



# Safeguarding media rights and ending impunity in Nepal

REPORT

International fact-finding and advocacy  
media mission to Nepal, February 2012

May 2012

**Contributing Organisations:**

AMARC – World Association of Community Broadcasters  
Article 19  
Centre for Law and Democracy  
Committee to Protect Journalists  
International Federation of Journalists  
International News Safety Institute  
Internews  
International Press Institute  
Open Society Foundations  
South Asia Free Media Association  
South Asia Media Solidarity Network  
Reporters Without Borders  
United Nations Educational, Scientific and Cultural Organisation  
International Media Support (IMS)



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## Acronyms

AMARC	World Association of Community Radio Broadcasters
CLD	Center for Law and Democracy
CPA	Comprehensive Peace Accord
CPJ	Committee to Protect Journalists
CPN (UML)	Communist Party of Nepal (Unified Marxist-Leninist)
FNJ	Federation of Nepali Journalists
FoE	Freedom of Expression
ICCPR	International Covenant on Civil and Political Rights
IMM	International Media Mission
IFJ	International Federation of Journalists
IMS	International Media Support
INSI	International News Safety Institute
IPI	International Press Institute
ISP	Internet Service Provider
JICA	Japan International Cooperation Agency
MJF	Madheshi Janadhikar Forum
MoIC	Ministry of Information and Communication
NHRC	National Human Rights Commission
NTA	Nepali Telecommunication Authority
OAS	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
OSF	Open Society Foundations
PSB	Public Service Broadcaster
RSF	Reporters Sans Frontiers
RTI	Right to Information
SAFMA	South Asia Free Media Association
SAMSN	South Asia Media Solidarity Network
UCPN (M)	Unified Communist Party of Nepal (Maoist)
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNMIN	United Nations Mission in Nepal
VoIP	Voice-over Internet Protocol
WJA	Working Journalists Act

# 1 Introduction

## 1.1 Background of the International Media Mission

The International Fact-finding and Advocacy Media Mission visited Nepal from 23 to 27 February 2012 to assess the media freedom situation in the country at the invitation of the Federation of Nepali Journalists (FNJ).<sup>1</sup> The International Media Mission to Nepal (hereafter IMM) is an alliance of 14 international organisations including UN agencies, global media associations, freedom of expression advocates, and media development organisations.

The International Media Mission was conceived in 2005 as a response to the deteriorating press freedom and freedom of expression situation in the aftermath of the installation of direct rule by King Gyanendra. Over a dozen international organisations, including UN agencies, global media associations, freedom of expression advocates and media development organisations participated in the five visits organised between July 2005 and April 2008 which focused on seeking new guarantees for press freedoms and highlighting the continued threat to press freedom in the country.

The visits carried out by the IMM between 2005-2009 were successful in securing releases of journalists in detention and carrying out follow-up activities on the safety of journalists. The IMM also assisted the Federation of Nepali Journalists (FNJ) in institutionalising a system to monitor media freedoms, advocate for reform of laws, particularly on Right to Information and the Working Journalists Act (WJA), and to prepare an 'Agenda for Change' detailing these reforms through an extensive process that involved Nepali stakeholders and international organisations. Most importantly, the IMM visits provided support to journalists, as needed, and through all of the above-mentioned activities, helped to build the confidence of Nepali journalists to continue struggling for basic media rights.

The February 2012 visit was the seventh by the IMM.<sup>2</sup>

<sup>1</sup> On this visit, the International Media Mission was represented by AMARC, ARTICLE 19, Centre for Law and Democracy (CLD), Committee to Protect Journalists (CPJ), International Federation of Journalists (IFJ), International News Safety Institute (INSI), International Media Support (IMS), International Press Institute (IPI), Internews, Open Society Foundations (OSF), Reporters sans Frontières (RSF), South Asia Free Media Association (SAFMA), South Asia Media Solidarity Network (SAMSAN) and UNESCO.

<sup>2</sup> Previous visits were organised in July 2005, March 2006, September 2006, January 2008, April 2008 and February 2009.



The International Media Mission meets with Nepal's Prime Minister Dr. Baburam Bhattarai (center). Photo by FNJ

## 1.2 Objectives and focus

The overall objective of the IMM visit in February 2012 was to advocate international best practices on press freedom, Freedom of Expression (FoE) and Right to Information (RTI) among key policy makers working on the constitution and to assess the capacity and situation of the media. Specifically, the IMM sought to:

- Assess FoE, RTI, media rights and capacity
- Recommend revised strategies and agree on activity priorities
- Dialogue with political parties, national authorities and key groups on key press freedom and FoE
- Engage the donor community to consider the revised activity priorities.<sup>3</sup>

The IMM of February 2012 took some key decisions that differentiated it from previous missions. The agreement amongst partners was to focus on key challenges and also devise follow-up mechanisms to address the main concerns. This agreement guided the IMM's interaction with stakeholders.

## 1.3 Putting action first

As a clear departure from previous missions, the IMM identified priorities for action that were stated unequivocally in the statement released by the IMM. The focus was on two key areas: constitution, policy and legal reforms, and secondly, attacks on journalists and the culture of impunity. The choice of focus areas pertained to the fact that only two concrete reforms have been achieved on policy and law since the first IMM in 2005: the amendment of the Working Journalists Act (1995) and the promulgation of the Right to Information Act (2007). Furthermore, while the number of attacks on journalists declined after 2009, the rate has remained unacceptably high and those responsible for murdering journalists still remain at large, promoting a culture of impunity.

The focus on policy and law was justified conceptually as it sought to tackle specific issues with a broad inclusive framework of policy, legislation and practice rather than take a disciplinary focus on specific incidents and media type. The IMM raised key issues such as constitutional guarantees for freedom and ending impunity that had been identified previously at meetings with the Prime Minister, leaders of all major political parties and a group of Members of the Constituent Assembly's Directive Principles and Fundamental Rights Committee. At the meetings, all stakeholders committed to the different proposals made by the IMM. These included revisiting the proposed constitutional guarantees, and supporting a multi-stakeholder taskforce that would address the protection of journalists and work to end the culture of impunity. Another proposal put forward was to prepare an inclusive media policy for taking into account the changes taking place in the media environment.

Using this framework, the mission made recommendations on two specific areas (1) constitutional, policy and legal framework, and (2) impunity and working environment for journalists. These were reflected in the Mission statement in four points.<sup>4</sup>

<sup>3</sup> *Concept note for the IMM prepared by the FNJ*

<sup>4</sup> *See Annex 1 for full statement.*

- Reform of the proposed constitutional guarantees for Freedom of Expression, of media and information
- Addressing the culture of impunity
- Development of a media policy, and
- Classification of the Right to Information.



Journalists in a silent protest demanding action against those involved in the attack on Khilanath Dhakal in Biratnagar. Photo: Kiran Pandey/FNJ

### 1.3.1 Immediate actions

Following the February 2012 visit, the IMM identified two priorities to begin work immediately. One priority was doing a thorough legal review of the proposed constitutional provisions and providing written comments and suggestions to all the stakeholders met by the Mission, including the prime minister, leaders of all major political parties, and Constituent Assembly members. This was followed up with individual letters written to key members of the Directive Principles and Fundamental Rights Committee of the Constituent Assembly.

The other priority was setting up a robust and efficient multi-stakeholder mechanism for protecting journalists for tackling impunity based on international best practices. Representatives of the Mission held several meetings with the National Human Rights Commission (NHRC) that has agreed to take a lead in formulating the mandate for such a task force in consultation with the relevant stakeholders. A concept note to this effect has been prepared and the NHRC is expected to take a formal decision to operationalise the task force, following consultations with the stakeholders.

## 1.4 Structure of the report

This report is organised in four chapters covering the two key areas on which the IMM is focusing: constitutional, policy and legal environment; and impunity and working environment for journalists.

Chapters two and three deal with Nepal's political environment 2012 and the legal media environment with analysis and findings. Chapter four cites the recommendations of the IMM, which complement those presented in the IMM statement (see Annex 1) produced as a result of the visit.

## 2 Nepal's political environment 2012

Nepal's peace process began in April 2006 and reached the first milestone with the signing of the Comprehensive Peace Accord (CPA) in November 2006. The next steps involved the promulgation of the Interim Constitution in January 2007, including the Communist Party of Nepal (Maoist) in government, and the holding of the Constituent Assembly election in April 2008. The term of the United Nations Mission to Nepal (UNMIN) that had been in Nepal to assist the peace process ended in January 2011.<sup>5</sup> The UN mission was mandated to oversee the implementation of the CPA, manage the arms and armies and assist with the Constituent Assembly election.

However, the peace process was far from complete when UNMIN ended its operations in Nepal on 15 January 2011. The "major issues pertaining to integration and rehabilitation remained unresolved. They included the numbers, norms and modalities for integration into the security forces; whether the combatants would be integrated principally into the Nepal Army and Armed Police Force or into other forces; and the value of the proposed rehabilitation packages."<sup>6</sup> In the 5 January 2011 briefing at the Security Council, the head of UNMIN had, among others, added that:

- 5 UNMIN began work in Nepal in January 2007 (<http://www.transcend.org/tms/2011/03/the-un-mission-in-nepal-unmin-s-humiliating-withdrawal/>). UNMIN was established following the Security Council resolution 1740 (2007) on 23 January 2007. It was mandated to monitor arms and armies and provide electoral assistance during the Constituent Assembly election initially planned for June 2007 (it was held in April 2008).
- The contestation over resources and a share in decision-making had heightened and could be a source of future tension and instability
  - The human rights situation was still characterised by a general atmosphere of impunity and lack of accountability
  - Some journalists had been killed and others threatened and efforts to establish the Truth and Reconciliation Commission and the Commission of Inquiry on Disappearances had slowed.

A Special Committee with cross-party political representation and a Secretariat, of Nepal's security agencies replaced the UN arms monitors.

