



Nepal

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Submission by **CIVICUS: World Alliance for Citizen Participation, NGO in
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And

Freedom Forum

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1. Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 180 countries.
- 1.2 Freedom Forum is an independent, non-governmental and not-for-profit CSO mainly working in the areas of freedom of information, expression and association, and media freedom and governance through research, evidence-based advocacy, policy review and dialogue, capacity development and field engagement.
- 1.3 In this document, the authors examine the Government of Nepal's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Nepal's fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in November 2015. To this end, we assess Nepal's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of follow-up recommendations.
- 1.4 During the 2nd UPR cycle, the Government of Nepal received three recommendations relating to the space for civil society (civic space). All three recommendations were accepted. However, an evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of Nepal has not implemented any of the recommendations. The government has failed to address unwarranted restrictions on civic space since its last UPR examination, and acute implementation gaps were found with regard to the right to association, along with issues relating to the freedom of expression and media freedom.
- 1.5 We are deeply concerned by proposed repressive laws that seek to limit the work of independent CSOs and suppress the freedom of expression, including amendments made to Nepal's criminal code. We are also concerned by ongoing attacks against journalists and the suppression of peaceful assembly.
- 1.6 As a result of these issues, civic space in Nepal is currently classified as obstructed by the CIVICUS Monitor.¹
 - Section 2 of this submission examines Nepal's implementation of UPR recommendations and compliance with international human rights standards

¹ CIVICUS Monitor: Nepal, <https://monitor.civicus.org/country/nepal>.

concerning the freedom of association.

- Section 3 examines Nepal's implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, civil society activists and journalists.
- Section 4 examines Nepal's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of expression, independence of the media and access to information.
- Section 5 examines Nepal's implementation of UPR recommendations and compliance with international human rights standards related to the freedom of peaceful assembly.
- Section 6 contains a number of recommendations to address the concerns raised and advance implementation of recommendations under the 2nd cycle.
- An annex on the implementation of 2nd cycle UPR recommendations related to civic space can be found in Section 7.

2. Freedom of association

- 2.1** During Nepal's examination under the 2nd UPR cycle, the government received one recommendation on the right to the freedom of association and creating an enabling environment for CSOs, which stated that CSOs should be allowed to "operate free from hindrance and insecurity." The government also committed to ratifying International Labour Organization (ILO) Convention No. 87, which provides for the freedom of association and protection of the right to organise. However, Nepal has not yet implemented this Convention.
- 2.2** Article 17 of Nepal's Constitution, promulgated by the Constituent Assembly in 2015, guarantees the right to the freedom of association. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Nepal is a state party, also guarantees the freedom of association. However, despite these commitments, the government has continued to introduce legislation to restrict the work of CSOs unwarrantedly and a number of repressive laws have been introduced that risk undermining the freedom of association.
- 2.3** The outdated Organizational Registration Act 1978, National Directives Act 1962 and Non-Profit Company Law 2005 currently govern the registration of organisations. Consultations on new laws and policies are taking place, but there remain problematic clauses in new draft laws covering the objectives, scope of work and structure of CSOs, including provisions to allow the authorities to dissolve organisations. There are also concerning provisions stipulating that CSOs, including 'social organisations', would need prior approval from the authorities to receive foreign grants and project funding.

