

The Defence of Press Freedom and Freedom of Expression in Nepal

A Report by the 'International Press
Freedom and Freedom of Expression Mission to Nepal'

July 2005

This report is based on the findings of the 'International Press Freedom and Freedom of Expression Mission to Nepal' in mid-July 2005, which included the following organisations:

ARTICLE 19

Committee to Protect Journalists (CPJ)
International Federation of Journalists (IFJ)
International Media Support (IMS)
International Press Institute (IPI)
Press Institute of India (PII)
Reporters sans Frontières (RSF)
South Asian Free Media Association (SAFMA)
United Nations Educational, Scientific and Cultural Organization (UNESCO)
World Association of Community Radio Broadcasters (AMARC)
World Association of Newspapers (WAN)
World Press Freedom Committee (WPFC)

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Executive Summary

Media Rights and Freedom of Expression

During the past decade and a half, the media in Nepal has played an integral part in promoting peace, democracy, development and good governance. However, since the state of emergency was imposed in the country on 1 February 2005 -- and despite the fact that it was subsequently lifted on 29 April 2005 -- the press freedom and freedom of expression situation in the country has continued to deteriorate.

Since February 2005, the national media community has been engaged in a number of exemplary and dynamic efforts in defence of these freedoms and rights. Nevertheless, despite these efforts, press freedom and freedom of expression continue to be infringed upon by all combatant parties in the conflict.

Harassment, Detentions and Disappearances

Media practitioners and freedom of expression advocates across the country continue to be subject to killings, violent attacks, intimidation, harassment and displacement by both the government and the Maoists. Moreover, media practitioners and others continue to “disappear” or be detained and imprisoned for the free expression of their opinions. Media practitioners are protected under national and international law and agreements and those who violate these must be held accountable and prosecuted.

Media Policy and Legislation

A media environment based on international norms and standards, as enshrined in the 1990 Constitution and other legislation, needs to be preserved and respected, with particular reference to the restoration of civil liberties and fundamental rights after the lifting of the state of emergency. In this regard, the lack of transparency by the state authorities and security forces in dealing with media and freedom of expression issues is of serious concern, as would be the introduction of any new media ordinance, decision or ruling that would alter or override existing media-related legislation.

Direct and Indirect Censorship

A number of direct and indirect forms of censorship are being applied against the media in Nepal. In particular, this includes interference in editorial independence, the prejudiced allocation of state advertising, pressure on commercial entities not to advertise with particular media, increases in postage costs for print media, disruption of print media distribution and the threat of non-renewal of broadcast licenses. In addition, reported

“coercive measures”, such as firing particular editors and journalists, are being applied against media institutions as conditions for continuing to operate.

FM and Community Radio

FM and community radio in Nepal has to date been a leader in the field of community broadcasting in South Asia. However, contrary to the Constitution, the Supreme Court decisions and national legislation guaranteeing press freedom and freedom of expression, radio stations in Nepal are currently under a de-facto ban for broadcasting news. Despite claims by Government officials to the contrary, FM and community radio stations in many countries around the world broadcast news. This ban in Nepal is depriving the population of free access to information, threatening the financial viability of FM and community radio, as well as causing large-scale unemployment for radio journalists and broadcasters.

District Media

The conditions faced by the local media in districts across the country are particularly harsh. Whilst all of the media community has been subject to killings, attacks, disappearances, intimidation, harassment, detention and displacement, this has been particularly severe in areas outside of the Kathmandu Valley. In such locations the media often finds itself caught between the combatant parties and under pressure to censor or alter the content of despatches and reports so that it is perceived to be more favourable to one side or the other. Moreover, media facilities and infrastructures are more vulnerable to being shut down, deliberately damaged or removed by one of the combatant sides. The recent emergence of armed “vigilante groups” in certain districts also poses a serious threat to media practitioners and freedom of expression advocates, as well as press freedoms and freedom of expression in general.

1. Introduction

The International Press Freedom and Freedom of Expression Mission to Nepal

In response to the deteriorating press freedom and freedom of expression situation in Nepal, twelve international organisations, including UN agencies, global media associations, freedom of expression advocates and media development organisations, undertook a mission to the country from 10 to 17 July 2005. This mission reflected the serious concern with which the international community views the press freedom and freedom of expression situation in the country.

During the mission representatives of the international organisations met with persons and institutions espousing a broad spectrum of opinions on the current media and freedom of expression situation in Nepal. In particular, these meetings included cabinet Ministers, senior officers of the Royal Nepal Army, civil society representatives, and a cross-section of the national media community. In addition, the mission visited a number of the districts, including Butwal, Biratnagar, Nepalgunj and Mahendranagar, and met with local civil authorities and representatives from the local media in these areas. The members of the mission also participated in a national conference on *Press Freedom and Freedom of Expression* in Kathmandu on 15 July 2005.

Whilst in Nepal the international organisations sought to strengthen dialogue and relations with the media and freedom of expression community, as well as to highlight concerns with the national authorities and security forces over the situation of media and freedom of expression in the country. The mission stressed the crucial importance of press freedom, freedom of expression, freedom of association, and the right to be free of persecution in any situation as fundamental components of democratic society and a driver of peace-building, development and poverty eradication. In that regard, the mission acknowledged the importance of accuracy in media reporting.

The international organisations represented on the mission included:

- ARTICLE 19
- Committee to Protect Journalists
- International Federation of Journalists
- International Media Support
- International Press Institute

- Press Institute of India
- Reporters sans Frontières
- South Asian Free Media Association
- United Nations Educational, Scientific and Cultural Organization- UNESCO
- World Association of Community Radio Broadcasters - AMARC
- World Association of Newspapers
- World Press Freedom Committee

In Nepal, the mission activities were organised by a joint national committee consisting of:

- Broadcasting Association of Nepal
- Center For Human Rights And Democratic Studies
- Community Radio Broadcasting Association
- Federation of Nepalese Journalists
- Kathmandu Valley FM Broadcasters' Forum
- Media Services International
- Nepal Press Institute
- Sancharika Samuha – Women Communicator's Network
- Save Independent Radio Movement
- South Asian Free Media Association – Nepal

The national coordinator for the mission was Media Services International, whilst the international coordinator was International Media Support¹.

Report Structure

This report has been written by the international organisations that participated in the mission and is divided into five main chapters, each addressing one or more of the serious concerns identified. The report does not seek to provide an exhaustive list of all issues of concern relating to press freedoms and freedom of expression in Nepal, but rather those focused on during the mission. In this regard, the report addresses the following issues:

- Media Rights and Freedom of Expression
- Harassment, Detentions and Disappearances
- Media Policy and Legislation

¹ International Media Support is based in Copenhagen, Denmark, and receives its core funding from the Danish Ministry of Foreign Affairs.

- Direct and Indirect Censorship
- FM and Community Radio

The situation of the district media is of serious concern and the particularly vulnerable conditions under which they operate are addressed within each the issues outlined above. The international organisations foresee producing a separate document addressing issues relating to the district media.

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2. Background and Context

On 1 February 2005, King Gyanendra of Nepal declared a state of emergency in an apparent response to the country's deteriorating security situation. The controversial move, which relied on military backing, acted to dissolve sitting government, overrode various civil liberties protected under the 1990 constitution, and effectively granted the monarchy absolute administrative powers.

Politicians, activists and journalists were jailed, the media was censored at gunpoint, the Internet was shut down and mobile telecommunication networks were unplugged across the entire country. King Gyanendra's intervention signalled a significant retreat for Nepal's new multiparty political system, which only emerged in 1990 from three decades of hard-line, royal-led authoritarianism, known locally as the 'Panchayat' era.

After twelve years of rambunctious pluralism, Nepal's parliament was disbanded following heated political dialogue in May 2002. In October 2002, King Gyanendra unilaterally suspended new elections and handpicked representatives and Ministers, including the Prime Minister. Meanwhile, the terms of office of all elected district and village level representatives were allowed to expire in July 2002 without follow-up elections.