Nepal's peace process remained slow owing to frequent changes in government – there have been two since the departure of UNMIN. There had been some progress in the peace process after Mr. Bhattarai took over as prime minister, when the government and the main opposition parties signed a seven-point agreement to take the process forward. The agreement covered integration of 6500 Maoist combatants under a Directorate in the Nepal Army tasked with development-construction, forest security, industrial security and disaster management, and the rehabilitation of combatants who opted for voluntary retirement. There also was agreement on the Truth and Reconciliation Commission Bill and the Disappearance Commission Bill, and on drafting a constitution and forming a national government. The parties had also agreed on beginning to draft the constitution and the process of forming a national consensus government once the peace building and constitution drafting processes had picked up momentum.<sup>7</sup>

Nepal's constitution was due by May 2012. Even though articles providing for Freedom of Expression, media rights and Right to Information were more or less finalised in draft form, stakeholders had concerns about their adequacy. Particularly the terminologies used in the draft prepared by the committee on fundamental rights were inconsistent with international standards, and had no guarantees that the provisions would not be used for curtailing freedoms in the future.<sup>8</sup> There were also concerns around the government's

6 SC/10145. Final briefing by the Secretary General's outgoing representative at the UN Security Council. (<http://www.un.org/News/Press/docs/2011/sc10145.doc.htm>), 5 Jan 2011

7 The Kathmandu Post. <http://www.ekantipur.com/the-kathmandu-post/2011/11/01/nation/draft-of-the-7-point-agreement/227733.html>

8 Briefing note prepared for the IMM by Shiva Gaunle, President of the Federation of Nepali Journalists, February 2012

attempts to prescribe broad rules on the classification of information which were strongly opposed by Nepali stakeholders, including the FNJ.

In February 2012 when the IMM was in Kathmandu, the political situation in Nepal was fluid. While there had been some progress in the integration of Maoist combatants, work towards preparing a constitution remained slow. This was due to the inability of the main political parties to agree on matters disputed by the committees tasked with the work. The contested issues were under the purview of the Dispute Resolution Sub-committee of the Constitutional Committee, a body of top leaders from the main political parties.

The political uncertainty in Nepal after November 2006 provided the backdrop for attacks against journalists and media that had continued even after the peace initiatives. Nepal revised the law on working conditions of journalists, but it has yet to be enforced. A National Information Commission had been established, but was facing operational challenges, owing to issues related to capacity and resources. There was also a sense of increased partisan polarisation in a section of the press, and there were discernable efforts (through policy or other inducements) by the government and political parties to control the media. Three cases where journalists and media entrepreneurs who had been murdered after the IMM's visit in 2009 had not yet been investigated thoroughly, and those suspected of attacking the media and the press had yet to be brought to justice. The media also faced new threats from groups "claiming special social interests and recognition of their particular identity" that had been intolerant of an independent media,<sup>9</sup> while pursuing their claims and demands.

9 *Speech of Jesper Højberg, IMS Executive Director, delivered at the inauguration of the IMM visit on 23 February 2012.*

## 3 Legal media environment in Nepal: Analysis & findings

The IMM examined the key focus areas relating to Freedom of Expression, Right to Information and media rights in the context of the political environment, focussing on the following key areas.

- Constitutional, policy and and legal framework
- Impunity and working environment for journalists

### 3.1 Constitutional, policy and legal framework

#### 3.1.1 Strengthening proposed constitutional guarantees

The 2006 Comprehensive Peace Agreement laid out the process for the adoption of a new constitution. The Interim Constitution, which came into force in January 2007, provided for a Constituent Assembly, which was elected in April 2008. A key objective of the Constituent Assembly is to draft a new constitution for Nepal with the Interim Constitution, providing that this should happen by 28 May 2010. When it failed to meet that deadline, the Constituent Assembly extended the deadline by a year. In May 2011, the Supreme Court held the extension to be unconstitutional, but in November 2011 after three more extensions, the Supreme Court indicated that the latest extension to May 2012 must be the last. Failing agreement by that time, the Court held that the Constituent Assembly should be dissolved and new elections held.

Ten thematic committees were established to develop constitutional proposals on different issues to be developed into a full draft Constitution by the Constitutional Committee. The Committee on Fundamental Rights and Directive Principles was responsible for drafting provisions on human rights, and it had submitted its draft to the Constituent Assembly.<sup>10</sup> At the time of the IMM, agreement in principle has been reached on most of the text of the new constitution, including the text in relation to human rights. There were, however, a number of outstanding issues relating to the structure of the country and the form of government, and how certain powers would be distributed. A Dispute Resolution Sub-committee of the Constitutional Committee had been set up to deal with these key issues, but it did not have expressed power to reopen other constitutional issues. At the same time, decisions on other issues were not formally closed, and amendments could still be introduced either by the Constitutional Committee or, ultimately, by the Constituent Assembly itself, which was to vote separately on each constitutional provision as the final step for approval.

Three of the new constitutional proposals are of particular interest and concern to the IMM, namely those relating to freedom of expression, protection of the media and the right to information. Article 2(2)(a) of the constitutional proposals on fundamental rights guarantees every citizen the right to freedom of opinion and expression. This does not, however, prevent the adoption of laws which impose "reasonable restrictions" on these rights to prevent acts which undermine various interests – including the "nationality, sovereignty, independence and integrity of Nepal", harmonious relations between "the federal units" and various groups – which constitute "defamation, contempt

<sup>10</sup> An unofficial English version of these provisions can be found at: [http://www.ncf.org.np/ca-archives/fundamental\\_rights.htm](http://www.ncf.org.np/ca-archives/fundamental_rights.htm).

of court or incitement to an offence", or which "may be contrary to decent public behaviour or morality".

Article 4 provides for various special guarantees for the mass media, including prohibitions on prior censorship (subject to restrictions which are analogous to those for freedom of expression generally) and on the closure, seizure, cancellation or obstruction of media outlets and products.

Finally, Article 12 guarantees the right of citizens to access information of concern to themselves or to the public generally. This does not, however, require the provision of information regarding "any matter about which confidentiality is to be maintained according to law".

These guarantees are very similar to those found, respectively, in Articles 12(3)(a), 15 and 27 of the 2007 Interim Constitution which, in turn, are even more similar to those found in Articles 12(2)(a), 13 and 16 of the 1990 Constitution. A key difference between the 1990 guarantees and the constitutional proposals is the inclusion of additional grounds for restricting the right to freedom of expression and imposing censorship. Thus, 'nationality', 'independence', and relations 'among the federal units' have been added as grounds for general restrictions on freedom of expression, while these and new grounds for treason, for discouraging crimes and untouchability – have been added to the list of justifications for prior censorship of the media.

These guarantees find their parallel under international law in Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR),<sup>11</sup> a formally binding legal treaty that Nepal ratified in May 1991. Article 19 guarantees the rights to freedom of expression and opinion in the following terms:

- Everyone shall have the right to freedom of opinion
- Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice
- The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 19 has been interpreted to include the right to information, as well as protection for media freedom.<sup>12</sup>

The guarantee of freedom of expression and opinion in the constitutional proposals is more limited than under international law in several ways. These include the facts that the former applies only to citizens, does not provide absolute protection for opinions, and does not elaborate on key characteristics of the right (while Article 19 provides that the right includes freedom to seek, receive and impart information and ideas, of all kinds, regardless of frontiers and through any media).

A more important difference between the two guarantees is the scope of permissible restrictions on these rights. The grounds for restrictions under international law are very limited, whereas they are relatively broad in the constitutional proposals. The idea of national security is replaced by the much wider notions of 'nationality, sovereignty, independence and integrity'. The reference to the 'rights of others' in Article 19 includes protection against

11 UN General Assembly Resolution 2200A (XXI), adopted 16 December 1966, in force 23 March 1976.

12 See, for example, UN Human Rights Committee, General comment No. 34, 12 September 2011, CCPR/C/GC/34.

incitement to hatred, discrimination and violence on the basis of race or religion, but this does not go so far as to protect 'harmonious relations' between different groups, a much wider concept. Article 19 does not allow for restrictions to protect relations between different parts of the State (unless these are necessary to protect public order), while the constitutional proposals protect relations 'among federal units'. Article 19 does protect public morals, but not also 'decent public behaviour', once again a much wider concept. Some of the grounds listed in the constitutional proposals are also rather vague in nature (such as 'nationality' and 'harmonious relations'). It is also problematic that the constitutional proposals refer to categories of statements – namely defamation, contempt of court and incitement to crime – instead of protected interests – namely reputation, the administration of justice and public order.

There are also important differences between the standard of harm required to justify restrictions under international law and under the constitutional proposals. The former requires restrictions to be necessary, while the latter uses much more permissive terms, such as 'may undermine', 'may jeopardize' or 'may be contrary to'.

It is positive that the constitutional proposals prohibit prior censorship, but the scope of permissible limitations on this prohibition is even broader than for freedom of expression generally. In contrast, while international law does not entirely rule out prior censorship, it is clear that it might be justifiable only in the very most limited circumstances, and probably never in relation to the media. In other words, international law scrutinises prior censorship far more strictly than other restrictions on freedom of expression, while the constitutional proposals grant more latitude to the Nepali state in this area.

Finally, while the protection for the right to information is welcome, it also suffers from being too narrow in scope, applying only to citizens, as opposed to everyone, and to information on matters of concern to the individual or the public, as opposed to all information. The permissible scope of restrictions here is far broader than those allowed in relation to freedom of expression or prior censorship, let alone what is permitted under international law. Indeed, proposed Article 12 would appear to permit any restriction on access to information that is provided for by law. Under international law, the same test of necessity to protect a limited list of interests applies to restrictions on the right to information.

The IMM discussed these concerns and recommendations with several key actors, including the Prime Minister, the Chairperson and other Members of the Constituent Assembly, and all of the political party leaders that the IMM met with. They agreed to reconsider these guarantees, and, as necessary, to engage in further discussion about them through the appropriate mechanisms (i.e. the Constitutional Committee and Constituent Assembly), with a view to bringing them into line with international standards. To support this process, the IMM has produced a detailed analysis of international standards in this area, as well as the ways in which the current constitutional proposals could be improved.