- 2.4** In April 2018, the Government of Nepal proposed a National Integrity Policy under the Ministry of Home Affairs that could curtail the work of international and national CSOs operating in Nepal. Under the policy, international CSOs would no longer be allowed to engage in projects that influence the drafting of laws and policies in Nepal, must obtain government approval before sending reports to their headquarters in their home countries and have their budgets and programmes approved by the Ministry of Finance. The policy also places a number of onerous restrictions on activist groups and on the international funding that many rely on for their work. The authorities are still in consultation over the policy after receiving strong criticism from national and international CSOs. Four UN independent experts also expressed their concerns on the limitations of the proposed draft, citing problematic definitions and reporting requirements, restriction of scope of activities and access to funding.²
- 2.5** In November 2019, the cabinet authorised the Ministry of Home Affairs to prepare a draft of a new law to regulate and supervise ‘social organisations’, which has raised serious concerns among CSOs.³ The Ministry of Women, Children and Senior Citizens is currently the designated agency to draft policies, laws, standards and regulations for CSOs. So far there have been no consultations between the Ministry of Home Affairs and civil society on the provisions of the new law.
- 2.6** A proposed amendment to the National Human Rights Commission Act could curtail the protection mandate and independence of the National Human Rights Commission of Nepal (NHRCN). Article 18 of the proposed bill states that the NHRCN would require consent from the Ministry of Finance to accept additional financial resources for it to carry out human rights-related activities. If approved, this would undermine its autonomy from the government. The amendment bill would make it mandatory for the NHRCN to recommend its investigated cases to the Attorney-General who would then decide whether to file a case against human rights violators. This could disempower the NHRCN’s protection mandate and potentially foster a culture of impunity within Nepal. The amendment bill has further dismissed article 26 (B) of the Act, which provides the legal basis for the creation of the regional and sub-regional offices of NHRCN. This will seriously undermine the ability of Nepalis who live outside Kathmandu to gain access to the NHRCN and would weaken the protection of most Nepali people’s human rights.⁴

² Communication from OHCHR to the Government of Nepal, Office of the High Commissioner for Human Rights (OHCHR), 11 July 2018, <https://www.ohchr.org/Documents/Issues/Opinion/Legislation/NPL-1-2018.pdf>.

³ ‘Non-government organisations concerned over a new law to regulate them’, The Kathmandu Post, 3 November 2019, <https://kathmandupost.com/national/2019/11/03/non-government-organisations-concerned-over-a-new-law-to-regulate-them>.

⁴ ‘Nepal: Amendment Bill of National Human Rights Commission Act will weaken the National Human Rights Commission of Nepal,’ Asian Forum for Human Rights and Development, 29 May 2019, <https://www.forum-asia.org/?p=28839>.

- 2.7** There remain concerns about hostility from Nepalese authorities towards some sections of civil society, particularly in the form of investigations of CSOs over dubious allegations by the Chief of Commission for Investigation and Abuse of Authority (CIAA). Many civic groups fear that the CIAA has the potential to be used to target critical CSOs selectively through heavy-handed investigations. In October 2016, the CIAA opened an inquiry into alleged mismanagement of funds at Social Science Baha, a leading research CSO, and an affiliate, the Alliance for Social Dialogue.⁵ The CIAA also issued a statement on 25 September 2016 asking the District Administration Office of Lalitpur to take action against the organisation. According to national daily newspaper Kantipur, the CIAA's allegation against Social Science Baha was targeted in an attempt to defame its staff. Social Science Baha strongly refuted any wrongdoing.⁶
- 2.8** On 14 August 2016, a group of HRDs campaigning for good governance registered a complaint with the CIAA, seeking information about the property details of the Chief Commissioner, Lokman Singh Karki. The group wanted to ensure that Mr Karki was adhering to same financial declaration procedures that are applicable to CSOs. The CIAA refused to register the application and called the security forces to detain nine of the activists. Security forces detained the nine defenders for four hours.⁷ Mr Karki was subsequently impeached on 23 October 2016, in an unprecedented move by Nepal's parliament, after his eligibility to hold office was questioned.⁸

3. Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

- 3.1** Under Nepal's previous UPR examination, the government received one recommendation on the protection of HRDs, journalists and civil society representatives. The government committed to "ensure the right to freedom of expression online/offline in law and in practice, including by decriminalising defamation, and to investigate all cases of threats and attacks against journalists and human rights defenders." However, as examined in this section, the government has failed to operationalise this recommendation effectively.
- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure protection to HRDs. The ICCPR further guarantees

⁵ 'CIAA seeks action against Social Science Baha, Alliance for Social Dialogue', The Himalayan Times, 25 September 2016, <https://thehimalayantimes.com/kathmandu/ciaa-seeks-action-social-science-baha-alliance-social-dialogue>.

⁶ 'Social Science Baha refutes CIAA charges', The Kathmandu Post, 25 September 2016, <https://kathmandupost.com/miscellaneous/2016/10/01/social-science-baha-refutes-ciaa-charges-20161001081414>.

⁷ 'Information seekers arrested, peaceful gathering intimidated', Freedom Forum, 17 August 2017, <http://freedomforum.org.np/information-seekers-arrested-peaceful-gathering-intimidated>.