By November 2002, there was no elected representation at any level of government across the country. After the 1 February 2005 intervention, Gyanendra assumed the role of "chairman" of the Council of Ministers. Nepal's dramatic moves towards monarchic authoritarianism notably come against the backdrop of a grinding decade old civil war pitching national security forces against an armed Maoist insurgency, which operates predominantly in the country's remote rural and mountainous areas.

The Maoists had previously pursued their political ideology through democratic processes under the banner of the Communist Party of Nepal (Maoist). Frustrated by the then political system, the Maoists took up arms and declared the beginning of a "People's War" in February 1996. Their tactics have mirrored recent revolutionary rural movements in other parts of Asia, Africa and Latin America, with a strong resemblance to Peru's "Shining Path" Maoist movement.

The Maoists' hit-and-run military style insurgency has had a significant impact. Some Kathmandu-based analysts estimate that the Maoists now control as much as 65% of the country's territory and have a significant presence in 70 of the country's 75 districts. A

series of coordinated roadblocks orchestrated by the Maoists have disrupted transportation systems and put economic pressures on the Kathmandu valley and other heavily-populated government-controlled areas, where prices for food staples and goods have risen sharply.

In the absence of democratically elected representatives, the Royal Nepal Army (RNA) has assumed responsibility for administration across those parts of the country the government controls. At the same time, the shadowy nature of both the insurgency and counter-insurgency operations has spawned widespread reports of human rights abuses by all of the combatant parties in the conflict.

For instance, Human Rights Watch reported that the RNA had “disappeared” hundreds of civilians since the conflict started in 1996. Amnesty International recently reported that women and children have been disproportionately affected by the conflict, including documented cases of forced conscription, rape and displacement. The United Nations is now in the process of establishing a human rights monitoring team throughout the country, which should be operational in the coming months.

The Nepalese government continues to refer to its conflict with the Maoists as a theatre in the United States-led global “war on terror”. However, the United States, United Kingdom and India suspended lethal weapon supply shipments to the RNA after King Gyanendra suspended democracy in February 2005, and have since predicated the resumption of their military assistance on a return to democratic rule and constitutional monarchy.

King Gyanendra has insisted that he intends to restore full democracy within three years. He has also implored foreign allies to restore military assistance to the RNA as quickly as possible, claiming that a sustained arms embargo would weaken the security forces and threaten to give the Maoists a crucial strategic advantage.

King Gyanendra’s government has recently eased its direct censorship of the Kathmandu-based media, although the district press still operates under strict restrictions and FM radio stations are barred from reporting news.

The King has also promised to hold municipal elections within one year, although without declaring a specific date. However, with recent reports of an upsurge in violence from the rural hinterlands and with the government’s human rights record now in the

international spotlight, it is both unclear and uncertain whether the government and armed forces will adhere to the promises for a return to democracy.

3. Media Rights and Freedom of Expression

Before the imposition of the latest state of emergency, the Nepal media environment was one of the liveliest and most vibrant in South Asia. Despite the fact that independent newspapers have only existed since 1990, there were numerous papers before 1 February 2005, both in Kathmandu and in the outlying districts.

In the electronic media sector, the creation of the country's first independent radio station, Radio Sagarmatha, in 1994 led to the formation of many other radio stations that have directed their programming to local audiences through a mixture of news, documentaries, entertainment and music. Indeed, a total of 47 independent stations and three local television stations operated before 1 February 2005. It has also been estimated that nearly 10,000 people worked in the media and that the sector generated considerable revenue for investors.²

Newspapers: Immediately following the announcement of the state of emergency, several print journalists reported that soldiers were in their newsrooms, scrutinizing all newspaper copy and monitoring all publicly transmitted information. Elsewhere, soldiers set up patrols outside media houses, often preventing staff from entering their work place. While such around the clock patrols are no longer taking place, media practitioners, especially those working in the districts, report that security forces still enter newsrooms at random and continue to monitor what is reported. Journalists have been directly warned against disseminating any information that shows the government, local administrators or security forces in a negative light.

Logistical limitations for the media have increased as tensions in the districts have heightened. Many media workers, particularly correspondents of national media working in the districts, have reported that they lack the necessary infrastructure such as accessible telephone and fax lines. Additionally, the Internet and mobile phone services have yet to be restored in many of the districts -- creating even greater challenges for journalists reporting from these areas. Often, the only accessible telephone and fax services are in government offices. Journalists using these services have found themselves compromised by the civil administrators or security forces.

² See "A Young Vibrant Media" By Daniel Lack, The Committee to Protect Journalists, www.cpj.org, Accessed: July 20, 2005

In many of the outer-lying areas journalists reported that they continue to face intimidation and harassment from security forces and the Maoists with both sides objecting strongly, and at times violently, against reporting that criticizes their actions.

Throughout much of the country, the RNA enforces government directives restricting freedom of the press. There is much evidence to suggest that, with particular emphasis in the districts outside of Kathmandu, local security forces are censoring the media, leaving the civil administration to claim that it plays no role in preventing the media from reporting on such issues as the insurgency, the King, corruption and local government.

In recent months, newspapers in Kathmandu have made important steps towards creating 'space' for freedom expression, but newspapers in the outer districts are still compromised.

Pressures on the Media from Combatants: Maoists have also endangered the lives of journalists and media practitioners in continuing attempts to prevent them from reporting on certain activities. There are numerous cases of harassment, intimidation and at times, abductions, attacks and killings reported by journalists working in the districts outside Kathmandu. One journalist was held for over 56 days after he published a story about Maoist activities in the Eastern district of Ilam and was not released until mid-July.

In Butwal, one of the districts visited during the mission, journalists also identified a third group, vigilantes who refer to themselves as the "resistance" and who were allegedly supported and trained by the security forces. This group is routinely perpetrating attacks against media practitioners. One journalist, who wrote a story exposing financial connections between the vigilantes and the state, was abducted and held for a number of days, during which time he was blindfolded and interrogated. More recently, members of the vigilante group threatened to kill a group of journalists who had collected information on the sophisticated arms that the vigilantes held in their possession.

Radio: Findings concerning FM and community radio stations have been particularly worrying as the repression continues. A continuing de-facto ban on reporting any news, political or otherwise, means that many stations are reduced to playing music. Representatives from radio stations in Kathmandu have reported that they are even prevented from airing spoken words to introduce or announce music selections.

Economic Pressures: Continued restrictions on the media have led to an array of economic difficulties. The state has withdrawn advertisements in newspapers that are not

seen as supporters of the government's position. This in turn has had a significant impact on those independent publications that have been unable to find alternative sources of revenue. In the districts many newspapers report that circulation has greatly decreased. There is also widespread unemployment, particularly among radio journalists. It has been said that over 1,000 radio journalists and stringers have lost their jobs since 1 February 2005. In both the print and broadcast sectors, many journalists report that they are working for reduced wages, and in some cases, without any remuneration at all.

Assessment and Analysis

Despite the lifting of the state of emergency, the Nepalese media is still prevented from operating with the same freedoms that existed before King Gyanendra's Royal Proclamation. Press freedom and the rights of journalists and media workers continue to be severely restricted. Additionally, freedom of expression has been severely limited due to intimidation and harassment carried out by the state and other parties of the ongoing conflict.

The information obtained through detailed discussions with journalists in the districts outside of Kathmandu confirmed that all combatants in the conflict have played a part in abusing and restricting press freedom and freedom of expression.

Before 1 February 2005, FM and community radio stations played an essential role in providing news and information. Rural populations were largely dependent on such stations due to high rates of illiteracy. The low cost of small radio sets that are available even in the most remote areas of the country has meant that people could access news without financial restrictions. The de-facto ban on FM and community radio has a direct impact on limiting access to information throughout the country. The loss of community development and education programs that have been interrupted since the FM and community radio ban was imposed is also of great concern.