### **3.1.2 Development of an inclusive media policy**

The Ministry of Information and Communication (MoIC), as part of its bilateral cooperation with the Japan International Cooperation Agency (JICA), has placed a Media Policy, 2012 on its website for "discussions".

A comprehensive, progressive and non-discriminatory media policy is needed in order for Nepal's media to grow. At the same time, there were problems

with the current draft, including the timing, the fact that it was not the subject of proper consultations and its content. With the Constitution expected within a few months, the legal backdrop to the policy was missing, as all media policies and laws are subject to the Constitution. In addition, active participation of political leaders in the policy process is more likely after the Constitution is ratified. This is a prerequisite for the effective implementation of the policy.

Participative, inclusive policy development on media issues is increasingly important in Nepal where the democracy is young and peace-building under way. Inviting participation ensures the quality and relevance of the product, and gives legitimacy through endorsement by key stakeholders.

MoIC had invited stakeholders to comment on the draft policy through three meetings, but key players, including the FNJ, had not been sufficiently involved in the preparation of the document. In order for the policy to reflect the realities and needs of Nepal's media landscape, all media stakeholders should have been involved throughout the process, ensuring inclusiveness and pluralism of the policy.

The content of the draft policy attempts to be holistic as regards applying to the entire media, and it covers important areas such as broadcasting, print media, cinema and advertising. However, there are key issues that have not been covered in the policy, or that have not been covered sufficiently. For example, the need for independent regulatory body for broadcasting and protection of freedom on the Internet are missing.

In order to provide for the disempowered, the policy should also include a section that recognises social inequalities and ensures that this perspective is taken into account, for example, when managing the broadcast licensing (for example by ensuring that broadcasters that aim to involve and service the poor and marginalised are able to access frequencies). Without a specific focus on these groups, it is unlikely that they will be able to take advantage of opportunities to have their voices heard in the design and performance of a media system. To this end, the policy should make clearer the distinction between public, private and community broadcasters, and provide for more detailed rules which are adapted to suit the needs of each sector, including in relation to frequency allocations.

The policy should explicitly list the stakeholders in the policy – government, state bodies, political parties, civil society groups, media owners and entrepreneurs, investors, editors, journalists including freelancers, amateur media producers including bloggers, and the audiences.

Furthermore, the policy should be more specific about the role played by various actors in the system, such as the Ministry of Information and Communications, the High Level Independent Media Commission, the Censorship Board, and State-owned media. For example, the role of government vis-à-vis the Independent Media Commission, which is not part of government, should be clarified, in particular in relation to policy. The policy should also set clear rules regarding government spending powers, in particular on advertising or other communications. It should also establish clear guidelines on appointments to the Independent Media Commission, and on the process for appeals from its decisions. Furthermore, the policy should set clear limits on the mandate of different bodies, and ensure stakeholders have the right to appeal against decisions they do not agree with. The different actors playing a regulatory role should be accountable for their performance in terms of their mandate, and there should be channels and mechanisms to help ensure this.

As the policy develops, it might be useful to refer to the UNESCO Media Development Indicators to help establish where there are gaps in the policy.

13 See [www.article19.org/data/files/pdfs/igo-documents/three-mandates-dec-2004.pdf](http://www.article19.org/data/files/pdfs/igo-documents/three-mandates-dec-2004.pdf).

14 See *Constitution of Nepal* (1948), Article 4, *Constitution of Nepal* (1951), Article 17(2)(a), *Constitution of Nepal* (1959), Article 7(a), *Constitution of Nepal* (1962), Article 11(2)(a), *Constitution of Nepal* (1990), Article 12(2)(a), and *Interim Constitution of Nepal* (2007), Article 12(3)(a).

15 *Constitution of Nepal* (1990) Art. 16, *Interim Constitution of Nepal* (2007) Art. 27.

16 *Interim Constitution of Nepal* (2007), Art. 12: 'Every citizen shall have the right to demand or obtain information on any matters of concern to him or herself or to the public. Provided that nothing in this Article shall be deemed to compel any person to provide information on any matter about which confidentiality is to be maintained according to law.'

17 ARTICLE 19, *An Agenda for Change: The Right to Freedom of Expression in Nepal*, (2008: Kathmandu). Available at: [www.article19.org/data/files/pdfs/publications/nepal-agenda-for-change.pdf](http://www.article19.org/data/files/pdfs/publications/nepal-agenda-for-change.pdf).

18 *IMS, A call to end violence and impunity* (2009: Denmark). Available at: [www.i-m-s.dk/files/publications/1453%20Nepal.web.pdf](http://www.i-m-s.dk/files/publications/1453%20Nepal.web.pdf).

19 Mendel, Toby, *Implementation of the Right to Information in Nepal: Status Report and Recommendations*, (2011: World Bank, Washington DC). Available at: [http://www.freedomforum.org.np/content/attachments/article/114/RTI-Report-Nepal%20\\_World\\_Bank.pdf](http://www.freedomforum.org.np/content/attachments/article/114/RTI-Report-Nepal%20_World_Bank.pdf).

During the mission the draft policy was discussed with MoIC representatives as well as several other key actors. The MoIC agreed that there was a need for a wider consultative process, and for the policy to be redrafted based on those consultations.

### 3.1.3 Limiting the scope of classification of information

In international human rights law, the right to freedom of expression encompasses a right to seek, receive and impart information. The UN, Organisation for Security and Cooperation in Europe (OSCE) and Organisation of American States (OAS) Special Rapporteurs for freedom of expression have stated that the right to access information held by public authorities is a fundamental human right which should be given effect through comprehensive legislation (for example, a Right to Information Act) based on the principle of maximum disclosure, establishing a presumption that all information is accessible, subject only to a narrow system of exceptions.<sup>13</sup>

Successive Nepali constitutions since 1948 have to some extent guaranteed the right to freedom of expression.<sup>14</sup> The 1990 Constitution was the first to expressly guarantee the right to information, which was subsequently guaranteed under Article 27 of the 2007 Interim Constitution.<sup>15</sup> The Constituent Assembly Committee on Fundamental Rights and Directive Principles, charged with drafting the provisions on fundamental rights, has recommended that the Constituent Assembly replicate the Interim Constitution's guarantee on the right to information into the new Constitution.<sup>16</sup>

Article 12 as it currently stands raises two concerns. Firstly, the right should apply to everyone, not just citizens, and this is particularly important when considering recent issues in the provision of citizenship in the Tarai region. Secondly, the right should apply to all publicly held information, not just to information 'of concern'. Limitations should only be allowed that are necessary to protecting overriding public and private interests, such as national security and privacy.

The constitutional right was brought into effect with the adoption in 2007 of the Right to Information Act; 12 years after the Supreme Court ordered its effectuation. The Act has been reviewed by several international organisations and contains many of the features necessary to be regarded as a good law.<sup>17</sup> The previous IMM visit to Nepal in 2009 did however pinpoint a number of shortcomings:

- The Act is limited in scope to citizens rather than applying to everyone
- The information request procedures require applicants to submit reasons for their requests. This is contrary to international standards and potentially places the burden of proof on the applicant
- The Act lacks an override providing for the disclosure of even exempt information where this is in the overall public interest
- The National Information Commission should be given a wider mandate to promote implementation of the law.<sup>18</sup>

The IMM notes that independent international studies have found that implementation of the RTI Act remains weak from both a supply and a demand point of view.<sup>19</sup> The IMM were also informed that the ability of the National Information Commission to function effectively has been undermined by a rapid turnover of secretaries.

It is legitimate for States to stipulate in law the specific types of information that should remain confidential. However, the IMM was concerned by the government's recent attempts to classify broad types of information under the Act. On 12 December 2011, the government published a directive listing 24 categories of secrets, along with 116 types of information that are declared to be secret for a period of 30 years, many of which are vague and unclear. The directive, which was due to come into force from 15 January 2012, had not been the subject of any consultations with civil society. Protests against the classification rules, which would have rendered information on treaty ratification, meetings with foreign dignitaries and ministerial documents secret, were organised by the Federation of Nepali Journalists and other civil society groups.

The directive was also challenged in the Supreme Court by a number of civil society organisations. On 31 January, the Supreme Court issued an interim order which recognised that there were potential problems with the directive in terms of restricting the dissemination of information 'of public importance', and which stayed implementation of it until the merits of the case could be heard. In response to this, the government postponed but has not withdrawn the directive.

### **3.1.4 Issues related to print media**

The print media sector has been expanding in recent years on Nepal, with a growing number of newspapers published every day. According to information distributed by Nepal's press council, a total of over 500 newspapers and magazines are regularly published in the country. Among them, 89 are daily newspapers, 381 are weekly publications, 40 are published fortnightly, and four magazines are published every two months. The others are not regular.

From a policy perspective, the print media has not witnessed any change since 2009, when the IMM had visited Nepal, in spite of strong pressure by international and local advocacy groups for the need to amend the legislative framework. The Press and Publications Act, for example, still contains a number of provisions that limit freedom in the print media sector and contradict international standards. Of concern is the licensing (registration) requirement for newspapers, an obligation broadly considered as unnecessary in a democratic society.

Another issue is the Press Council Act, 1992 that establishes a statutory press council. According to the Act, the government appoints the chair and members while the law also gives it authority to respond to complaints about media content and, whenever information published is found to be in contravention of its code of conduct, it can order the publication of an apology or "any comment, article or publishing material of the aggrieved party in the concerned paper".

Press freedom advocates in Nepal are also concerned about the lack of independence in the way government-sponsored advertisements are distributed to newspapers, which leads to self-censorship by newspapers that fear to lose their share of government-sponsored advertising as a consequence of reports perceived as critical of government's policies.

Another challenge to independent reporting in Nepal is the increasing share of newspapers that are owned by political parties. In particular, the ruling Unified CPN (Maoists) has recently started publishing newspapers in every region and district of the country. (Earlier other democratic parties also published or supported publication of certain newspapers as mouthpieces).