⁸ 'Cannot defend Karki in impeachment case: AG', The Kathmandu Post, 22 October 2016, <https://kathmandupost.com/national/2016/10/22/cannot-defend-karki-in-impeachment-case-ag>.

the freedoms of association, peaceful assembly and expression. However, in spite of these protections, there have still been a number of physical attacks on HRDs and journalists, while others have been subjected to judicial harassment. In a positive step, the NHRCN and the Federation of Nepali Journalists are expediting the process of setting up an independent mechanism to protect journalists and media freedoms.⁹

- 3.3** Several restrictions on and attacks against HRDs have been documented. Gyanendra Shahi, an anti-corruption activist, was attacked in Bharatpur, Chitwan, in September 2019. Shahi was travelling home by bus when he was attacked with stones, rods and sticks by a group of local young people. A group of young people close to the ruling party had also obstructed a programme he was attending earlier that day, causing the event to be cancelled. Shahi underwent preliminary treatment at Chitwan Medical College and was then taken to Kathmandu for further treatment.¹⁰
- 3.4** In September 2018, activist Ram Manohar Yadav, who was part of a peaceful movement seeking to advance the civil and political rights of Madhesi people, died in police custody, a week after waving black flags at Upendra Yadav, the Deputy Prime Minister and Health Minister. Yadav was detained along with three others and was charged with treason by the Bardiya District Police.¹¹
- 3.5** In August 2018, Lenin Bista, an HRD and former child combatant, was barred from travelling to Bangkok, Thailand to participate in a civil society workshop.¹²
- 3.6** Since 2018, at least six journalists have been detained under the 2006 Electronic Transactions Act. Section 47 of the Act prohibits electronic publication or display of material deemed illegal under existing laws, including vaguely defined material “which may be contrary to the public morality or decent behavior 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.”¹³ It authorises a sentence of up to five years in prison and a 100,000 Nepali rupee (approx. US\$900) fine. Dozens of reporters and editors have been arrested, detained and fined under the law in the last decade.

⁹ ‘Time to boost journalists’ safety in Nepal’, International Media Support, 15 June 2018, <https://www.mediasupport.org/time-to-boost-journalists-safety-in-nepal>.

¹⁰ ‘Restrictive bills still being pushed by Nepali lawmakers as protests around Xi’s visit stifled’, CIVICUS Monitor, 16 November 2019, <https://monitor.civicus.org/updates/2019/10/16/restrictive-bills-being-pushed-nepal-silence-expression-while-journalists-remain-risk>.

¹¹ ‘Press freedom at risk with new Criminal Code restrictions’, CIVICUS Monitor, 16 October 2018, <https://monitor.civicus.org/updates/2018/10/16/press-freedom-risk-new-criminal-code-restrictions>; Communication from OHCHR to the Government of Nepal, OHCHR, 12 November 2018, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24167>.

¹² Ibid.

¹³ ‘Nepal: End attacks on free expression’, Human Rights Watch, 18 April 2019, <https://www.hrw.org/news/2019/04/18/nepal-end-attacks-free-expression>.

- 3.7** We are also concerned about ongoing physical attacks against journalists. On 5 August 2018, Radheshyam Bishwokarma of Butwal Today daily and Buddha TV, Khabar weekly's editor Deepak Ghimire and Annapurna Post daily's local journalist Salman Khan were attacked by students who were organising a protest over the death of a fellow student at the Universal College of Medical Sciences. The protesters damaged the journalists' equipment.¹⁴
- 3.8** A group of journalists – Maheshwor Gautam of Rajdhani daily, Skanda Gautam, Nivesh Kumar of News24 TV, Prabin Maharjan of The Himalayan Times and Ajaya Babu Shiwakoti, editor of hamrakura.com and general secretary of the Nepal Press Union – was attacked by police officers while covering a demonstration near parliament in Kathmandu 21 July 2018.¹⁵
- 3.9** On 18 July 2018, L B Devkota of Kantipur daily and Prakash Upadhyay of AP1 TV sustained minor injuries after an attack by the police while they were covering demonstrations in Jumla, Karnali. Police also tried to confiscate a camera from the journalists and harassed them.
- 3.10** On 22 July 2018, journalist Bidur Katuwal was threatened over a news report by Baldev Chaudhuary, the mayor of Triyuga Municipality, Devi Kumar Chaudhary, the vice-mayor, and Sunita Chaudhary, a provincial assembly member.
- 3.11** On 2 June 2018, Dinesh Giri, editor of nirantarkhabar.com, was attacked by three people over a news report about an illegal business in Belbari, Morang in eastern Nepal. Giri sustained injuries to his head and back and had to be taken to hospital.¹⁶
- 3.12** On 6 February 2018, Prakash Dhakal, a journalist with Adarsha Samaj daily, was attacked by police when he was reporting on a demonstration by students on the Prithvi Narayan campus in Pokhara, western Nepal. While police were attempting to disperse the demonstrators, the police charged Dhakal, even when he showed his press card. Dhakal received a minor injury to his leg.¹⁷