In Kathmandu, there are signs that the press is creating a 'space' in which to report independently. Cartoonists, photojournalists and reporters continue to push the boundaries of the restrictions imposed upon them in order to deliver information and messages to the public.

The media community within Nepal continues to protest against these increasingly negative developments and to stand firm in its role as the watchdog of the society. Members from a broad cross-section of the country's media community have staged

public demonstrations urging King Gyanendra's government to restore democracy and allow a more open and free media environment.

Recommendations

- Freedom of expression and press freedom should be respected by all parties throughout the country with particular emphasis on news broadcasts by FM stations and the district media and the correspondents of national media in the districts.
- The government should make a formal public statement that clearly and unambiguously reaffirms that all articles of the Constitution are in force.
- Security forces should be transparent in their role and intentions, as well as in their dealings with the media and media-related issues.
- Security forces should respect freedom of expression and press freedom across the entire country, with a particular emphasis on the media in the districts outside Kathmandu.
- The Communist Party of Nepal (Maoist) should respect freedom of expression, press freedom and pluralism.
- The media community in Nepal should continue their movement with the dedication and solidarity shown to date in defending press freedom and freedom of expression.
- The international donor community should look at how they can support capacity building and practical campaigns and measures at the local and international level to advance press freedom and freedom of expression.
- All editors and media owners should support and protect media practitioners in undertaking their work, and remain mindful of the impact of amendments to original copy can have on the safety of district reporters.
- The international community should continue to address press freedom and freedom of expression in Nepal and seek to further such rights with the national authorities at all given opportunities and through supporting substantive activities on the ground.

4. Harassment, Detentions and Disappearances

Following 1 February, hundreds of media practitioners and freedom of expression advocates have been harassed, intimidated and detained, often in secret. There have been numerous reports of torture of journalists while in detention, as well as kidnappings of journalists.

Media repression from both the Maoists and security forces is not new in Nepal. There has been a steady deterioration of human rights, including press freedom and freedom of expression, since the State of Emergency declared in 2001. What is different this time is the widespread and systematic nature of the repression, particularly by the security forces outside the Kathmandu valley, and evidence that the rule of law no longer exists.

The pattern of daily arrests and short detentions appears to be one of the strategies used by the army to intimidate journalists and crush peaceful dissent by the media community. Although in the majority of cases the detained journalists have been released within a few hours to a few days, in some cases, the detentions, particularly following 1 February 2005, have been for months at a time. The Federation of Nepalese Journalists, as well as missions by the International Federation of Journalists, Committee to Protect Journalists and the South Asian Free Media Association, have drawn attention to the harassment and intimidation of journalists following the royal coup.

The lifting of the emergency has not made any significant difference to the condition of journalists. Short-term and arbitrary detentions, repeated interrogation, the summoning of journalists to the barracks and administrative offices, as well as the harder to monitor subversive threats and "warnings", have become a pattern over the past few months. Media practitioners, particularly in the districts, spoke of the difficulties of functioning independently in this atmosphere of threats and intimidation. Carrying out daily professional duties -- whether news gathering, editing or publication -- was fraught with apprehension about whether a news item, headline or photograph would be interpreted as "anti-King" by the security forces or government functionaries, or "anti-Maoist" by local Maoist cadres. In this situation, self-censorship was rife.

Harassment by the security forces and local government officials takes many forms, including repeated visits to the homes and offices of media practitioners, interrogation, psychological torture, phone calls at odd hours with threats and warnings of "dire consequences". Accosting media practitioners at social gatherings and making oblique

references to their “safety” was another reported form of psychological pressure. Media practitioners are summoned almost everyday to the barracks and police stations to “explain” particular news items and editorials.

District officials, clearly under instructions from security forces, are also responsible for harassing media practitioners. The situation is particularly grim outside the Kathmandu valley. Media practitioners who met with the mission in the districts expressed their feeling of insecurity and the difficulties in carrying out their profession, especially at low and delayed wages or in many cases, with no remuneration at all. In many cases, the harassment has led to displacement, as journalists have fled to Kathmandu, or across the border to India.

The threat to security and even survival in the districts was more serious as compared to the Kathmandu valley, as media persons described how the barriers of distance and unavailability of communication facilities made journalists feel more vulnerable. The ban on mobile phones has still not been lifted outside the Kathmandu valley and landline connections are few and erratic. Information and news reports are being sent through bus drivers and conductors, rather than by fax or email. Women journalists in the districts expressed their vulnerability while news gathering and reported that they were subjected to humiliating body searches by male personnel, which often resulted in molestation and harassment at check points.

In the context of the political conflict and the impunity with which the security agencies have conducted themselves in the counter-insurgency operations, the coercion of journalists by the army to publish news that suits the royal regime has several serious consequences. Not only are journalists being harassed and independent professional journalism being crushed, the Nepalese citizens are misinformed and deprived of their right to know about the brutality unleashed by both sides to the conflict.

The international media mission noted cases of illegal detention by the security forces, including several known cases of detention in army barracks accompanied by brutal torture, leaving journalist victims severely traumatized.

Media practitioners who met with the mission also described their vulnerable situation between the security forces and the Maoists, who were intolerant of independent reporting of the conflict. The mission noted cases of abduction, detention and psychological torture by the Maoists. A journalist from Agrakhanchi told the mission that Maoists threatened him for giving “wrong news” about a “foiled” Maoist attack on security

forces and were placated only after he managed to convince them that the news had been fed via the Home Ministry. Similarly, editorial changes in Kathmandu offices (for instance, changing the word “Maoist” to “terrorist” as per current official regulations) can have serious repercussions for local reporters threatened by local Maoists commanders who did not believe that the reporters do not control the final sub-editing or headlines.

Furthermore, a serious emerging problem is that of armed vigilante groups, particularly in Rupandehi district, suspected to be supported by the local administration. In Kapilvastu, large tracts of lands have been burnt down and entire villages ransacked by the vigilantes, resulting in massive displacement across the border to India. Yet, local journalists were prevented from reporting this news. Vigilante groups are also known to have perpetrated serious acts of violence against media practitioners and to have ransacked newspaper offices and vandalized printing presses. To cite one instance, in March 2005, JB Pun, a correspondent with Kathmandu-based *Himal Khabarpatrika* was abducted and detained for two days by armed vigilantes. Not only has no action been taken against these groups, some Ministers in the present government have gone on record as condoning these acts.³

Assessment and Analysis

The killings, attacks, disappearances, intimidation, harassment, detention and displacement of media practitioners and freedom-of-expression advocates are of grave concern and it is imperative that all such incidents cease immediately. Media practitioners are protected under national and international law and agreements and those who violate these agreements must be held accountable and prosecuted.

Recommendations

- Killings, attacks, disappearances, intimidation, harassment, detention and displacement of media practitioners and freedom-of-expression advocates must cease immediately. Those who violate international agreements protecting media practitioners must be held accountable and prosecuted.
- All detained media practitioners and others imprisoned for the free expression of their opinions must be unconditionally released.
- Anti-terrorism legislation should not be abused to curb freedom of expression and press freedom.