Further to this already problematic ownership landscape, observers noted that even the selection of editors of many national newspapers "have become subject of political deals and bargaining," as a journalist told the IMM.

Political influence on reporting combined with an increasing tendency towards "yellow journalism" and sensationalism is leading towards erosion of journalistic standards, which in turn challenges the public support for professional journalism. Print media journalists have also been the most common victims of attacks in retaliation for their reporting – according to the information in the Nepali press and that collected by FNJ and NGOs like Freedom Forum.

An FM station in Kathmandu. Nepal now has over 300 radios both commercial and community run. Photo by Shaligram Tiwari/FNJ



### 3.1.5 Issues related to broadcasting

Nepal's broadcast sector comprises of over 300 independent radios, the state-run radio and about a dozen television stations, including the state broadcaster. With the launch of Radio Sagarmatha in 1997, Nepal became the first country in South Asia to have an independent radio that introduced the idea of community broadcasting in the region. In 2012, there were over 200 community stations. Radio, particularly community radio, has played a critical role in strengthening freedom of expression and in giving voice to marginalised and less privileged people thereby increasing their access to information – and to public services.

Despite the growth in broadcasting, Nepal has not amended its laws on broadcasting and has no systems for independently regulating the broadcasters. Under the existing arrangements the government is the licensing organisation, the regulator as well as an operator of the state-run stations. There is an urgent need to adopt a comprehensive broadcasting law, which, among other things, establishes an independent body to regulate the broadcasting sector. There is also a need, long recognised by policy-makers and other stakeholders in Nepal, to transform the public broadcasters into public service broadcasters (PSBs).

Community radios groups have long been advocating for policy and laws that differentiate between community stations and regular commercial broadcasters. This is largely because the community stations that have an important public service function are constrained by policy on carrying out their functions because they have to compete for resources with commercial stations, and also because they have to pay fees and royalties that are applicable

to regular broadcasters. The existing laws and policies do not distinguish between community (not for profit) and private (commercial) radio stations. License application procedures and application costs also remain the same for both private and community radio stations. This is contrary to international good practices and broadcasting standards and has created serious obstacles to sustainability of community radio in Nepal.

### **3.1.6 Issues related to Internet and online media**

Although the Internet in Nepal remains relatively free and uncensored, government attempts at filtering content have raised serious concerns. Nepal's Internet Service Providers (ISPs) listed several incidents, which indicate a troubling pattern of government efforts at censorship.

The ISPs cited, by way of example, approaches by the Ministry of Home Affairs, through the Nepali Telecommunication Authority (NTA), asking all ISPs to install filtering software and, without a judicial order, ordering them to block content. Although the ISPs were able to resist demands to install software, according to a recent report by members of an international coalition on Internet freedom in 2011, the NTA was successful in forcing them to block more than 60 websites. Civil society advocacy has been successful in getting the NTA to release the blocked website list which revealed that blocked sites included popular news and social networking sites, according to a November 2011 report by Internet Democracy Project.

Under international standards there can be legitimate reasons for wanting to block content, for instance in the interest of protecting minors from child pornography. However, this is provided that such blocks are proportionate, necessary and according to law as decided by a court. Broad filtering systems can too easily be abused and redirected to block content that is viewed as unappealing by various authorities, such as politicians or religious leaders. Additional cases citing prominent politicians wanting to block the social networking site Facebook when unflattering remarks were made about them on the site were also highlighted during the visit.

Weeks before the IMM in February 2012, Prime Minister Baburam Bhattarai made a public statement at the Ministry of Science and technology where he said, "social networks are disseminating materials which go against the social norms, morality and public welfare, which disturb the social harmony and spread hatred and terror, and are against the national dignity and pride." (These are the same type of terminologies that appear in the Electronic Transactions Act) When questioned about this by the Mission members, the Prime Minister again highlighted his concern with the lack of ethics in the online space.

The impulse of some members of the government to ban websites or block content when unflattering remarks are made should be strongly resisted. Open discourse is a core element of democracy, even when what is being said is deemed to be offensive to some. There are other legal mechanisms for legal redress when libellous statements are made or the Internet is used to incite hatred and violence.

Another worrying trend has been attempts by the government to impose third party liability on ISPs for "banned" content. Particularly disturbing are the extremely vague definitions in the Electronic Transactions Act 2008 which would impose fines and criminal imprisonment on anyone for publishing any information which "may be contrary to the public morality or decent behaviour or any types of materials which may spread hate or jealousy against anyone or which may jeopardize the harmonious relations subsisting among

the peoples of various castes, tribes and communities shall be liable to the punishment." Thus, under this provision, ISPs would be held financially and even potentially criminally responsible for content that the government defines as illegal. Given the broad allowances in place for blocking content that runs counter to "public morality", making ISPs responsible for defining what goes against public morality would be both impractical and effectively impose self censorship on ISPs. (Given the restraints the notice has on free expression it is ironic that some radio stations in Kathmandu were broadcasting the Home Ministry notice as a paid advertisement).

The ISPs also said there was a lack of proper procedure from within the police and Ministry of Home Affairs when demanding user data. Police often demand user data from the ISPs without any kind of warrant or judicial order authorising it, often under the pretext of attempting to identify illegal users of Voice-over Internet Protocol (VoIP). This lack of clear legal process in obtaining sensitive user data is of concern to the IMM as Internet users should be able to have their user data remain confidential provided they are not using the Internet for illegal activities.

From discussions and interviews it was also clear there is a great deal of confusion with the government ministries and agencies such as the police over who has jurisdiction over the Internet. The challenge of rationalising the legal and regulatory framework to address the convergence of telecommunications, broadcast media and print media is not faced by Nepal alone. Convergence has challenged regulatory bodies around the world and there is now a robust community of practice dealing specifically with this issue from which Nepal could benefit. The IMM can assist in helping the government to find the technical expertise necessary to address these challenges.

The IMM endorses the "Kathmandu Statement on the Internet and Freedom of Expression," which was also supported by the UN Special Rapporteur on Freedom of Expression and Opinion, Mr Frank La Rue, during a regional symposium on Internet freedom in November 2011.<sup>20</sup>

## 3.2 Impunity and working environment for journalists

### 3.2.1 Impunity and investigation of attacks

Journalism suffered serious assaults during Nepal's decade-long Maoist insurgency, leading to increased self-censorship. The abuses of this period remain to be addressed in a spirit of truth and national reconciliation. In terms of the threats and violations that persisted even after the CPA of November 2006, the Supreme Court has appropriately upheld the law of the land. Among the cases that have not been resolved are the 'disappearance' of Prakash Thakuri some time after his abduction from the far western district town of Mahendranagar in July 2007; Birendra Sah, killed in October 2007; J.P. Joshi, missing since September 2008, whose remains were found in a forested region of far western Nepal two months later; and Uma Singh, murdered in her home in Janakpur in the southern plains in January 2009.

In March 2010, the owner and editor of *Janakpur Today*, Arun Singhania, was killed in broad daylight and police have still not made any evident headway in the investigation. In January 2012, implicit death threats were made against the editor of *Himal Southasian* Kanak Mani Dixit, and two civil society activists – in the 30 January edition of *Lalrakshak* (Red Guards), the mouthpiece of the Unified Communist Party of Nepal (Maoist) or UCPN (M) had declared the three as 'people's enemies'.

<sup>20</sup> <http://content.bytesforall.pk/node/36>

On 30 May 2011, a district court in Nepal sentenced Mainekar Giri and Ramekbal Sahani to life terms in prison for Birendra Sah's murder. Giri and Sahani, both reportedly members of the UCPN (M), were arrested shortly afterwards, and suspended from their party membership. There were suspicions that other suspects continue to enjoy the patronage of the Maoist leadership. Three other suspects, Lal Bahadur Chaudhary, Hareram Patel and Kundan Fouzdar, have been declared as absconders but media have reported that they still work for the UCPN (M).

In June 2011, the Dhanusha district court in Janakpur sentenced two persons found guilty in the Uma Singh murder to life in prison. Following widespread protests by journalists and media organisations after the crime, local authorities in February 2009 quickly arrested five persons though Umesh Yadav, the individual who allegedly ordered the killing, has since remained elusive.

Lalita Singh, a sister in law of the murdered journalist, and Nemlal Paswan were found guilty, while three other accused, Shravan Yadav, Bimlesh Yadav and Akhilesh Singh, were acquitted.

These partial gains in dispelling impunity have to be assessed against the continuing obstacles in the way of securing justice in the cases of Prakash Thakuri and J.P. Joshi.

Thakuri's wife filed a case against named cadre of the UCPN (M) soon after his disappearance. When charges were apparently ready to be formally laid in October 2009, the case was ordered dropped by the Nepal government, on the grounds that the case was political in nature. The FNJ and certain civil society groups had then petitioned the Supreme Court, which held that a crime committed after the CPA of November 2006 could not be deemed to have a political basis, and directed the district court to reopen the case. Though formally underway, the prosecution according to the FNJ remains paralysed by political uncertainty.

J.P. Joshi's killing is believed to be the outcome of a dispute within the UCPN (M) ranks. A commission of inquiry was set up to ascertain the truth, with the explicit mandate that findings would be made available within 15 days. After repeated extensions, the committee finally submitted a report late in 2009, only to have it vanish under a shroud of official secrecy. Late in 2010, an application under the Right to Information law by Ramji Dahal of the fortnightly paper, *Himal Khabarpatrika*, revealed that the commission had spent Rs. 3 million (USD 40,800) on its sittings, including in the acquisition of SIM cards for its members. All this time Joshi's impoverished family had received absolutely no financial support. Soon after these reports were published, Nepal's cabinet met to approve financial support of the order of Rs. 1.5 million (USD 20,400) for Joshi's family.

At a meeting with the IMM, Nepal's Home Minister and Deputy Prime Minister, Vijay Kumar Gachhedar, committed to securing justice for all cases of human rights violations during the conflict and its aftermath. He said the appropriate legal context for addressing the abuses of the past would only be achieved after a new constitution is agreed. In regard to the Joshi murder inquiry, the minister underlined his personal commitment to transparency, but argued that the final call on the matter was for the Cabinet to make.