¹⁴ 'Nepal journalists physically attacked', International Federation of Journalists, 10 August 2018, <https://www.ifj.org/media-centre/news/detail/category/human-rights/article/nepal-journalists-physically-attacked.html>.

¹⁵ 'Journalists face increased attacks and threats in Nepal', International Federation of Journalists, 23 July 2018, <https://www.ifj.org/media-centre/news/detail/category/human-rights/article/journalists-face-increased-attacks-and-threats-in-nepal.html>.

¹⁶ 'Journalist in east Nepal beaten over news', International Federation of Journalists, 4 June 2018, <https://www.ifj.org/media-centre/news/detail/category/press-freedom/article/journalist-in-east-nepal-beaten-over-news.html>.

¹⁷ 'Police attack journalist covering demonstration in Nepal', International Federation of Journalists, 8 February 2018, <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/police-attack-journalist-covering-demonstration-in-nepal.html>.

4. Freedom of expression, independence of the media and access to information

- 4.1** Under the 2nd UPR cycle, the government received and supported one recommendation relating to the freedom of expression and access to information, pledging to “ensure the right to freedom of expression online/offline in law and in practice, including by decriminalizing defamation.” However, as discussed below, the government did not take effective measures to implement this recommendation.
- 4.2** Article 19 of the ICCPR guarantees the right to the freedoms of expression and opinion. Article 17 of the Constitution of Nepal also guarantees the right to the freedom of expression. However, some provisions relating to the freedom of expression and right to information are unduly restrictive. Article 17 of the Constitution of Nepal states that “every citizen shall have the following freedom – a) freedom of opinion and expression,” but proviso (2.1/4) qualifies this through adherence to vague terms including “harmonious relations between the Federal Units [...] public morality [...] harmonious relations between various castes, tribes, religions and communities [...]and] territorial integrity.” Such over-broad provisions open the law to wide and subjectively discretionary implementation.¹⁸
- 4.3** Further, a number of restrictive laws have been introduced since Nepal’s last UPR cycle that undermine the freedom of expression, while existing laws such as the Electronic Transactions Act and the Cybercrime Law have been misused to subdue the media.¹⁹ In particular, the Electronic Transactions Act, which the current government has often misused to prosecute online journalists reporting on corruption.
- 4.4** As well as journalists, the Electronic Transactions Act has also been misused to target artists and musicians. In June 2019, Nepalese stand-up comedian Pranesh Gautam was arrested and detained for nine days for posting a satirical comment about a film on his YouTube channel.²⁰ In October, musical artists Samir Ghishing and Durgesh Thapa, popularly known as VTEN, were arrested for the content of their songs.²¹
- 4.5** On 14 June 2016, the government approved the Online Media Operation Directive – 2016, which is intended to “make online journalism responsible, and bring it within

¹⁸ ‘Freedom of Expression on Internet in Nepal’, Freedom Forum, 5 August 2016, https://ifex.org/images/nepal/2016/08/05/nepal_freedom_expression_internet_freedomforum.pdf.

¹⁹ CIVICUS Monitor, 16 October 2018, op. cit.

²⁰ ‘Nepal comedian Pranesh Gautam released from jail after 9 days on district court’s orders’, MediaNama, 17 June 2019, <https://www.medianama.com/2019/06/223-nepal-comedian-pranesh-gautam-released-from-jail-after-9-days-on-district-courts-orders>.