³ Please see the list of specific cases in Annex II

- Substantive steps should be undertaken to discover the whereabouts of all “disappeared” media practitioners and freedom of expression advocates.
- The ill-treatment of female media practitioners, with an emphasis on molestation, verbal and physical humiliation, and all other forms of intimidation and harassment should cease immediately.
- Independent investigations should be carried out with respect to armed “vigilante groups” that perpetrate attacks against freedom-of-expression advocates, media practitioners and media facilities, as well as all human rights violations and criminal acts, and that such individuals and groups be held accountable and prosecuted for any such actions.
- The newly established Office of the High Commissioner for Human Rights (OHCHR) in Nepal should consider what training and other practical measures of support it can give to the FNJ and other human rights advocacy groups that are involved in the monitoring and documenting of abuse of human rights relating to media practitioners, press freedom and freedom of expression.
- Nepalese media, journalists organisations and press freedom advocates should continue to monitor, document and make public all cases of attacks on journalists and press freedom violations.
- Reliable information on abuses be regularly given to diplomatic and UN missions and they should take into account the situation and register their concern in decisions and dealings with the Nepalese military and government.
- The partners to the international mission for press freedom in Nepal should look at strategies for advocacy and lobbying using the information supplied by Nepalese partners.
- Psychological and financial support should be provided for journalists with post-traumatic syndrome.
- Job security should be provided for media practitioners as laid down in the Working Journalists Act. In particular, employers should seek to provide insurance cover and safety training, especially to journalists in the districts.

5. Media Policy and Legislation

Constitutional Rights to Freedom of Expression: In 1990, Nepal promulgated a Constitution that recognised the sovereignty of the people as supreme. This Constitution is a landmark document in the history of the country as it guarantees the fundamental rights of the citizens of Nepal. These include the right to freedom of thought and expression, the right to assemble without weapons, the right to establish organisations, the right to information, and the right to protection from censorship⁴.

The Constitution of Nepal includes a simple guarantee of freedom of opinion and expression as stated in Article 12(2)(a). However, it also provides for wide-ranging restrictions on this right as follows:

(1) nothing in sub-clause (a) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities, or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behaviour or morality;

Article 13(1), entitled *Press and Publication Right*, provides that no news item shall be censored, but provides for limitations to this on the same basis as for freedom of expression generally. Article 13 also, however, and without restriction, prevents the banning or de-registration of newspapers as follows:

(2) no press shall be closed or seized for printing any news item, article or other reading material.

(3) the registration of a newspaper or periodical shall not be cancelled merely for publishing any news item, article or other reading material.

Article 16 guarantees the right to information on matters of public importance, subject to secrecy laws, as follows:

(1) every citizen shall have the right to demand and receive information on any matter of public importance.

⁴ ARTICLE 19, War of Words: Conflict and Freedom of Expression in South Asia, Forthcoming, July 2005

(2) provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by law⁵.

Following the promulgation of the Constitution, several acts relating to the media in Nepal were passed, two of the more significant ones being the *Printing Press and Publications Act, 2048 BS*, and *National Broadcasting Act, 2049 BS*. The first of these provided guarantee against seizure for investments in the print media sector and the second made it possible for the private sector, NGOs and local governments to enter the field of electronic media⁶.

The government also ratified several international human rights instruments including *Universal Declaration of Human Rights (UDHR)* and *International Covenant on Civil and Political Rights (ICCPR)* that guarantee freedom of expression of the people. Finally, Supreme Court decisions have further reinforced the constitutional rights to freedom of expression through landmark decisions, and they extended the rights enshrined in Article 13 to electronic media.

Continued States of emergency: In November 2001, King Gyanendra issued an order of state of emergency and suspended the rights to freedom of expression and information. The state of emergency was extended with all-party support in February 2002. In October 2002, the King started ruling with a government comprised of people known to be loyal to him.

Terrorist And Disruptive Acts (Control and Punishment) Ordinance (TADA): In November 2001, the King also promulgated the *Terrorist and Disruptive Acts (Control and Punishment) Ordinance (TADA)*. The Ordinance was passed as a bill in Parliament on 4 April 2002, which allows preventive detention for up to one year. The TADA preventive detention clause has been widely misused for the arrest of media workers and anyone suspected of complicity with the Maoists.

State of Emergency 2005: The February 2005 state of emergency suspended a large number of fundamental constitutional rights, including:

- Freedom of expression and information
- Freedom of assembly

⁵ ARTICLE 19, Memorandum on Nepal's Draft Information Act, January 2004. By delimiting the scope of this article to matters of 'public importance', the constitutional right to information is unnecessarily circumscribed.

⁶ ARTICLE 19, War of Words, op cite

- Freedom to form unions and associations
- Press and publication rights
- The right against preventive detention
- The right to privacy
- The right to a constitutional remedy

Breaking with the precedent set during the 2001-2002 state of emergency, throughout February and March 2005, the Supreme Court refused to hear writs related to non-suspended articles of the Constitution (as provided for in Article 88 of the Constitution, which itself has not been suspended) (4). This meant that while in theory non-derogable rights (5), such as the right to equality, remained in place, in reality there was no legal remedy available to enforce these rights. However, under pressure from the Nepal Bar Association, on 31 March 2005 a special judicial bench of the Supreme Court finally ruled that the court could entertain writ petitions related to non-suspended rights⁷.

Assessment and Analysis

The media had been hit particularly hard by the February 2005 state of emergency and although it was lifted on 29 April, fundamental rights were not restored. The Information and Communication Minister assured the international media mission to Nepal that all constitutional rights had been re-instated and that there was no need to issue a public statement to that effect. Yet, the unwillingness of the national government to issue a public and unambiguous statement regarding the re-instatement of fundamental rights, as enshrined in the 1990 Constitution and further upheld and confirmed by Supreme Court decisions, calls into sharp question the national authorities' commitment towards enforcing the rule of law and democracy.

This unwillingness is made worse by the persistent rumours of a new media ordinance being drafted by the authorities, some of which was confirmed by high-level officials. Amending the laws enacted by the Parliament through ordinances goes against the rule of law and the 1990 Constitution. The possibility that a new media ordinance may be passed clearly contradicts the repeated claims of the national authorities that the 1990 Constitution and fundamental rights enshrined in this Constitution have been re-instated.

The Information and Communication Minister confirmed that new regulations regarding defamation would be re-introduced; this would sharply increase the penalties in case of

⁷ Amnesty International, Nepal: Human Rights abuse escalate under the state of emergency, 20 April 2005

defamation. If enacted, this Ordinance would constitute a violation of international standards regarding criminal and civil defamation and be a major step backwards with respect to freedom of expression and media freedom in Nepal.

The national authorities also acknowledged that the ban on news broadcasting imposed on FM and community radio during the state of emergency would continue to be enforced. The absence of clear guidelines regarding the nature of news broadcasting further meant that the ban was imposed in various fashions and that a number of FM and community radio stations had resorted to broadcasting entertainment in an extent not seen previously.

The lack of free information and political news in a country in conflict has greatly increased the sense of insecurity and fear among ordinary Nepalese people. The attacks on the media have crippled Nepal's dynamic media sector and fuelled the environment of impunity: those who were seeking to expose human rights abuses perpetrated both by the security forces and CPN (Maoist) are being muzzled.

Nepalese publications could now have their registration withdrawn based on their content, something that they should be protected from under the constitution. Many journalists, editors, and newspapers owners reported that fear of the possibility of withdrawal of registration has led to self-censorship.

Evidence of the security forces continued disregard for the courts' decisions, including those of the Supreme Court, is also cause for concern. Indeed, there are many reported incidents of recently released individuals being re-arrested immediately afterwards by the security forces. To date, there are thirty-three cases of persons having been re-arrested after being released by the Supreme Court or Appeal Court -- two third of whom are associated with political parties or known human rights defenders.

Recommendations

- Immediately restore the fundamental human rights suspended during the state of emergency.
- The government should preserve and respect the media environment based on international norms and standards as enshrined in the 1990 Constitution and other legislation, with particular reference to the restoration of civil liberties and fundamental rights after the lifting of the state of emergency.

- The Supreme Court's decisions regarding freedom of expression, including freedom of the media, should be enforced and respected.
- The national authorities should refrain from introducing any new media ordinance, decision or ruling which would alter or override existing media rights, including the Supreme Court's decisions, with particular reference to civil and criminal defamation and licensing regulations.
- All media-related issues should be dealt with in a transparent and accountable manner.
- The security forces should comply with all court rulings, including in habeas corpus petitions.
- Effective steps should be taken to end the impunity of the security forces.
- Independent investigations and trials for human rights abuses should take place in civilian courts, as opposed to military courts.

