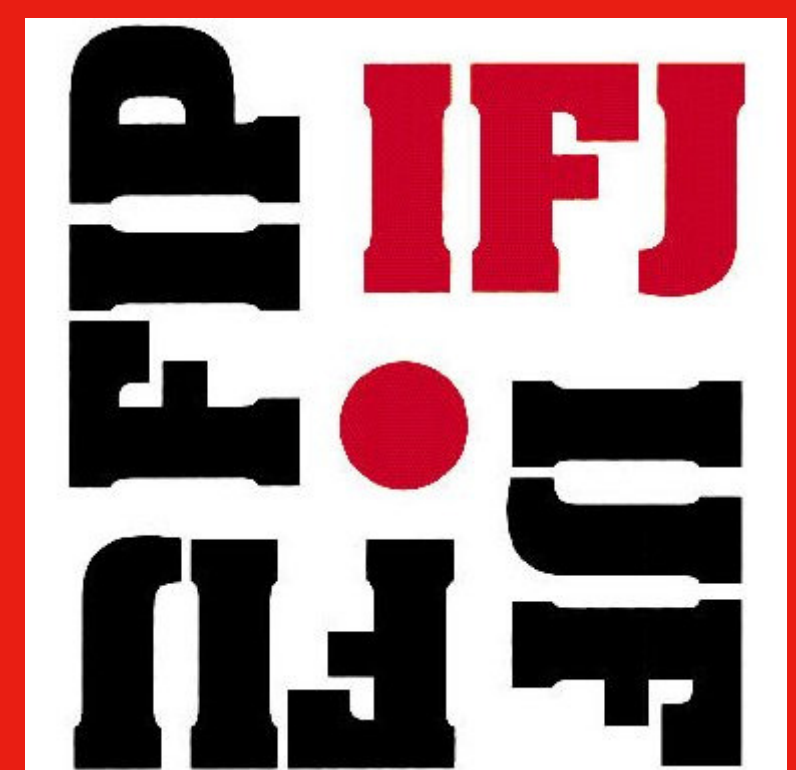


CLAMPDOWNS AND COURAGE: NEPAL



**SOUTH ASIA PRESS FREEDOM
REPORT 2017-18**



NEPAL



OLD ISSUES, NEW CONCERNS

After years of instability due to political transition, Nepal is finally on the road to stability after three levels of successful elections – local, provincial and general – held between May and De-cember 2017. The coalition of the Communist Party of Nepal (United Marxist Leninist) and the Communist Party of Nepal (Maoist - Centre) won a majority in all three elections and formed the federal government under the premiership of KP Sharma Oli and provincial governments in six out of seven provinces. The alliance of parties based in the Madhes or the southern plains has formed a provincial government. With two major parties of the coalition now working on the unity process, PM Oli looks set to lead the country for a full term, bringing much-needed stability in the country's governance.

The Madhes-based parties, which had previously boycotted the promulgation of the Constitu-tion, vowed to disrupt the elections, but ultimately did not follow through. The three elections, which transpired without noticeable violence, finally gave a legal validity to the Constitution of Nepal 2015. The participation of all political parties, except a splinter group of the Maoist party, was considered a good sign, since the dissatisfaction of the Madhes-based parties could be ad-dressed in the parliament through a democratic process.

However, implementation of the new federal structure, the new Constitution as well as the new Criminal Code and Civil Code is not expected to be smooth. Both the Criminal Code and Civil Code consist of provisions that could have direct implications for the media. The federal struc-ture is also expected to bring in new challenges, not only in its evolution, but also for press free-dom as the provinces and local bodies are entrusted with some responsibility regarding regula-tion of local media.

It flags tough years to come for journalists as they face unprecedented legal pressures and oth-er harassment, attacks and threats for their reporting of critical issues. Impunity for crimes against journalists is a long-standing issue still awaiting proper redress in the country.

THE MEDIA AND THE COURT

During the year, the judiciary of Nepal was at odds with the media on several occasions. How-ever, these cases were not prolonged and were not unfavourable for the media and journalists.

On February 25, 2018, Chief Justice Gopal Parajuli passed an order asking the Press Council of Nepal (PCN) to ban publication of news criticising him in Kantipur daily. The daily had published a series of investigative reports about discrepancies in the date of birth of the Chief Justice. Me-dia reports alleged that he had revised the date of birth in his official documents in order to ex-tend his tenure. In a contempt case filed by an advocate, Chief Justice Parajuli heard the case – despite the issue being about him – and issued an interim order, also calling on the PCN to probe the news reports in question. The order asked the PCN to investigate whether they vio-lated the journalists' code of conduct and to ensure that no news criticising the Chief Justice was published again.

Journalist Krishna Gyawali, editor Sudheer Sharma, and publisher Kailash Sirohiya appeared in the Supreme Court for the hearings before the case was discontinued when the Chief Justice was forced to resign. The Judicial Council determined the Chief Justice should be relieved from the post after gathering official documents to establish his date of birth, which turned out to be the date as claimed by the newspapers.