²¹ ‘Nepal: Information Technology Bill threatens freedom of expression’, Amnesty International, 16 January 2020, <https://www.amnesty.org/en/latest/news/2020/01/nepal-information-technology-bill-threatens-freedom-of-expression>.

the jurisdiction of Press Council of Nepal.”²² Through this directive, the government can shut down unregistered online media and websites that are deemed to run misleading content or provide news without official sources. The directive opens the door to tighter state control of online media and criminalisation of the freedom of expression online. In response to these criticisms, the government formed a panel, including members from the Federation of Nepali Journalists, to review the directive.²³

- 4.6** A new criminal code, which came into effect in August 2018 to replace around 15 outdated laws, includes several provisions of concern relating to media freedom. Particular provisions of concern include: section 293, which criminalises recording and listening to conversations between two or more people without consent of the persons involved; section 294, which prohibits the disclosure of private information without permission, including private information on public figures; section 295, which prohibits taking a photograph of a person outside of a public space without their consent; section 298, which prohibits people from receiving, sending or publishing unauthorised information through an electronic medium; and section 306, which criminalises satire that disrespects an individual.²⁴
- 4.7** A taskforce established by the Ministry of Communications and Information Technology to suggest changes to the new criminal code recommended decriminalisation of defamation in 2019. The taskforce recommended further changes to clauses that curtailed media freedom, and also suggested changes in section 50 (3) of the new code that prohibited journalists from ‘pressuring’ the president.²⁵
- 4.8** On 20 February 2019, the Government of Nepal tabled an Information Technology Bill to replace the Electronic Transactions Act. The new Bill would impose harsh sanctions for ‘improper’ social media posts. It creates a raft of loosely defined new offences that could be interpreted to include almost any online activity.²⁶ Of critical concern, section 94(1) of the Bill imposes restrictions on the freedoms of expression and opinion on social media. It criminalises online content that undermines “the sovereignty of Nepal, geographical integrity, national security, national unity,

²² ‘Nepal introduces repressive directives for online media’, SAMSN Digital Hub, 17 June 2016, <https://samsn.ifj.org/nepal-introduces-repressive-directives-for-online-media/>

²³ ‘2016 Country Reports on Human Rights Practices: Nepal’, U.S. Department of State, <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/nepal/>

²⁴ ‘Nepal’s new criminal act raises press freedom concerns’, SAMSN Digital Hub, 17 August 2018, <https://samsn.ifj.org/nepals-new-criminal-act-raises-press-freedom-concerns/>

²⁵ ‘Govt told to decriminalise defamation’, The Himalayan Times, December 1 2019, <https://thehimalayantimes.com/nepal/govt-told-to-decriminalise-defamation/>

²⁶ ‘Proposed new social media law in Nepal threatens freedom of expression’, CIVICUS, 8 March 2019, <https://www.civicus.org/index.php/media-resources/media-releases/3779-proposed-new-social-media-law-in-nepal-threatens-freedom-of-expression>

independence, dignity or national interest.”²⁷ The draft law also creates an intermediary liability for internet service providers (ISPs), meaning that ISPs could be held legally responsible for material posted by others on the internet.

4.9 The Media Council Bill, which would replace the existing Press Council Act, was introduced to parliament on 9 May 2019 without stakeholder consultation.²⁸ Article 10 of the bill eliminates the principle of media independence outright by stating that “the president and members of the Media Council will be directly appointed by the government,” which can “remove the president and members at any time.” Section 17 of the Bill would effectively increase the government's control over the issuing and suspension of press accreditation and Section 18, which grants the Media Council the ability to impose fines for damaging a person's reputation, would enable any individual to file a complaint against a journalist, even if the individual was not personally affected by the journalist's reporting.²⁹ In August 2019, National Assembly members who participated in a multi-stakeholder discussion on the Bill agreed to reform its regressive provisions after taking suggestions from stakeholders.³⁰ However, these reforms have not yet materialised.