4. Direct and Indirect Censorship

Direct censorship: The draconian censorship, which the authorities imposed on the Nepalese news media after King Gyanendra assumed full powers on 1 February 2005, has had no precedent since the restoration of democracy in 1990. Five months later, FM and community radio stations, dozens of local media, websites, and government media are either being censored or blocked. The Royal Nepal Army (RNA) and local administration directly control news reporting in the remote districts of Basa and Theratun. However, most Nepalese newspapers, especially those based in the capital, have sought to resist censorship by the army and administration.

In some districts such as Danke and Parsa, the authorities have still not rescinded the directives issued after 1 February 2005. In theory, the news media in these regions are still banned from carrying news about the Maoist rebels or opposition political parties. The local administration and/or army often censor the reports of those correspondents working in the eastern and western regions of the country – such censoring is easy to carry out as the local administration and army often control the only means of communication (i.e. fax, telephone and the Internet). Moreover, the government still censors the *BBC World Service's* radio programs in both English and Nepali.

In view of the impossibility of monitoring all media, the authorities have insisted on the dismissal of some journalists known for their independence, including one of the editors of the daily *Rajdhani*. Two reporters with the privately owned TV station *Nepal One* were also fired and threatened allegedly as a precondition for the station to be able to resume broadcasting. All this constitutes serious interference in editorial independence and encourages journalists to censor themselves.

The government has also reinforced its editorial control over the state-owned media. Journalists are told what subjects to cover and what to say in their columns. Some local officials in the districts control the news reports sent by correspondents. Journalists working for state-owned newspapers are being exposed to danger because they are forced to use certain terms, such as “terrorists” to refer to the Maoist rebels.

The army has also forced the Nepalese Internet service providers to block access to more than 20 websites, some of which are linked to the Maoists, and to step up the monitoring of e-mails. News websites operated by Nepalese civil society are being blocked without any legal grounds.

The Maoists meanwhile prevent the emergence of any pluralism in the regions they control. The rebels have in recent months continued attacks on state media installations, including the premises of the state television station near Nepalgunj. They also seized the equipment of an FM radio station near Mahendranagar and have killed at least two journalists in the past two years.

The anti-Maoist 'vigilante' militia have also reportedly terrorized journalists in the Butwal region in particular. A newspaper's premises were recently ransacked, a national daily's correspondent was kidnapped, and several others were banned from writing about these armed groups.

Indirect Censorship: The practice of indirect censorship of the media in the form of bans on advertising, pressure on private advertisers and end-to-end disruptions in the chain of distribution of newspapers, comprise a less obvious, yet equally insidious form of pressure on the media, as well as play a key part in what appears to be a highly orchestrated campaign to erode and eventually extinguish independent media in Nepal.

Unlike FM and community radio stations, which have suffered from a direct ban on news reporting, newspapers both within the Kathmandu valley and in outlying districts appear to have greater editorial independence, yet this is being chipped away through a number of tactics aimed at undermining the economic survival of the Nepalese media.

In many newspapers throughout the country, state advertising accounts for approximately 25 to 30 percent (about 200 million Nepalese rupees) of all revenue from advertising. The government's "One Door Advertisement Policy", which directs public expenditure on advertising to media that demonstrate "respect for the nation, nationality and the monarchy", has imposed a de-facto ban on all public advertising in newspapers that are critical of the government.

This policy has a particularly debilitating effect on small and medium-sized newspapers outside of the Kathmandu valley, which depend on an even greater proportion of state advertising and paid-for supplements as a source of revenue. This loss in financing has forced many publications in the districts to rely almost exclusively on revenue from circulation, a practice that will most likely be unsustainable in the long-term. A number of rural newspapers have reported that their operating costs are now exceeding their ability to generate revenue.

The major English and Nepali-language private newspapers in the capital appear less impacted by government restrictions on advertising than their rural counterparts, yet government pressure on commercial enterprises to withhold or divert advertising from private newspapers is evident. One Kathmandu-based publication reported a sudden and inexplicit loss of one of its largest advertisers in March 2005, a move which resulted in the loss of an account worth over one million Nepalese rupees. Because of an overall decrease in advertising since 1 February 2005, this English daily has now decreased the number of pages from 16 to 12, with a loss of advertising accounting for the four missing pages.

The restricted allocation of state advertising has, in some cases, given private advertisers greater bargaining power. In Butwal, where currently there are five dailies and three weeklies in circulation, one newspaper publisher cited having been forced to slash the newspaper's normal advertisement rates by up to 50 per cent.

Disruption in the links of the distribution chain including delivery delays, confiscation of print runs and recent increases in postal tariffs for newspapers were observed outside the Kathmandu valley. *Drishti* newspaper, operated out of the capital, but with a readership made up almost exclusively in the districts, has reported a drop in circulation from 20,000 to 15,000 since 1 February 2005 due to disruptions in distribution. The newspaper was forced to stop distributing to the more remote areas, as the ongoing practice of confiscation of print runs from security checkpoints made these deliveries too much of a financial liability for local distributors.

Meanwhile, the nation-wide de-facto ban on FM radio stations reporting news has resulted in a direct loss of advertising due to the tendency for advertisers to buy air space around news programmes. For community radio stations, the ban on political and social programmes has resulted in a loss of sponsors, which has in turn resulted in wide-scale job losses.

However, certain newspapers have recorded an increase in circulation since the 1 February 2005. This suggests that citizens are turning to print media to fill the gap in information normally provided by FM radio. While this ban remains in place, the survival of newspapers becomes even more vital in the absence of other forms of independent news sources.

Assessment and Analysis

The international community has condemned the direct censorship exercised by both the government and the Maoists, which is preventing millions of Nepalese from getting access to news and information. The de-facto ban on news broadcasts by FM and community radio stations and the restrictions imposed on the work of journalists in many districts are serious violation of press freedom.

The restrictions on news reporting, ban on radio news broadcasts and blocking of websites are of serious concern and journalists should be able to access all means of communication without being subject to surveillance.

Likewise, the censorship of journalists working for the state media denies the country of a real public information service. The destruction or confiscation of news media installations and equipment by the Maoists is also of grave concern and it is regrettable that the news media affiliated with the CPN (Maoist) promote armed struggle and permit no criticism of the party's policies.

Efforts by the government to constrict the lifeblood of media organisations by attacking their financial foundations should be halted immediately. This includes the "One Door Advertisement Policy" and the cessation of all attempts to exert pressure on private enterprises concerning their advertising policies. Confiscation of print runs, transportation delays and unnecessary increases in tariffs must be prevented at all costs, as they can only be interpreted as a thinly veiled effort to deny rural readers access to independent sources of information.

Recommendations

- All direct and indirect forms of censorship on the media must cease, with particular reference to interference in editorial independence, the prejudiced allocation of state advertising, pressure on commercial entities not to advertise with particular media, the ten-fold increase in postage costs for print media, disruption of print media distribution and the threat of non-renewal of broadcast licenses.
- The national authorities should not impose 'coercive measures', such as firing particular editors and journalists, on media institutions as a condition to continue to operate.

- The independence of the media must be respected by the government and security forces and the media must not be forced or coerced to carry any specific messages or content; media facilities and infrastructure must not be shut down, damaged or removed.
- All media, with particular reference to district broadcast and print media, should not be obstructed or prevented in any way either by CPN (Maoist) or 'vigilantes' to disseminate news and information. As well, the media should not be forced or coerced to carry any specific messages or content.
- Media facilities and infrastructure must not be damaged, shut down or removed by the CPN (Maoist) and the 'vigilantes'.