Prime Minister Baburam Bhattarai argued similarly saying that the political context needs to settle down before the range of issues involving attacks on journalists during the years of strife could be addressed.

### Attacks in 2011

Khilanath Dhakal a young reporter based in Biratnagar in the south-eastern plains, with *Nagarik* daily, was attacked on 5 June 2011, by cadre of the Youth Force, an affiliate of the Communist Party of Nepal (Unified Marxist-Leninist) or CPN (UML) that led Nepal's governing coalition at the time. This followed a shootout in the Morang district court premises earlier that month in which two local criminal gangs clashed. Dhakal had reported that one of the gangs was associated with the CPN (UML). The report spoke of the rivalry between Parashuram Basnet, a local leader of the Youth Force and the detained person who was the target of the shooting.

Three days after the report appeared, Dhakal received a threat from Basnet who asked for a retraction of the published report. Later that day, Manoj Rai and Rohit Koirala, both Basnet's known associates, called Dhakal to a meeting at 10 p.m. When he presented himself for the meeting at the assigned spot, Dhakal was taken to a remote and isolated place by motorcycle and badly assaulted by Rai and Koirala. He was left at the site with severe injuries, including a fractured nose. A policeman found him and took him to hospital. Koirala was arrested within hours of the attack on the basis of Dhakal's complaint, registered orally by the police. Rai was arrested six days later following an order issued by the local court. Basnet remained at large at the time of the Mission's visit. (He presented himself in court on 30 April when he was released on bail the same day. He was asked to be present in court for hearings on two charges he faces after 70 days.<sup>21</sup>)

The local CPN (UML) unit called a two-day strike when their leaders were arrested, but this did not materially influence the prosecution. Police Superintendent for Morang district Pradyumna Karki and the Chief District Officer, Taranath Gautam, denied any suggestion of political pressure to go easy on the case. Prosecution is yet to begin.

In another incident, two men armed with *Khukuris* (Gurkha knives) took Kishore Budhathoki, a reporter with *Annapurna Post* in Sankwasabha district in the eastern region of Nepal, from his home on 11 August 2011. He was taken to an isolated spot and slashed across the head. He remembers very little of what happened subsequently. The two assailants were involved with a local criminal gang and one of them had been named in a report published under Budhathoki's name for his involvement in a case of domestic violence. Both have since been convicted to maximum terms of imprisonment under the law.

### 3.2.2 Physical safety

The physical safety of journalists has improved marginally since the last visit of the IMM to Nepal in February 2009. However, serious incidents continue to recur. Most of the recent attacks on journalists came from youth and groups affiliated with the major political parties. Two recent attacks on journalists and media included one by members of the youth wing of the Unified Marxist-Leninist party, who were responsible for a major attack on a reporter in Biratnagar, while youth from the Nepali Congress had attacked a newspaper in Kathmandu.

The situation of strife has settled to some extent, though specific problems persist, arising from the border location of certain districts and the consequent safe havens available for criminal elements, as well as the passionate demands for recognition of identity that have sometimes turned violent. Political parties all had a set piece on press freedom: "We respect the principle but believe that the press has to be responsible and ethical." All parties vowed to expel anybody involved in attacks on the press. Though they did not deny that criminal elements had infiltrated their cadre, they argued that this

21 <http://www.thehimalayan-times.com/fullNews.php?headline=Journor+attacker+Basnet+appears+in+court&NewsID=330257>



The Federation of Nepali Journalists (FNJ) demonstrating on its Establishment Day, 29 March 2012. Photo by Kiran Pandey/FNJ

was only on account of unsettled political conditions and the prolonged uncertainty over the enactment of the constitution. Rural reporting was more hazardous in the unsettled conditions.

Journalists blamed the political parties. A journalist in Biratnagar said: "The political parties rule the law, they are not ruled by the law. Until this changes, nothing changes".

### 3.2.3 Professional security and ethical concerns

The Working Journalists Act (WJA) as first passed in 1995 was criticized for its inadequacies and thus an amended version was passed by Parliament in 2007. The law has specific provisions on salaries and working conditions for journalists, but even the state-run media and most of the private media have not implemented the provisions.

Further more, in spite of the fact that Nepal's Supreme Court ruled in May 2008 for the creation of a Press Register Office in charge of monitoring implementation of the WJA, the office has yet to be set up. The government has also not followed up on its obligation to develop the necessary monitoring and regulatory mechanism specified in the WJA. It has also ignored the order of the Supreme Court to constitute a body to regulate and monitor the implementation of the Act.

The WJA, as amended, has important provisions on security of employment and periodic wage revisions for media workers. A basic minimum wage can be specified under the act, subject to periodic revision. The law also makes it mandatory that working journalists should be issued letters of appointment by all media establishments, assuring them of security of tenure. Short-term contractual employment would be permitted when circumstances warrant, but would not under any circumstances, exceed 15 per cent of the total number of journalists in the news organisation. A standing body of 13 members to monitor levels of compensation in the industry and oversee job security issues was conceived under the law.

Demonstrations on World Press Freedom Day, 3 May 2012. Photo by Satish Jung Shahi/FNJ



A committee formed under the WJA pointed out in a report submitted 24 November 2010, that 37 per cent of the country's journalists are paid below the prescribed minimum wage, while 45 per cent are working without appointment letters. Among the media houses surveyed, 48 per cent had failed to introduce basic measures such as retirement and welfare funds, insurance and medical coverage.

Among the media groups reported by the FNJ to be in default on basic obligations under the WJA was the government-owned Gorkhapatra Corporation and the state-run Nepal Television and Radio Nepal. Though statutory wage levels are formally notified, the government newspapers, employ a large number of working journalists – well beyond the 15 per cent limit sanctioned under the WJA – on contract.

Nepal's Prime Minister Baburam Bhattarai said that he was also deeply disturbed by this information and assured the IMM that he would make an effort to determine the facts and remedy any abuse.

According to the FNJ, the recent media boom in Nepal has created favourable conditions for professionals within certain newspapers and broadcasters that are generally favoured by the high-value advertisers. However, the situation for the vast majority of journalists, including those in the weekly newspapers and Nepal's dynamic and expanding radio sector, remains dismal.

The FNJ's membership has crossed 8000 journalists, but the number of women in media remains low, owing largely to workplaces that are not gender-sensitive and also lack inclusive hiring policies. While the entry of more women in journalism is a welcome development, women journalists told the IMM that they are not given equal opportunities at work. They are not given field assignments and face insecurity, especially in the districts.

Civil society actors met by the IMM had mixed feelings about post-1990s media growth, especially since the restoration of democracy in 2006. New investments, they felt, had been driven mainly by commerce or narrow political calculations. Rights activists said there was the need to unravel the politics of the new investments in media, which were seemingly undertaken with little regard for sustainability.

Though rules of entry in the media sector need to be liberal, journalists and rights activists were convinced that some discretion would be warranted in the public's interest. As the representative from a civil society organisation dealing with political corruption said: "Sustainability and security are the two main issues facing journalists." No story on corruption, for instance, escapes without an interrogation of the motive. There is in short, a public reluctance to assess any such media story purely on merits, because of the background of investments in the industry made with dubious motives.

Poor pay means that journalists are susceptible to diverse pressures from state and non-state actors, including criminal elements. In Nepal's main industrial town, Biratnagar (Morang district), FNJ representatives and civil society actors pointed out that journalists at the entry level are paid Rs. 3000 per month, while a factory worker begins with Rs. 9000.

The FNJ on 26 January 2012 filed a writ petition in the Supreme Court of Nepal seeking a direction to government to fully implement the WJA in state-owned media organisations.

Despite the clear provisions for decent wages and working conditions for journalists, state-owned media enterprises have been conspicuous in their default on these requirements.

The FNJ petition stated that 45 per cent of the journalists working in government owned media do not receive the minimum salary and only 14 per cent journalists had been receiving regular salaries. The petition argued that government owned media had been encouraging private media houses to disregard all applicable provisions of the law.

In early February 2012 the Supreme Court issued a directive requiring that minimum wages should be implemented in all the media houses in accordance with the recommendation of the Minimum Wage Determination Committee. The directive also stated that the minimum wage for working journalists in the papers classified as 'A' by the Press Council Nepal should be Rs. 10,008 and of those classified as 'B' should be Rs. 7,200.

## 4 Recommendations

The IMM followed up immediately on its recommendations upon the end of the visit. The most important intervention was a thorough review of constitutional provisions in Nepal – of the constitution of 1990, the Interim Constitution 2007 and the proposed provisions for the new constitution. The IMM sent the analysis as well as recommendations on wording of the proposed provisions to the major stakeholders including the Prime Minister, the Chair of the Constituent Assembly, leaders of main political parties and Assembly members it had met during the visit. This was followed up with personal letters to key parliamentarians of the Directive Principles and Fundamental Rights committee that had prepared the proposed draft provisions.

The IMM also carried out immediate follow up on its recommendations for setting up a Task Force for protecting journalists, an idea that has been adopted by the NHRC. Following several consultations, in early May the NHRC prepared a concept note on the idea to discuss it with potential stakeholder members of the task force.

The immediate actions complement the following recommendations on specific areas that were covered by the IMM.

### 4.1 Recommendations: Constitutional, policy and legal framework

#### **Constitution**

- The rights to freedom of expression and information should apply to everyone and should cover all information, not just information deemed to be of concern.
- The right to opinion should be absolute.
- The tests for restrictions on the three other rights – to freedom of expression, of the media and to information – should be amended by narrowing the list of grounds which would justify these restrictions and by making the standard more stringent (for example by replacing 'may' by 'would be likely to').
- Consideration should be given to banning all prior censorship of the media.

#### **Media policy**

- The drafting process should be restarted and carried out in a manner that ensures a broad and inclusive consultation involving all interested stakeholders, with a view to finalising the policy only after the new Constitution has been ratified.
- All key areas should be covered in the policy.
- The policy should support and encourage the development of a pluralistic, inclusive media that provides a platform for democratic discourse and supports Nepal's peace building process.