4.10 Judicial harassment against journalists demonstrates the risk of the draft laws currently before parliament being misapplied. In March 2018, Nepal's largest newspaper was summoned by the country's chief justice for articles critical of him, in a case widely condemned as an attack on media freedom. Kantipur Daily was subpoenaed by Chief Justice Gopal Parajuli on charges of contempt of court for a series of articles that stated that the country's top judge had given different dates of birth on various official documents.³¹

4.11 There have been multiple other acts of judicial harassment against journalists. On 20 May 2019, Freedom Forum reported that Ramesh Rawal, a Kalikot-based reporter associated with Hamro Karnali Khabar daily and the Thahakhabar Network, had been threatened by the authorities after he reported on the misuse of a municipal vehicle.³²

²⁷ Nepal's new IT bill seeks to curb freedom of opinion and expression, MEDIANAMA, 23 April 2019, <https://www.medianama.com/2019/04/223-nepals-new-it-bill-seeks-to-curb-freedom-of-opinion-and-expression/>

²⁸ ‘Media Council Bill moves quietly to Parliament after remaining shrouded in secrecy for months’, The Kathmandu Post, 8 May 2019, <https://kathmandupost.com/national/2019/05/08/media-council-bill-moves-quietly-to-parliament-after-remaining-shrouded-in-secrecy-for-months>

²⁹ ‘Nepal government proposes bills that endanger press freedom’, the Committee to Protect Journalists, 23 May 2019, <https://cpj.org/2019/05/nepal-government-proposes-bills-that-endanger-pres/>

³⁰ ‘Urge for Reform on Media Council Bill’, 4 September 2019, Freedom Forum, <http://freedomforum.org.np/urge-for-reform-on-media-council-bill/>

³¹ ‘Nepal newspaper due in court for case slammed as press freedom attack’, AFP, 2 March 2018, <https://www.dawn.com/news/1395380/nepals-chief-justice-sacked-for-faking-date-of-bi>

³² ‘Death threat to journalist for publishing news’, Freedom Forum, 21 May 2019, <http://nepalpressfreedom.org/main/issue-single/1057>

- 4.12** On 14 May 2019, government authorities opened an investigation into three state-employed journalists who published a wire report about the recent stay of exiled Tibetan spiritual leader the Dalai Lama in an Indian hospital. The move was reportedly undertaken at the request of China’s embassy in Kathmandu.³³
- 4.13** On 15 April 2019, the authorities briefly detained Arjun Giri, editor of the online weekly Tandav News, under the Electronic Transactions Act and initiated a police investigation after he reported on alleged fraudulent business practices in the city of Pokhara.³⁴

5. Freedom of peaceful assembly

- 5.1** During Nepal’s examination under the 2nd UPR cycle, the government received and supported one recommendation on the right to the freedom of peaceful assembly, pledging to “ensure that freedom of assemblies are guaranteed and lift all restrictions on peaceful protests.” However, the government has failed to realise this commitment adequately.
- 5.2** Article 21 of the ICCPR guarantees the right to the freedom of peaceful assembly. Article 17 of Nepal’s Constitution also guarantees the freedom of peaceful assembly. However, peaceful protests have been met with excessive force and arbitrary arrests, and the authorities have limited public space to prevent assemblies from gathering to express dissent against government policies.
- 5.3** In June 2019, at least six people were injured when police used excessive force to disperse heritage conservationists, local residents and other stakeholders who were protesting against a proposed bill that seeks to nationalise centuries-old community and religious trusts. Police also detained four protesters.³⁵
- 5.4** On 24 August 2018, police opened fire on protesters in the city of Mahendranagar in west Nepal. Protesters were demanding action over the rape and murder of a 13-year-old girl. A 17-year-old boy, Sani Khuna, was killed, and dozens were injured during the demonstration.³⁶ Protests had also taken place a day earlier, on 23 August 2018, in Kanchanpur district. Protesters reportedly burned tyres on the main

³³ ‘Nepal Orders ‘Investigation’ of Reporters Who Wrote About Dalai Lama’, Radio Free Asia, 14 May 2019, <https://www.rfa.org/english/news/tibet/reporters-05142019151851.html>

³⁴ ‘Tandav News editor Giri investigated under Nepal’s cybercrime act’, the Committee to Protect Journalists, 15 April 2019, <https://cpj.org/2019/04/tandav-news-arjun-giri-nepal-cybercrime/>