7. FM and Community Radio

Soon after King Gyanendra announced the formation of a new cabinet under his “chairmanship” and declared the state of emergency, the new Minister of Information and Communication banned broadcast news and current affairs on FM and community radio for six months with his third notice announced on 4 February 2005. In spite of the end of the state of emergency, FM and community radio broadcasters are still unable to resume their normal program schedule.

The news ban contradicts international standards of freedom of expression. It is in conflict with the Articles 12, 13 and 16 of Nepal's 1990 Constitution regarding the right of information, freedom of press and freedom of expression, and it contradicts Clauses 5 and 16 of the *National Broadcasting Act* (1993), which authorizes the broadcast of “impartial and reliable news and information concerning national and international events.” It is furthermore in conflict with the landmark 2001 decision of the Supreme Court regarding news broadcast on FM radio.

Even after the lifting of the state of emergency, the chief district officers sent a letter to all FM and community radio stations insisting that radios were allowed only to broadcast entertainment programming. Most FM broadcasters and radio promoters feel that “radio will no longer exist if the situation continues.” Furthermore, the international media mission were informed that a new regulation reportedly under discussion might confirm the prohibition of broadcasting news and current affairs for the independent FM and community radio in Nepal.

There is confusion on the part of the authorities regarding its policy towards FM and community radio. First, the argument was advanced that the ban of news and current affairs on FM and community radio was a worldwide practice, whereas international standards indicate the contrary. Second, the Minister for Information and Communication insisted that its concern related only to “political” news and not every type of news. The ban of news and current affairs on FM and community radio remains in effect despite claims that all fundamental rights were reinstated. The international media mission in July 2005 was informed that the military and the security forces in the Kathmandu valley and in the districts are implementing the ban on news, usually through verbal intimidation or harassment.

Before 1 February 2005, among the 47 FM and community radio stations in the Kathmandu valley and in the districts of Nepal, 43 devoted almost 50% of their programming to news, current affairs and social programs. Some 12 stations counted on independent producers such as *Communications Corner* to broadcast six daily radio news bulletins, radio magazines and similar programs, which were received through satellite. As a whole, the independent radio stations reached 65% of the Nepalese audience. In July 2005, the international media mission observed that local radio audiences -- especially in the districts -- could only access the State news via *Radio Nepal*. Some stations reported that, under pressure from the local administrators, they were forced to air the so-called successes of the King's 100 days of government. After such broadcasts, the Maoists often threatened the stations. As a result, the FM and community radio broadcasters, especially in the districts where conflict is most rife, find themselves threatened from both sides – they are “between two guns.”

The phase of direct presence and supervision of security forces at the radio stations is technically over. However, the presence of the RNA and security forces is nonetheless felt through telephone calls and frequent visits to the radio stations, as well as summons to army barracks to answer questions about programmes carried, including non-news items. In other words, the harassment and intimidation practices are still in place. In some cases, the stations have repeatedly been ordered by security forces to provide a list of all staff and personnel. In other cases, for instance in April 2005, the *Royal Commission for Corruption Control* started to investigate the legality of the news and current affairs production hub *Communications Corner*, which received threats regarding the renewal of its broadcast license. Moreover, the authorities have been refusing permission for back up transmitters to be acquired by stations, thereby directly impeding the running of the existing stations. The mission also heard reports that the Maoist insurgents have continued to warn radio stations not to broadcast *Radio Nepal* news in the districts. On 19 May 2005, the Maoists looted all equipment of Ghodaghod FM in Kailali, a district in Nepal's far west.

The administration policy towards FM and community radio is particularly discriminatory when it comes to news and current affairs programs. This ban is not being applied to the print media or to television. Even though FM and community radio are suffering a reduction of their programme diversity, they are still expected to pay the same royalty and renewal fees in order to continue broadcasting. Due to the de-facto ban on news and current affairs programs, interest in advertising has gone down. News and current affairs programmes were the key factors in the popularity of FM and community radio broadcasting. Likewise, government advertisement is being blocked, and as no

development programmes are allowed, sponsorship revenues have declined. The general decline of the advertisement market is on the order of 20%. This economic crisis brought on by the censorship has led to significant unemployment at the FM and community radio stations. In some radio stations, the news departments have been closed, while in others the news departments` objectives have changed, but in all cases there has been staff reduction.

Whilst the Kathmandu-based media has been able to expand its space for freedom of expression, the district media has not been able to do so. The international media mission found that individual FM and community radio stations are testing the limits by broadcasting news and/or current affairs programs in defiance of the government ban. As a result, the stations find themselves under constant observation, harassment and intimidation by the RNA and the security forces. This occurs most frequently in the Kathmandu valley. In the districts, the situation is far more complex and the consequences are dire. The general situation continues to be very fragile, and harassment and intimidation have become part of the everyday life of independent radio broadcasters.

Like their print counterparts, the FM and community radio broadcasters have reacted as a group. On 19 May 2005, an umbrella organization, the *Save the Independent Radio Movement* (SIRM), was created by the *Broadcast Association of Nepal*, *Broadcasters Association of the Kathmandu Valley* and *Community Radio Broadcasters Association*. SIRM has launched a strategic campaign to create public awareness in connection with the general movement for press freedom and freedom of expression in Nepal.

The SIRM has also been lobbying and negotiating with the authorities as part of the overall freedom of expression movement in Nepal. The international media mission noted the difficult situation the Nepalese independent radio movement faces, given that the Minister of Information and Communication broke off the negotiations the same day he met the international media mission delegates. In comparison, the press freedom and freedom of expression movement has been successful in re-establishing the right to disseminate news and current affairs among the print media and television channels. The situation of FM and community radio is more difficult, as the government continues to maintain that international standards justify a monopoly by state radio on the broadcast of news and current affairs.

Assessment and Analysis

The banning of radio news and related programmes continues to be one of the most important violations of freedom of expression. This has not changed even after the lifting of the state of emergency.

The FM and community radio stations are confronted with a hostile environment that questions not only the security of journalists and the people's right to information, as enshrined in the Constitution, but also the FM and Community radio stations very survival.

The FM and community radio stations have not only been subjected to an unacceptable degree of censorship, but in the districts they are also trapped "between the guns" of the RNA and the Maoists.

This limitation on freedom of expression is unacceptable - even more so as radio is the most ubiquitous and appropriate media for a country like Nepal. It transcends literacy. Its signals are accessible to most people with appropriate receivers. It can reach people in remote areas of the country in the language of their choice. It also covers topics of particular interest and relevance to the local population. Due to the ban on news and current affairs programs, there is an information vacuum. Local audiences, especially in the districts, only have access to one-sided media.

Nonetheless, FM and community radio broadcasters lack the institutional memory to apply their experiences to the current situation and need to assess and develop their advocacy strategy to obtain the restoration of news and current affairs programs. Individual radios are also defying the orders of the Ministry by broadcasting news and programmes that have been banned. The general movement for freedom of expression in Nepal and the *Save the Independent Radio Movement (SIRM)* are preparing themselves for what looks like a long struggle. In that context, international support for FM and community radio stations is an essential part of the struggle for press freedom and freedom of expression in Nepal.

Recommendations

- The de-facto ban on news and current affairs on FM and community radio should be lifted and restored in accordance with the Constitution, Supreme Court rulings and national legislation.

- National organisations and SIRM should continue their movement demanding the right to broadcast news and current affairs.
- International organizations should support FM and community radio stations in Nepal on a continual basis.
- Pressure on the government should be increased in order to create an enabling environment for the sustainability of FM and community radio stations.
- A fair and transparent advertisement policy should be restored.
- National and international media support organisations should develop economic projects programmes for FM and community radio.
- FM and community radio should increase the exchange of programmes among stations in order to reduce the costs.
- The authorities should lift the ban on the import of spare parts for radio stations.
- The authorities should create a media fund financed through taxes and ministered by the sector.
- In order to restore the physical security context for FM and community radio practitioners, negotiation and advocacy strategies with all parties of the armed conflict is essential.
- International support should be provided for capacity building for radio journalists in conflict management and safety skills.

