet shutdowns, when a government blocks specific websites or platforms but preserves overall network connectivity.

An effective alternative to VPNs are private servers. Because VPNs are publicly accessible, governments can block them. Private servers (such as Outline, an open-source project from Google's Jigsaw unit, which works on internet safety) permit users to establish protected servers located anywhere in the world and to share them with other individuals. This method is particularly helpful during partial internet shutdowns or when states are blocking VPNs; its decentralized model means that there is no single domain or internet protocol (IP) address for governments to impede.

Mesh networks are another useful option during internet blackouts when all outside connectivity is blocked and users cannot use VPNs. Mesh networks allow users to maintain communication with one another without relying on the internet or short message service (SMS) services. Instead, they use Bluetooth or Wi-Fi technology to create a chain of devices that can send messages to one another when they are in close proximity. Activists in Hong Kong, for example, relied heavily on mesh networks like Bridgefy to facilitate peer-to-peer communications during protests in 2019–2020. While mesh networks do not facilitate internet access, they are among the only digital communication options available during a total shutdown.

Serverless circumvention tools also demonstrate promise and can be used to either facilitate internet access during short-term disruptions or to circumvent longer-term restrictions. Programs such as Intra, GoodbyeDPI, Green Tunnel,

and Geneva do not tunnel traffic or rely upon third-party servers (like VPNs), which means that governments have a much harder time blocking them.

Democratic states, together with local and international civil society organizations, technology developers, and companies, should pursue a multifaceted strategy to counter shutdown trends. The strategy should emphasize, first, advance preparation, such as encouraging citizens to mass download censorship-resistant VPNs ahead of specific windows of risk; second, user accessibility to facilitate scaling up, recognizing that the more steps required to install VPNs or circumvention technology, the less likely it is that individuals will actually use the software; third, nontechnological strategies to complement digital solutions; and fourth, raising the costs for governments and private companies to continue implementing shutdowns.

Liberal democracies in particular should consider the best mix of carrots and sticks to contest internet shutdowns. Imposing reputational and legal costs for governments and companies that participate in shutdowns—whether by supporting strategic litigation, making internet blockages more economically costly, or flagging repressive behavior in international fora—can be successful deterrents. Conversely, providing financial inducements to states that maintain free and open internet access, and incentivizing countries to participate in the digital economy, can create structural incentives that mitigate against governments shutting down the internet. Finally, long-term investment and advocacy, rather than quick fixes, are the best paths to empowering citizens to navigate increasingly advanced online controls.

(Source: <https://carnegieendowment.org/2022/03/31/government-internet-shutdowns-are-changing-how-should-citizens-and-democracies-respond-pub-86687>)



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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**Freedom Forum**

P.O. Box: 24292

Block No. 22, Adarsha Marg

Thapathali, Kathmandu, Nepal

**Telephone:** 977-1-4102022, 4102030

**Fax:** 977-1-4226099

**Email:** [info@freedomforum.org.np](mailto:info@freedomforum.org.np)

[monitoring@freedomforum.org.np](mailto:monitoring@freedomforum.org.np)

**Web:** [www.freedomforum.org.np](http://www.freedomforum.org.np)

[www.nepalpressfreedom.org](http://www.nepalpressfreedom.org)