³⁵ ‘Police use force against those protesting Guthi Bill’, The Kathmandu Post, 10 June 2019, <https://kathmandupost.com/valley/2019/06/10/police-use-force-against-those-protesting-guthi-bill>

³⁶ ‘One dead in Nepal rally demanding action over teen’s rape, murder’, Al Jazeera, 25 August 2018, <https://www.aljazeera.com/news/2018/08/dead-nepal-rally-demanding-action-teen-rape-murder-180825134648376.html>

roads of the town. In response, police allegedly opened fire on protesters, leaving at least four people injured and taken to hospital.³⁷

- 5.5** The UN Basic Principles on the Use of Force and Firearms require officials to apply non-violent means before resorting to the use of force and firearms. There has yet to be an independent and impartial investigation into the events leading up to the violence in the above incidents, and prompt and effective redress and justice to the victims and their families have not been provided.
- 5.6** On 30 November 2018, at least 30 people – including members of the board, staff and supporters of Amnesty International Nepal – were detained while protesting outside the Indian embassy against the Indian government’s crackdown on civil society, which included raids on the offices of Amnesty International India and attempts to shut down its campaigning in the country.³⁸
- 5.7** On 30 November 2018, police intervened in a peaceful protest and arrested 12 protesters for pasting posters on utility poles in Maitighar. The demonstrators were pasting posters featuring Nirmala, a 13-year-old girl who was raped and murdered in Kanchanpur district in July 2018, demanding that the government hold the perpetrators accountable. While the peaceful protest was under way, armed police arrived and arrested protesters, including eight women. Police also confiscated and tore up the posters. The arrested protesters were forced into a police van and detained in the Metropolitan Police Circle, Singha Durbar, before being released in the evening.³⁹
- 5.8** On 31 March 2018, defenders from the Human Rights and Peace Society (HURPES) organised a sit-in in front of Prime Minister’s residence to protest against impunity around the Tikapur incident, when seven police personnel and a child were killed in Tikapur, Kailali district, on 24 August 2015. The incident happened after police fired teargas into crowds of thousands of Tharu protestors, who had taken to the streets to protest against federal boundaries proposed by the government during negotiations for a new constitution and to demand a separate, autonomous province. The HURPES sit-in demanded immediate ratification of the International Criminal Court’s Rome Statute. Police arrested 34 individuals at the sit-in, including the founding president of HURPES, Krishna Pahadi, for gathering around a prohibited

³⁷ One killed, 24 injured in police-locals clash, The Kathmandu Post, 25 August 2018,

<https://kathmandupost.com/national/2018/08/25/one-killed-24-injured-in-police-locals-clash>

³⁸ ‘Nepal: Release Amnesty International activists now’, Amnesty International, 30 November 2018,

<https://www.amnesty.org/en/latest/news/2018/11/nepal-release-amnesty-international-activists-now/>

³⁹ ‘Police disrupt peaceful protest’, The Himalayan Times, 20 November 2018,

<https://thehimalayantimes.com/nepal/police-disrupt-peaceful-protest/>

zone.⁴⁰

5.9 The authorities have also denied or disrupted protests by refugees and Free Tibet activists against China. In March 2018, government officials declined permission for Tibetan refugees who live in Nepal to hold a rally to commemorate Tibetan National Uprising Day and advised the refugees against organising gatherings or demonstrations.⁴¹ In October 2019, at least 22 Free Tibet movement campaigners and human rights activists from Kathmandu were arrested over a period of three days. They were planning to hold protests during Chinese President Xi Jinping's visit to Nepal.⁴²

6. Recommendations to the Government of Nepal

CIVICUS and Freedom Forum call on the Government of Nepal to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In the light of this, the following specific recommendations are made:

16.1 Regarding freedom of association

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the right to association.
- Remove all undue restrictions on the ability of CSOs to receive international and domestic funding in line with the best practices articulated by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- Undertake a full consultation with all concerned stakeholders on the

⁴⁰ '34 Human Rights activists detained for staging sit-in at Baluwatar', The Himalayan Times, 31 March 2018, <https://thehimalayantimes.com/kathmandu/34-human-rights-activists-held-for-staging-sit-in-protest-at-baluwatar/>