9. Conclusion

The Nepalese media had made significant progress since the re-establishment of democracy in 1990. A liberal constitution and appropriate media laws and regulations have helped the unparalleled growth of the print and electronic media, making them free, independent and vibrant. In this regard, the media in Nepal has made an invaluable contribution during the past decade and a half and played an integral part in upholding and promoting democracy, peace, development and good governance, as well as contributing to the eradication of poverty.

On 1 February 2005, King Gyanendra dismissed the country's coalition government, dissolved all the ministries and suspended fundamental rights, including the freedom of assembly and expression, the right to information and privacy and the right to property. A state of emergency was declared and the prohibition against arbitrary detention was withdrawn.

Since the royal proclamation, all constitutional and legal safeguards available to the media were paralyzed through government directives. Censorship was imposed directly for the first time in the last 15 years and security personnel were stationed in editorial rooms where they censored all news items.

The media has been hit hard by the state of emergency and the effect of the censorship is profound. Not only are journalists and editors intimidated and prevented from carrying out their work effectively, but also the lack of free information has greatly increased the sense of insecurity and fear among ordinary Nepalese people.

Atrocities against the media and human rights defenders have intensified after the declaration of the state of emergency. The government detained human rights activists, political leaders, cadres, and professionals imposing bans on peaceful assembly and restrictions on the domestic as well as international travel of a number of eminent personalities without giving any reasons.

Nearly two-dozen Nepali journalists were killed over the last six years during the on-going violence and counter violence. Half of the journalists were killed over the last two years. Similarly, dozens of journalists faced threats, intimidation, physical harassment and over 30 journalists were forced to abandon their workstations due to threats to their lives.

Security forces and government authorities interrogated several journalists over the last year (mid-April 2004 until mid-April 2005). Many received death threats. At least 51 journalists were arrested and were subjected to harassment while in detention. Most of the journalists who were given three months detention warrants under the public security act were released at the initiation of Federation of Nepalese Journalists (FNJ) and human rights groups. By mid April 2005, there were still 11 journalists in detention. There were also incidences of manhandling against over two dozen media practitioners during this period. Moreover, dozens of journalists were assaulted or physically harassed by police while covering demonstrations against the royal proclamation in various parts of the country.

There have been over a dozen incidents of seizures of publications and there are at least six reported cases of snatching of the equipment of journalists by Maoists and security forces. Three journalists were severely assaulted while covering political protests.

A number of local newspapers have shut down entirely while FM radio stations -- an important source of information for people in remote districts -- are not allowed to broadcast any independent news.

The Nepalese media continues to face assaults from both the government and Maoist rebels. There is also a new group patronized by the government, the 'vigilantes', who have also reportedly assaulted journalists. All combatants in the conflict have been responsible for abusing and contravening press freedom and freedom of expression.

The experience of FM and community radio in Nepal was considered an example for the development of an independent radio movement in South Asia. Local community radio is a relatively new feature in the Nepalese media landscape, although in recent years there has been a significant expansion in the number of local radio stations. Through legal battles and professional development, the stations had managed to broaden their scope of programming to include news that was previously prohibited by the authorities. FM and community radio stations in Nepal contributed significantly to the promotion of development, awareness, peace and stability.

The FM radio stations operated by the communities and private sector were hit hard by the government's decision after 1 February. The government banned the broadcast of news and news-related programmes in all FM radios for six months. As a result, over 1,000 journalists working in 47 FM stations all over the country have been laid off. With

the closure of news-related programmes, business transactions of FM and community radio stations have also declined drastically.

FM and community radio stations in many countries around the world do indeed broadcast news. As such, radio stations in Nepal should not be prevented from broadcasting news in compliance with the Constitution, Supreme Court decisions and national legislation guaranteeing press freedom and freedom of expression.

By inhibiting news of FM and community radios, the authorities are depriving the population of free access to information, threatening the viability of media as well as causing large-scale unemployment and declining incomes for media practitioners, particularly among the district media and FM community radio stations.

Despite these challenges and abuses, the media community in Nepal has been dynamic in defending press freedom and freedom of expression. Many journalists were quick to oppose the royal takeover. The FNJ, for example, issued a strong-worded statement against the royal move and decided to launch a nationwide movement against it. To date, many journalists continue to take active steps to reinstate press freedom and freedom of expression.

It is important that all those who are active in demanding media freedom and freedom of expression in Nepal maintain the unity and momentum thus far established. They must also be supported to continue to promote public debate, encourage the participation of civil society, and pursue advocacy and lobbying strategies, including legal remedies.

During a conflict, it is pivotal that a government allow full and proper access to information and a free flow of information. Such a transparent policy is necessary not only because government decisions at such times warrant a higher degree of scrutiny, but also because members of the public have a right to understand the actions of their government.

The "freedom to hold opinions without interference and to seek, receive and impart information" in a conflict (Article 19, *United Nations Universal Declaration of Human Rights*) has been supported by a number of declarations. Of these, perhaps the most important are the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (U.N. Doc. E/CN.4/1996/39, 1996) and the *Manila Resolution on Terrorism and Media* (2002). The *Manila Resolution* explicitly states that the media

has a right to report during a conflict and that it is vitally important for informed and open debate to take place at such times.

Unfortunately, the Nepali government has chosen to ignore such statements in favour of a media policy that specifically restricts access to information and the free flow of information. By doing so, the Nepali government risks undermining its own attempts to bring the Maoist insurgency to an end, as well as jeopardising its relationship with both the media and civil society. The government also appears to have disregarded the possibility that by restricting traditional media outlets and journalists, there is a real risk of a vacuum forming that will readily lend itself to the spread of conspiracies, rumours and violence.

Suspension of democracy in Nepal has aggravated the existing culture of non-accountability and lack of transparency. It has increased the pattern of militarization and restricted the space for political dialogue, thereby significantly reducing the chances of peace.

Annex: I

The following specific cases have been compiled with information provided to the international mission in mid-July 2005. However, this does not present an exhaustive list of all harassments, detention, disappearances and other attacks against media practitioners, but only provides examples of the current situation in the country.

Detention by Royal Nepal Army

Binod Dahal was arrested initially on 28 October 2003 and charged under TADO. The Nepalese government continues to hold him in custody following the lapse of his six-month detention order on 27 June 2005. Dahal has reportedly been severely tortured. A high level FNJ team visited him in Nakku jail on 17 July 2005 and found that his physical condition had deteriorated. Dahal, who is a kidney patient, has not received any medical attention.

Bhaikaji Ghimire, a journalist with the Kathmandu-based *Samadristi* weekly, was picked up by the security forces on 3 December 2003. Although it is now known, through other detainees, that he is being detained at Nakku Jail, he has not appeared in court. He is reportedly being held under TADA. Ghimire has reportedly been tortured.

Maheshwor Pahadi, a journalist with Pokhara-based *Swabhiman* weekly, was arrested on 2 January 2004. He was detained in an undisclosed location for several months before being lodged in Kaski jail where he continues to be detained.

Tej Narayan Sapkota, of *Yojana*, was located in Nakku jail, Kathmandu in the third week of July 2005, after the departure of the international media mission from Kathmandu. He had "disappeared" on 24 November 2003.

Deepak Adhikari, editor of *Naulo Awaj* of Bhadrapur in Jhapa district, went to the army barracks to seek the release of his colleagues who had been detained by the army. On arrival, he was blindfolded and taken to a bunker where he was held for eight days, from 13 to 21 February 2005, and tortured to try to obtain a confession that he was a Maoist, which he denied.