#### **Right to information**

- The government should withdraw the directive listing types of information that are exempt from the Right to Information Act and establish an inclusive committee to create a new list in line with international standards.

- The government should also take steps to reduce the level of turnover of senior staff at the National Information Commission.

### **Print media**

- Establish an independent authority in charge of distributing government-funded advertising to newspapers in a fair manner.
- Amend the Press and Publications Act to ensure it respects international principles on press freedom, in particular by abolishing any licensing requirement for newspapers.
- Repeal the Press Council Act of 1992 and allow the creation of an independent, non-statutory press council under the sole responsibility of media professionals, or other self-regulatory systems of media accountability.
- Ensure transparency in media ownership structures.

### **Broadcasting**

- An independent body should be established and given the power to exercise regulatory powers in the broadcasting sector, instead of having the government undertake this role.
- Broadcast licensing rules need to reflect both in spirit and letter, the principles of a three tiered media structure – public, private and community – with frequencies reserved for each tier of broadcasting.
- Licensing rules should be appropriate to the different needs of each type of broadcaster, and non-profit community broadcasters should benefit from simple licensing procedures and preferential fee structures.
- The State broadcasters should be transformed into independent public service broadcasters.

### **Internet freedoms**

- A free and open Internet is an integral part of democratic space in Nepal and the government should not seek to filter or censor the space.
- The Internet should be uncensored and the burden of proof on what constitutes “unmoral” content should lie with the government.
- There should be transparent legal mechanisms and written notifications for all data requests by government agencies. The government should consider developing a data protection law, which can ensure protection of such information.



Camera men in Singha Durbar, the official seat of the government. Photo by Bikash Karki/FNJ.

## 4.2 Recommendations: Impunity and working environment for journalists

### Impunity

- End all forms of impunity for killers of journalists and ensure that all cases are resolved, and all guilty parties are punished in accordance with the law.
- Enact and enforce a witness protection law to enable witnesses to make statements without fear.
- Publish all available information related to the four most recent murders of journalists.
- Allow journalist murder investigations to proceed without political intervention.
- Make investigations into journalist murders distinct from the peace process. Killing journalists in reprisal for their work is not a political crime under the terms of the November 2006 CPA.
- Detain and prosecute the masterminds who ordered the killing of Uma Singh and Birendra Sah.

### Physical safety

- End impunity for attacks on journalists. Ensure that all cases are resolved, and the guilty are punished in accordance with the law.
- Ensure immediate actions by local police when journalists are attacked.
- Detain and prosecute the key actor in the June 2011 attack on Khilanath Dhakal, who continues to evade accountability on account of his political connections.
- Authorities must fully investigate threats against journalists and establish a protection mechanism.
- Media organisations should take full responsibility to care for victims of attacks in terms of initiating preventive measures, providing insurance cover, and medical coverage.

### Professional security

- Media organisations and journalists need to abide by the ethical guidelines and professional practice of journalism.
- Implement the WJA fully and unconditionally across all media, and particularly the government media as committed to by the prime minister.
- Formulate and enforce a fair government advertising policy for levelling the playing field for private and state-run media.
- Create and enforce mechanisms for clear and transparent investments in media. Where media owners have potentially conflicting business interests, these should be stated in all relevant contexts.

## 5 Annexes

### **Annex 1: Joint statement of the International Fact Finding and Advocacy Media Mission to Nepal (IMM), 27 February 2012**

*The International Fact Finding and Advocacy Mission to Nepal (also known as the International Media Mission) visited Nepal from 23 to 27 February 2012 to assess the media freedom situation in the country. The International Mission was represented by AMARC, ARTICLE 19, Centre for Law and Democracy (CLD), Committee to Protect Journalists (CPJ), International Federation of Journalists (IFJ), International News Safety Institute (INSI), International Media Support (IMS), International Press Institute (IPI), Internews, Open Society Foundations (OSF), Reporters sans Frontières (RSF), South Asia Free Media Association (SAFMA), South Asia Media Solidarity Network (SAMSAN) and UNESCO.*

This is the seventh International Media Mission to Nepal, starting with a mission in July 2005. Notwithstanding dramatic improvements following the restoration of democracy in 2006, in recent years progress in promoting respect for media freedom has stalled.

The International Mission focused on two key areas: legal and policy reform, and attacks on journalists and the culture of impunity. Despite the existence of a wide range of law and policy reform needs, concrete action has been taken in only two areas since April 2006, namely amendments to the Working Journalists Act, 2051 (1993) and the adoption of the Right to Information Act, 2064 (2007). While the overall number of attacks on journalists has declined in recent years, the rate remains unacceptably high and there is disturbing degree of political protection being afforded to the perpetrators. Many of those responsible for murdering journalists remain at large, promoting a culture of impunity and leading to widespread self-censorship by journalists.

The International Mission is making specific calls for action in relation to these two priority areas. It is committed to conducting rigorous follow-up to monitor progress on their implementation and also to providing support for this. We also invite our partners and other local stakeholders to work together, and with us, to achieve these goals.

The International Mission has two further priority concerns. First, implementation of the Working Journalists' Act remains poor, even within State media outlets. Security of employment and fair compensation for working journalists are essential for press freedom and independent, quality journalism. We call upon media owners and employers to fulfil their legal obligations under the Working Journalists' Act by signing secure employment agreements with journalists and by paying the wages that are set pursuant to the law. We also call on the Government to fulfil its obligation to enforce the law where owners and employers do not do so.

Second, the International Mission is concerned with the growing threats to online freedom of expression and the application of restrictive regulations to the Internet.

The International Mission calls on relevant actors to address the following media freedom needs:

### **I. Law and Policy Reform**

#### *Strengthening Proposed Constitutional Guarantees*

The International Mission has studied three of the new constitutional proposals, namely for the freedoms of expression, of the media and of information. We note that, while relatively strong, the proposed guarantees are actually weaker than those found in the 1990 Constitution. Furthermore, the current proposals are not fully in line with international standards. In particular, vague language is used to describe the permissible restrictions to these rights, which could be abused to unduly limit them. We call on the Constituent Assembly to review these draft provisions with a view to further improving them. Several key actors – including the Prime Minister, the Chairperson and other Members of the Constituent Assembly, and the political party leaders we met – have agreed to open up the discussion on these guarantees so as to strengthen them. To support this process, the International Mission will provide a detailed analysis of international standards in this area, as well as the ways in which the current proposals could be improved.

#### *Development of an Inclusive Media Policy*

In the course of a bilateral cooperation project, which includes efforts to transform Radio Nepal into a public service broadcaster, the Ministry of Information and Communications has published a draft Media Policy, 2012, on its website. The International Mission recognises the need, following the adoption of the Constitution, for the development of a comprehensive, progressive media policy in Nepal, which is non-discriminatory in relation to all media. However, the current efforts are problematical both because they failed to involve key players – including the Federation of Nepali Journalists – in the process and because the substance of the policy is inadequate, for example because it fails to address key issues such as the need for independent regulation of broadcasting and protection of freedom on the Internet. We call on the Ministry of Information and Communications to develop a new media document, through an inclusive, pluralistic and gender sensitive consultative process, with a view to producing a policy, which fully addresses the needs of the media in Nepal. Most of the key stakeholders we met supported this and the Ministry of Information and Communications made a commitment to do it. To support this process, the International Mission will prepare an analysis of the draft policy and work with other stakeholders to ensure a robust consultative process.

#### *Limiting the Scope of Classification of Information*

In January 2012, the Government of Nepal issued a document, purportedly in accordance with the Right to Information Act, but without conducting any consultations with local stakeholders, listing some 140 categories of secrets and types of information that should not be made public. These go well beyond what is permitted by the Right to Information Act, as well as by international standards. Following widespread local protests and a legal challenge, the Government has postponed implementation of these rules. We call on the Government to scrap this document and to restart this process, beginning with consultations with interested stakeholders. If the Government

does this, the International Mission commits to providing relevant support for the process.

## **II. Addressing the Culture of Impunity**

The International Mission notes that while there have been some convictions for attacks on journalists, perpetrators of many of the most serious crimes remain at large (for example in the cases of Uma Singh, Birendra Sah and Arun Singhaniya). We call on the Government of Nepal to take appropriate action to bring the culture of impunity to an end, including by being fully transparent in relation to the status of investigations into crimes against journalists. We specifically call on the Government to publish the findings of the high-level committee that inquired into the killing of J.P. Joshi and to ensure that political pressures do not derail prosecutions already launched, including the case of Prakash Thakuri.

In the current hostile environment that prevails in much of Nepal, journalists need to know how to protect themselves, while owners and editors need to be made aware of their duty of care. We recommend the provision of a sustained safety development training programme, which would build sustainable local expertise on this issue, and which would cover physical dangers and trauma awareness, and are gender sensitive.

We also call on relevant stakeholders to set up a high-level, independent task force with a mandate to take action to address the culture of impunity, including by carrying out transparent investigations of serious cases and working with the authorities to ensure that convictions are secured. In due course, and subject to resources, proactive measures could also be undertaken, including developing a mechanism for protecting journalists at risk and a witness protection programme. The precise contours of the task force still need to be finalised, but we call upon the National Human Rights Commission, which already has a mandate to investigate human rights abuses, to play a key role, working with a range of stakeholders, including government. Many of the key stakeholders we met – including the Commission, several political parties, victims, and civil society and government representatives – agree that this is a priority. To support this process, the International Mission will provide examples and facilitate exchanges to raise awareness of how similar mechanisms have worked in other countries, and provide support to bring key stakeholders together to develop the task force.

### *About the International Media Mission (IMM)*

The International Mission travelled to Nepal from 23-27 February 2012 at the request of the Federation of Nepali Journalists and other members of the Nepali media community. The International Mission met with the Prime Minister, Ministers and the Attorney General, the Chairperson and other Members of the Constituent Assembly, political party leaders, human rights bodies such as the National Human Rights Commission and National Information Commission, donors, and media and civil society organisations. Mission members also visited Janakpur in Dhanusha District and Biratnagar in Morang District.