⁴¹ 'Tibetan refugees face increasing restrictions on their activism', CIVICUS, 17 April 2018, <https://monitor.civicus.org/updates/2018/04/17/tibetan-refugees-facing-increasing-restrictions-their-activism/>

⁴² 'Restrictive bills still being pushed by nepali lawmakers as protests around Xi's visit stifled', CIVICUS, 16 October 2019, <https://monitor.civicus.org/updates/2019/10/16/restrictive-bills-being-pushed-nepal-silence-expression-while-journalists-remain-risk/>

proposed law regulating 'social organisations', and the proposed National Integrity Policy, and guarantee that when enacted, undue restrictions on the freedom of association are removed and they are brought into compliance with articles 21 and 22 of the ICCPR.

- Guarantee the effective and independent functioning of autonomous trade unions by ratifying ILO Convention No. 87.

16.2 Regarding the protection of human rights defenders

- Provide civil society members, HRDs and journalists with a safe and secure environment in which to carry out their work, conduct impartial, thorough and effective investigations into all cases of attacks, harassment, and intimidation against them and bring the perpetrators of such offences to justice.
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction or legal and administrative harassment.
- Amend the Electronic Transactions Act to bring it into line with the ICCPR and the UN Declaration on Human Rights Defenders.
- Publicly condemn at the highest levels instances of harassment and intimidation of civil society activists and CSOs.
- Systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect human rights activists by adopting a specific law on the protection of human rights activists, in accordance with Human Rights Council resolution 27.31.

16.3 Regarding freedom of expression, independence of the media and access to information

- Ensure the freedom of expression and media freedom by bringing all national legislation into line with international standards.
- Review the criminal code in order to ensure that legislation is in line with best practices and international standards in the area of the freedom of expression, looking particularly at sections 293, 294, 295, 298 and 306.
- Reinstate all media outlets unwarrantedly closed.

- Reform defamation legislation in conformity with article 19 of the ICCPR, in accordance with the recommendation of the taskforce.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may deem sensitive.
- Take adequate steps to lift restrictions on the freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Develop an action plan to ensure that internet laws comply with the government's commitment to guarantee the freedoms of expression and information, including by ensuring free access to electronic media, liberalising electronic media ownership rules and allowing domestic bloggers, journalists and other internet users to play a full and active role in promoting and protecting human rights.
- Implement legislative measures regarding access to information and establish mechanisms to facilitate public access in line with best practices.
- Adopt a law on access to information in order to promote fully the exercise of the right to the freedoms of expression and opinion.
- Organise inclusive consultations with journalists and media in order to resolve disputes that exist concerning the new media law.
- Refrain from adopting any laws providing for censorship or undue control over the content of the media.

6.4 Regarding freedom of peaceful assembly

- Adopt best practices on the freedom of peaceful assembly, as put forward by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his 2012 annual report, which calls for procedures in which there is simple notification of assemblies being held, rather than explicit permission being needed to assemble.
- Unconditionally and immediately release all protesters, HRDs and journalists detained for exercising their right to the freedom of peaceful assembly and review their cases to prevent further harassment.

- Immediately and impartially investigate all instances of extrajudicial killing and excessive force committed by security forces while monitoring protests.
- Review and if necessary update existing human rights training for police and security forces with the assistance of independent CSOs to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Publicly condemn at the highest levels the use of excessive and brutal force by security forces in the dispersal of protests, launch formal investigation into such instances and bring the perpetrators to justice.
- Provide recourse for judicial review and effective remedy, including compensation, in cases of the unlawful denial of the right to the freedom of peaceful assembly by state authorities.

6.5 Regarding access to UN Special Procedures mandate holders

- Extend a standing invitation to all UN Special Procedure mandate holders and prioritise official visits by the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 3) Special Rapporteur on the rights to freedom of peaceful assembly and of association; 4) Special Rapporteur on the Independence of Judges and Lawyers; 5) Special Rapporteur on extrajudicial, summary or arbitrary executions; 6) Special Rapporteur on the rights to privacy; and 7) Working Group on Arbitrary Detention.

6.6 Regarding state engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation of law and policy.
- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of UPR recommendations, including by holding periodical comprehensive

consultations with a diverse range of civil society.

- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.