Deepin Rai, editor of *Mukti Awaj Weekly*, was arrested on February 23 2005, also in Jhapa district, and held for nine days in an army bunker.

Media Practitioners at Risk

Chandralal Giri, 22, released from detention on 21 June 2005, continues to fear severe reprisals from the security forces. A Kathmandu correspondent of the Malaysia-based *Shram* weekly, Giri was first detained by a group of plain-clothed RNA personnel on 31 December 2004. He was handcuffed, blindfolded and taken to an unknown destination. He was then lodged in Shree Jung Barracks, Kathmandu, for two weeks, questioned about his relationship with the Maoists, and was brutally tortured both psychologically and physically, including electric shocks to his head. On 19 January 2005, Giri was charged under TADA and transferred to Singh Durbar and Central Jail. A habeas corpus petition in the Supreme Court secured Giri's release on 21 June 2005, with the declaration that he had been illegally detained. He has filed a case in the Kathmandu District Court for compensation for torture against the RNA personnel. He has also published an article in the weekly paper *Janaastha* about his illegal detention and torture at the hands of RNA personnel. Giri and his family continue to face harassment. Specifically, the security forces are intimidating him to prevent him from publishing any further comments on his detention and torture. His family also fears that he may be re-arrested to ensure his silence.

Rewati Sapkota, 28, a reporter with the Kathmandu-based *Rajdhani* weekly, was forced to flee to India in early February 2005, fearing arrest and torture, following receiving information that he was on the “wanted” list of the RNA. He was in army custody in May 2002 and in June 2004 and was severely tortured both physically and psychologically. To date, he experiences severe headaches and body aches because of the torture. In early 2005, the Maoists also threatened Sapkota as he wrote an investigative story in the *Himal Khabarpatrika* on the recruitment of child soldiers by the Maoists. Following a critical story after the royal coup of February 1, the security forces have hounded him. His wife and two-year old child live in Kathmandu without any support system as their families are from a village in Sindhupal chowk. In June 2005, following the publication of his story in *Samaya* weekly, security forces visited his home and threatened his wife to reveal his whereabouts. He has reliable information that it is risky for him to return to Nepal at present, and is struggling to survive in India.

Both the army and the Maoists have targeted **Jitman Basnet**, 30, editor of the Kathmandu-based *Sagarmatha Times*. In September 2002, he was arrested by the Maoists (along with three other journalists) at Bamti Bhandar, Ramechhap District during a professional trip. From February 2004 to October 2004, the RNA, following his article about the Doramba incident, which detailed how the army had been violating human rights, detained Basnet. He was detained at the Bhairav Nath Battalion, Maharajganj, Kathmandu, blindfolded, with his hands tied behind his back. He was physically tortured, beaten to unconsciousness, head dunked in cold dirty water, and denied food and bed. Basnet’s problem was magnified following his release after ten months in detention. Since he had to report to the army once a month, Maoists suspected him of being an army informer and began to threaten him. In November 2004, the NHRC requested Basnet to divulge information about other detainees and conditions in the RNA barracks and, in turn, assured him anonymity. However, Basnet’s name appeared in the NHRC report released in January 2005. Subsequently, he has been at risk and was advised by various human rights groups to leave the country. In early February, he fled to India. His wife has also fled to India due to harassment by the security forces.

Gokul Baskota, executive editor of the *Dristi* Weekly published from Kathmandu, is under serious threat, with routine intimidating calls and menacing elements at his heels. Lately, a group of unknown people have been following Baskota presumably with an intention of harming him physically. On July 18 2005 and also on the following day three unknown people were inquiring about Baskota’s usual itinerary and movements at Lokanthali, an area in the outskirts of the capital city. The *Dristi* Weekly office has been receiving regular threatening calls against Baskota.

Harassment by Security Forces (RNA and Police)

Threats to reveal sources: The mission met **Dipendra Baduwal**, a reporter for the *Kathmandu Post* in Butwal. Officials of the RNA have threatened him for his reports exposing misdeeds of the army. He has been pressurized to reveal his sources and warned not to write “against” the army. Several journalists in Nepalgunj told the mission that the security forces often forced them to reveal their sources and the details of their stories.

Pressure to dismiss a journalist: The security forces exerted pressure internally on a journalist working for a state owned TV station to choose between the FNJ and his job at the station. He was subsequently sacked on 16 June 2005.

Obstruction in professional duty: The seizure of cameras and tape recorders from the journalists while covering demonstrations was rampant in the district Rameshwar Baura. Another photojournalist had his equipment seized during a FNJ protest in Nepalgunj.

Disciplining dissent: In Nepalgunj, police officers in plain clothes harassed journalists during a demonstration and monitored the activities of the protestors in an attempt to identify the key organizers and to seize their digital cameras and tape recorders.

Harassment by Civil Authorities

Journalists have also been facing pressure from the Zonal Administrators and the Chief District Officers. For instance, **Surya Bahadur Chandar**, working for *Gorkhapatra* in Nepalgunj has been asked to visit regularly the zone administrator's office, otherwise he would be arrested.

Three days after lifting of the emergency, the District Administrative Officer in Chitwan summoned district reporters on Kantipur publications and interrogated them regarding a news item about Maoists burning a truck. A few days later, the District Chief of Police forced the journalists to give written explanations. They refused.

Other attempts to curb open discussion and public debates include the attempts in May 2005 to pressure **Rishi Dhamala**, convener of the *Reporters' Club* in Kathmandu. The Club, which has become an important forum for public debate, was threatened with closure after the Minister of Information and Communication summoned Dhamala. He was reportedly told that the Reporters' Club could remain open only if he stopped having guest panellists from the political parties.

Abduction and Detention by Maoists

The Maoists abducted **Som Sharma**, a reporter for *Aankha*, on 16 May 2005 from his residence at Mangalbare Bazar in the eastern part of Ilam. Following demands for his release by the FNJ and the IFJ, and negotiations by a high level FNJ team with local Maoist leaders, Sharma was released on 9 July 2005. The negotiations, also resulted in the lifting of the house arrest imposed by the rebels on **Umesh Gurung**, of *Radio Nepal* and the *Sutradhar* weekly, who had not been allowed to leave his home in the village of Jamuna, 600 km east of Kathmandu, for more than a month.⁸

⁸ For detailed lists of incidents of harassment, intimidation and detention, see Media Monitor South Asia, on Nepal Jan-June, 2005 (SAFMA-FNJ Joint Findings) on www.southasianmedia.net/MediaMonitor; Nepal Report 2005, CEHURDES; Courage and Censorship: Journalists and Press Freedom in South Asia 2004-2005, International Federation of Journalists (www.ifj-asia.org), and other alerts and reports regularly posted on the websites of CPJ, RSF, IFJ and other institutions.

Annex II:**List of Acronyms**

AI	Amnesty International
AMARC	World Association of Community Radio Broadcasters
BAN	Broadcasting Association of Nepal
CEHURDES	Centre for Human Rights and Democratic Studies
CPJ	Committee to Protect Journalists
CPN	Communist Party of Nepal (Maoists)
CRBA	Community Radio Broadcasting Association
CS	Civil Society
FNJ	Federation of Nepalese Journalists
ICCPR	International Covenant on Civil and Political Rights
IFJ	International Federation of Journalists
IMS	International Media Support
IPI	International Press Institute
MSI	Media Services International
NGO	Non-Government Organization
NHRC	National Human Rights Commission
NPI	Nepal Press Institute
PII	Press Institute of India
RNA	Royal Nepal Army
RSF	Reporters sans Frontières
SAFMA	South Asian Free Media Association
SAS	Sancharika Samuha- Women Communicator's Network
SIRM	Save the Independent Radio Movement
TADA	Terrorist and Disruptive Acts (Control and Punishment) Ordinance 2002
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
USA	United States of America
WAN	World Association of Newspapers
WPFC	World Press Freedom Committee