The International Mission comprises fifteen international organisations, including global media associations, freedom of expression groups, media development organisations and UNESCO. This is the

seventh visit of the International Mission to Nepal, the previous trips being in July 2005, March 2006, September 2006, January 2008, April 2008 and February 2009.

The International Mission thanks the Federation of Nepali Journalists and other organisations involved in preparing and hosting the visit, acknowledging the importance of close cooperation with national stakeholders and ensuring a nationally driven process for promoting press freedom in Nepal.

For further details about the International Mission please contact any of the participating organisations or:

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27 February 2012 Kathmandu, Nepal

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## **Annex 2: Members of the fact-finding and advocacy mission to Nepal**

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Ashish Sen  
Suman Basnet

### **Article 19**

Oliver Spencer

### **Centre for Law and Democracy**

Toby Mendel

### **Committee to Protect Journalists**

Elisabeth Witchel

### **International Federation of Journalists**

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Sukumar Muralidharan

### **International Media Support**

Jesper Højberg  
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### **International News Safety Institute**

Rodney Pinder

### **Internews**

Oren Murphy

### **International Press Institute**

Barbara Trionfi

### **Open Society Foundations**

Stewart Chisholm

### **South Asia Free Media Association**

Afzal Khan, SAFMA

### **South Asia Media Solidarity Network**

Geeta Sheshu

### **Reporters Without Borders**

Binod Dhungel, RSF (Nepal)

### **United Nations Educational, Scientific and Cultural Organisation**

Axel Plathe  
Terhi Ylikoski

## **Annex 3: Concept note: International Fact-finding and Advocacy Media Mission to Nepal on Press Freedom and Freedom of Expression, February 2012**

This concept note has been prepared by the Federation of Nepali Journalists (FNJ) and International Media Support (IMS) as a basis for discussion about the proposed International Mission to Nepal in February 2012. This draft does not necessarily represent the opinions of all organisations to be involved in the International Mission process and is a document that will be discussed and finalised by the mission partners.

### **1. Background**

#### **1.1. The Nepali peace process**

The major parties in the parliament signed a seven-point pact on 1 November 2011 there they agreed to integrate 6,500 Maoists combatants under a general directorate in the Nepal Army and accelerate the constitution drafting process, which has been underway since mid-2008. This agreement came after prolonged pause in the peace and constitution drafting processes, and has rekindled hopes for a swift resolution of outstanding disputes. The constitution was to have been promulgated by May 2010 but owing to instable governments, and internal and external conflicts among the major political parties the task remained unfinished in early November 2011.

Nepal has had four coalition governments after mid-August 2008. And constitution drafting became a victim of the frequent changes in government and the inability of successive governments to focus on the task leading to a sense of 'openness' that has been marked by a rise in factionalism within parties, identity politics, criminal activities – often in the name of identity – and a general breakdown of law and order. The new deadline set by the government led by the United Communist Party of Nepal (Maoist) or UPCN that was installed on August 28, 2011 for producing a draft constitution is November 30, 2011.

Nepal was under direct rule of the king from February 2005 to April 2006 when the government had marginalised the political parties and intensified military actions against the Maoists. However, the political parties and the Maoist jointly opposed the king's ambitions and led a popular movement that culminated in April 2006 when the monarch was forced to step down, reinstall parliament dissolved in May 23, 2002, and form a new government led by the political parties. This new government began negotiations with the UPCN that culminated in the signing of the Comprehensive Peace Accord (CPA) in November 2006 in which the parties agreed on forming a Constituent Assembly to draft a new constitution. The Interim Constitution was promulgated in January 2007 and led to the holding of the Constituent Assembly election in early 2008.

The Constituent Assembly declared the end of monarchy and began working towards setting up a democratic republic. However, the transition from the decade-long Maoist insurgency and continued political instability and direct rule to a peaceful democratic republic has been slow, and remains incomplete. The key tasks that need for be agreed and formalised are the system of governance, delineation of boundaries of federal units – the proposal on the table includes having 14 autonomous provinces (ethnic, regional or based on dominant social

groups) and the integration and rehabilitation of former combatants (living in camps since 2007). The protracted transition has witnessed the emergence of different interest groups and also a fracturing of political parties. The continued tussle for political power among the parties and widening internal differences within them have overshadowed constitution making, which among others, will also include guarantees for media rights and freedom of expression.

### **1.2 State of media freedoms and safety of journalists**

Different parliamentary committees have prepared thematic papers with recommendations for incorporation in the new constitution. The section on fundamental rights includes sections related to the media, which while seeking to guarantee media freedoms also comes with restrictive clauses that are broadly defined or even undefined, and therefore could impact media rights in the coming days. The draft of the provisions relating to media, while continuing the provisions of the Interim Constitution also have terminologies that are open to interpretation while formulating laws following the promulgation of the new constitution. Some examples are terminologies such as content that could affect "good relations" between friendly countries and federal units, broadcast or publication of "false matter" that could affect the "social prestige" of individuals and matters against "morality".

The Interim Constitution 2007 guarantees freedom of expression, right to information and media rights but this has not been followed up with appropriate legislations and regulations. Nepal has two major laws supporting the right to information and the rights of journalists. However, both the Right to Information Act and Working Journalists Act remain to be implemented in true spirit of the legislations.

### **1.3 Recent attacks on journalists and media**

Attacks against journalists have continued. The suspects have invariably been affiliated with one political party or another or associated with an identity group or even groups that have taken up identity politics as "cover" for their criminal activities. Violence against journalists has been most intense in Nepal's central plains and the eastern hills. Therefore, while journalists in the capital and urban centres have been largely secure, those working in the plains in general and in the eastern hills have been attacked, threatened or continuously harassed by different interest groups, many of which are armed. Most of the suspects in cases of attacks against journalists, including those documented by the IMM in the past, have also not been thoroughly investigated and prosecuted. This has emboldened others that continue to threaten or attack journalists to get their points of views in the media rather than allow the media to function independently. The inability of the State to punish suspects, including those accused of murdering journalists in the past, has led to a situation where impunity is becoming a norm especially in situations where the accused have been supporters or members of political parties and interest groups.

The FNJ has reported of instances where journalists and media have come under attack from supporters and members of all major political parties and by identity groups that have been demanding autonomous ethnic states. On 5 June 2011 activists of the Youth Force, a group affiliated with the Communist Party of Nepal (Unified Marxist-Leninist) or CPN (UML) attacked Khilanath Dhakal, a reporter for a Kathmandu-based daily in Biratnagar, with the intention of "finishing

him off". He was allegedly beaten for reporting on the group leader's involvement in ordering attack against a rival gang. Dhakal survived the attack but has internal injuries that have not healed completely. Ironically, the leader of the Youth Force was unrepentant and even publicly challenged the editors of the newspaper that Dhakal wrote for. This event took place when the CPN (UML) led the government. The FNJ filed a case against three alleged assailants while one who is said to have given the orders is still at large – possibly with political protection.

In an earlier incident, on 10 May 2011, supporters of the Madheshi Janadhikar Forum (MJF) burnt copies of a newspaper for not publishing news they would have liked. Similarly, on 4 September 2011, a group led by officials of the Nepal Student Union affiliated to the Nepali Congress party, vandalised the office of a Kathandu-based daily allegedly over disagreement of news published by the newspaper. In yet another incident on, 15 August 2011, a Maoist party member manhandled Sushil Babu Shrestha, president of FNJ's Gorkha Chapter, while he was gathering news on a conflict between Maoist factions over contracts for transporting food to remote villages. Likewise, on 7 June 2011, members of Kirat Yakkha Chhumma vandalised the local office of a Kathmandu-based daily in Dharan – the charge was not publishing news on their activities. Most of these cases have not been thoroughly investigated and those responsible for the actions have not been punished. There was yet another incident on 12 August 2011 when local toughs attacked Kishor Budhathoki, a journalist in Sankhu-wasabha District.

These attacks have come after three murders of media entrepreneurs in 2010. Jamim Shah was shot and killed in the heart of Kathmandu on 7 February 2010, Arun Singhaniya was shot and killed in Janakpur on 28 February 2010, and Devi Prasad (Hemraj) was shot and killed in Dang on 22 July 2010. The perpetrators in all three cases still remain unidentified even though the Chhota Rajan Group of India claimed responsibility for killing Shah and the Madhesh Janatantrik Party claimed responsibility for Singhaniya.

Further, many of the cases of attacks, threats, harassment and even murder of journalists that took place before and after 2006 remain to be fully investigated. Instead there have been efforts by the political parties to even attempt to withdraw cases against their members and supporters accused of attacking or murdering journalists. Most of the cases of beating, harassment and threats have also largely gone unnoticed and unpunished.

The FNJ believes that most of the attacks against journalists have been for content produced by them but has not been able to ascertain the exact reasons for the attacks in all incidents. In effect, even though Nepal has a democracy and constitutionally guaranteed space for free expression, right to information and media rights, the inability of the state to ensure minimal law and order could also be partly responsible for the attacks. This when combined with impunity for suspects, continues to give the message that 'it is alright to attack journalists' as long as one has the necessary political/group protection to insulate them from facing the repercussions. The capacity of journalists could also be affecting how they report and be a reason for the attacks.

## **1.4. International Press Freedom and Freedom of Expression Mission to Nepal**

The International Press Freedom and Freedom of Expression Mission to Nepal (also called the International Mission) was conceived in 2005 as a response to the deteriorating press freedom and freedom of expression situation in the aftermath of the installation of direct rule by King Gyanendra. Over a dozen international organisations, including UN agencies, global media associations, freedom of expression advocates and media development organisations have participated in the missions organised between July 2005 and April 2008. The first two missions during the king's rule sought to expand the space for freedom of expression. A third mission, organised in September 2006, sought to seek guarantees for press freedoms from the new democratic government and leaders of the main political parties. The fourth, fifth and sixth missions in January 2008, April 2008 and February 2009 highlighted the fact that press freedoms in Nepal continue to face serious threat despite the hope that restoration of democratic rule would improve the situation.

Overtime, the IMM and its Nepali partners carried out various safety and media development activities and also contributed towards the preparation of an Agenda for Change – a set of recommendations aimed at ensuring a free and open space for practicing independent journalism for continuous development of the media sector for supporting democracy and democratic governance. During the missions, the IMM members had met leaders of all major political parties and heads of security agencies and government officials and sought commitments for guarantees of media rights, safety of journalists and for ending impunity against those accused of attacking journalists. Leaders of all parties, including the UCPN, had committed to assure safety and security of journalists and for establishing a legal and regulatory regime that would be conducive to free expression and media rights.

## **2. Justification**

The political changes brought about by the April 2006 protests and the change in regime resulted in a significant shift in the media environment. The new government annulled all media-related ordinances issued after 1 February 2005 and formed a High-level Media Commission to recommend media policy. The government has implemented some of the Commission's recommendations, which included many made by the International Mission and the Agenda for Change. Among them were the enactment of the Working Journalists Act and the Freedom of Information Act, but there still are issues of effective implementation.

The February 2009 International Mission urged the Government and political parties to implement the recommendations for freedom of expression and press freedom outlined in the Agenda for Change document as swiftly and as fully as possible. Specifically, the IMM had drawn attention to the following six points that need to be addressed in accordance with international standards and best practice:

- Guarantees of freedom of expression for all, and press freedom in the new Constitution,
- Enforcement of the RTI Act and creating an enabling environment for free and readily accessible information,

- End of government control of media and shift to Public Service Broadcasting
- Establishment of an independent regulator of broadcasting
- De-criminalising defamation and addressing it under civil law, and
- Implementing the Working Journalists Act accompanied by regular dialogues between media workers and owners.

Nepal's Interim Constitution was adopted by parliament on 15 January 2007. But the statute did not result in progress towards peace and instead triggered a month-long protest in the plains and by other social groups demanding greater inclusion in the political processes. Many journalists were attacked by some of the protesters for what they felt was unfair representation of their demands and movements in the media.

The Nepali transition, which began in April 2006 has become less violent but remains complex. Even though there are guarantees for press freedom and freedom of expression in the Interim Constitution and the government has also passed several laws that favour freedom of expression, the issues of safety of journalists and protection of press freedoms remain major challenges. The interpretation of the freedoms guaranteed in the constitution is also open to debate given the differing notions of media rights in the different ideologies of the political parties. There also are signs of growing partisanship among journalists, which the political parties have tried to exploit.

The FNJ has recorded over 170 instances of murder, attacks, threats and harassment of journalists between 1 January 2010 and 3 November 2011. Even though the number of attacks has declined compared to over 900 instances between April 2006 and November 2007 in absolute terms, the fact that they remain is a reason to worry. The FNJ being a representative organisation reports on all attacks against journalists.

The purpose of the International Mission in Nepal in February 2012 would be to take stock of the developments since February 2009 and join the FNJ in its efforts for advocating for legal guarantees for media freedoms, free expression and right to information in accordance with international practice and for ending impunity for those attacking media and media institutions. The implementation approach of the IMM recommendations need to be aimed at pursuing further reforms towards a more transparent and liberal media environment, while continuing targeted support for strengthening independent media, building capacity of journalists, supporting independent monitoring of press freedoms and media rights violations.

### **3. Objectives and Outputs**

#### *Overall Objective*

Press freedom and freedom of expression advocated among key framers of the constitution, international best practices shared and situation of FoE, RTI, media rights and capacity assessed.

#### *Immediate Objectives*

- FoE, RTI, media rights and capacity in Nepal assessed,
- Recommendations for revised strategies and activity priorities for the IMM agreed,

- Dialogue with the political parties, national authorities and key groups on key press freedom and freedom of expression issues established, and
- Donor community engaged to consider revised activity priorities.

### Outputs

- Cross-section of the national media community met to discuss press freedom and freedom of expression situation,
- Two district missions undertaken to Biratnagar and Janakpur to understand the media rights and practice situation in areas where there have been recent attacks on journalists (Biratnagar, for an interaction with journalists from the Eastern region and the Eastern hills and Janakpur, for interacting with journalists based in Nepal's Central plains districts),
- Commitments for FOI, RTI and media rights secured from major political parties, national authorities and emergent interest groups,
- Lobbying international and local donor community for supporting development of an independent, professional media community,
- Joint IMM-FNJ statement addressing the key concerns and outlining the way ahead in terms of FoE, RTI and media rights,
- A recommended project initiatives document drafted and shared with donors to reflect the 'new' priorities, and
- A mission report finalised and published.

## 4. Implementation

### 4.1. Participation

IMS will coordinate the participation of all international partners in the mission in close collaboration with the IFJ. FNJ will re-activate its partnership with its Nepali media partners/organisations and discuss the position papers for the mission with the partners. For this purpose, it will convene separate meetings with its Nepali media development and media organisations and also from professional organisations that support its campaign for media rights.

The IMM will seek to accommodate all partner organisations interested in participating, including regional representatives of different international organisations and their affiliates in Nepal. Even though managing a larger group would be more difficult than a smaller one, it is in the interest of the Nepali journalism community to have visible support for their cause and press freedoms in the Nepali transition.

### 4.2. Mission Agenda

The mission will focus on four main themes:

- Situation analysis of FoE, RTI and media rights including safety of journalists – both the cases of the past and recent incidents. (As part of the preparation process, the FNJ will prepare an authoritative account on the status of major cases of attacks against journalists that will be discussed and finalised among its partners.)
- Review progress in media policy and legislation, including recommendations in the Agenda for Change.
- Identify media development and capacity development opportunities.
- Broadcasting in Nepal after April 2006: the growth of radio and television and the challenges ahead. (FNJ's partners in community broadcasting will prepare a status report on the state of independent broadcasting in Nepal.)

### **4.3. Timing and Preparation**

The proposed date for the mission is from 24-27 February 2012.

## **Annex 4: Report of the 5-member mission to Janakpur**

Janakpur in Dhanusa district lies around 350 kilometres south of the Nepali capital Kathmandu. The city in the mid-Terai (plains), also a hub of the Madhesi (identity) movement, has eight daily newspapers, dozens of weekly newspapers, nine radio stations – commercial and community radio.

It is also the site of two gruesome killings of media persons – Uma Singh (2009) and Arun Singhaniya (2010), both from Janakpur Today.

While the main suspects are still at large, two persons have been arrested and one person is out on bail in connection with the killing of Uma Singh.

The Mission team met with 47 representatives of civil society, and journalists. The team also met the mother of journalist Uma Singh. The team also met the family of Singhaniya and around 50 journalists from eight districts. It also had meetings with the Chief District Officer Basant Raj Gautam and Superintendent of Police Purushottam Kadel, and did some interviews with women journalists.

A smaller team from the Mission also met with representatives of some militant groups at an undisclosed location. Those met included leader of Madhesi Rastra Janatantrik Party (Revolutionary) suspected behind the murder of Singhania in 2011. This team also held a telephone conversation with one individual who identified himself as chair of the Terai Janatantrik Party, Mahesh

The team also met with 13 journalists in 2010 who were beaten by police in Janakpur in March 2010 when they had gone to investigate the rape of a woman by a police inspector. Three journalists had to be hospitalised. There was no investigation into the case. Journalists said that officer who had ordered the baton charge was later rewarded with a foreign posting.

### **Key findings**

There was a strong sense of insecurity and fear amongst both civil society members as well as media persons. A general sense of lawlessness seems to prevail across the region.

There was also anger at the failure of the administration to conduct investigations and bring the suspects of attacks against journalists and media to account.

Media persons spoke of the abject lack of proper working conditions, poor wages way below the minimum, the lack of proper implementation of the WJA and the lack of facilities for newsgathering. Women journalists spoke of the absence of support for their work and the harassments they faced in the field.

Members of civil society and the media also said that, while there were exceptions, the general trend in the media pointed disturbingly towards the absence of proper ethical and professional media practices.

Self-censorship was prevalent, brought about both by the sense of fear as well as the increasingly partisan nature of the ownership of the media.

Another development that needs to be monitored is the prevalence of “village panchayats” who ‘take up’ complaints against the media. Under the ostensible objective of arbitration, these powerful social forums force journalists to apologise for news they published and the latter may even be abused or beaten if they fail to comply.

Several questions were also raised about the relevance, role and impact of the mission.

### **Mission observations**

**Uma Singh:** The investigation into Uma Singh's death still leaves several questions unanswered. The statements of witnesses were not recorded and no protection was available to them. Uma Singh was alive for at least an hour after the brutal hacking she was subjected to, yet no medical assistance was available. The slow process in arresting the remaining accused as well as in proceeding with the case for those on bail has handicapped the credibility of the administration. That Uma's mother is still unable to return to her home indicates the abject failure of the justice delivery system.

**Arun Singhaniya:** The pace of investigation by the police was slow and the family and public did not have information on its progress. The police should have made the report public and keep the family adequately informed of progress. There were two investigations – one by the district police and one by the national police. Neither has made their findings public. The officers investigating the case were also frequently transferred. The DSP Roop Kumar Neupane was suspected to have links with 10 underground operators and was demoted to the rank of inspector in Kathmandu. It is believed that he has resigned from his post.

### **Recommendations**

Attacks on journalists:

- Ensure that investigations must be time-bound and accountable
- Ensure families must be informed on progress according to international norms
- Establish systems for witness protection
- Create press freedom desk within NHRC with links in the districts

Working Conditions for Media persons:

- Implement the WJA
- Address issue of journalism quality and need for professional skills development
- Update and regularly monitor the practice of media code of ethics
- Organise gender sensitisation programs for media
- Emphasise inclusion in media with regard to women, Dalits, Janajatis and other minority groups.

Mission team members: Ashish Sen (AMARC), Binod Dhungel (RSF), Elizabeth Witchell (CPJ), Geeta Seshu (IFJ) and Shital Sah (FNJ)







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