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In November 2017, the Patan High Court backed attempts by the police to force editors of several online media platforms to reveal their sources. The Crime Division of the Metropolitan Police Office in Kathmandu wrote to several online media platforms asking them to disclose the source of secret appraisal reports of top police officials that were published following a controversy on the appointment of the Inspector General of Police (IGP).

The online media platforms filed a complaint against the police's request claiming that it infringed press freedom and requested the court's intervention. But the Court ruled that the police action did not violate freedom of the press thereby refusing to issue any order. The police mentioning the court decision again wrote to the online media pushing for disclosure of the source. After an outcry from journalist unions, including a statement of support from IFJ-affiliated Federation of Nepali Journalists (FNJ), the PCN intervened, met with senior police officials and urged them not to proceed with the request. The police were investigating unlawful access to the files and the alleged tampering with confidential appraisal reports.

POLICING THE MEDIA

The Nepal Police, on at least two occasions in 2017, tried to slap fabricated charges on journalists as a means to silence them.

On June 17, 2017, police arrested editor Khem Bhandari and executive editor Ganesh Bhatt of Manaskhanda daily and charged them under the Public Crime and Punishment Act in Kanchanpur district, western Nepal. It followed a news report that claimed that two women arrested by the police were innocent. After a strong protest by journalists and unions, the police released Bhandari and Bhatt after 28 hours.

On April 1, 2018, the District Court in Bajura cleared journalist Chakka Bahadur Malla of charges of rape due to lack of evidence. Malla, the district correspondent of Image Channel TV, was arrested and taken into custody on July 20, 2017, as he was about to register a case of attack against four municipal officials who allegedly beat him up on July 13. He alleged the four municipal officials attacked him near the district headquarters and sustained injuries. The police had later framed a rape charge against him and kept him in custody for more than eight months.

Prakash Dhakal, a journalist with Adarsha Samaj daily, was attacked by police as he was reporting on a demonstration by students of the Prithvi Narayan Campus in Pokhara, western Nepal. During the police's attempt to disperse the demonstrators, the police charged on Dhakal despite him showing his press ID card. Dhakal received a minor injury on his leg.

Police also arrested more than a dozen journalists, especially those considered to be close to the Maoist group calling for boycott ahead of the elections, as 'pre-emptive measures for security'. Between May 2 to 11, 2017, half a dozen journalists from various districts were arrested by police. Most were kept in detention without charge until the conclusion of the local elections. However, Pustaman Gharti, a provincial delegate of FNJ charged with causing 'public offences' was kept in custody for 55 days before he was finally released. A Supreme Court case filed by executive committee member Janmadev Jaisi on behalf of the FNJ was ultimately instrumental in securing the release of the journalists.

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Similarly, at least eight journalists were arrested from various districts in November 2017 ahead of the general election. Again, these journalists were kept in detention without any charges until the conclusion of the election. Although the election proceeded without major violence, there were some incidents of harassment and mistreatment of journalists including an attack on Dinesh Thapa, correspondent of OnlineKhabar.com, at his home by political cadre on November 25, a day before the first phase of the general election.

On July 31, 2017, the Election Commission (EC) issued a circular to the PCN ‘to present the chief editor of the Deshantar weekly before the EC within three days’ for clarification on two news items that the constitutional body claimed to be ‘false’ and ‘baseless’. The news items in question were published on July 23 and 30 accusing the EC of financial misconduct. The EC also directed PCN to take action against the chief editor Kabir Rana. However, the PCN took no action.

CONTINUED THREATS

One of the biggest investigative news stories of the year in the country was about the state-owned Nepal Oil Corporation and the financial misconduct by its Managing Director Gopal Khadka. However, the publication of a series of news reports about the misappropriation of funds and misuse of authority by the government-appointed civil servant also saw attempts to silence the media.

On August 4, 2017, Khadka threatened journalist Dilip Paudel of Nagarik daily on the premises of the Ministry of Supplies, where Paudel was on a reporting assignment. Paudel had first re-reported misappropriation of funds by Khadka while buying various pieces of land for NOC at a very high price. Despite the Parliamentary Public Audit Committee's order of an inquiry into the matter, Khadka had claimed that there was no truth in the news. He threatened Paudel that he would end his journalism career adding, “you have also a family, think about it”.



Kailash Sirohiya, chairman and publisher of Nepal's largest daily Kantipur, the group's director Swastika Sirohiya (C) and editor Sudheer Sharma (R) speak to the media after appearing briefly at the Supreme Court of Nepal in Kathmandu on March 2, 2018. They had been summoned by the country's chief justice for publishing articles critical of him, in a case widely condemned as an attack on press freedom. Credit: Gopen Rai/AFP

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On August 17, Khadka filed a SLAPP (Strategic Lawsuit Against Public Participation) as a defamation case against Nagarik daily, claiming NPR 800 million (USD 780,000) in damages with an intention to silence the media house from publishing reports about his alleged corruption. The Kathmandu District Court official served a notice to the daily's directors Binod Raj Gyawali and Shova Gyawali, editor-in-chief Guna Raj Luitel and correspondent Dilip Paudel on September 1. The media house filed a counter-claim of NPR 1.5 billion (USD 14.2 million). Khadka was later dismissed from office by the government on September 18. The legal case did not progress since Khadka had vacated his post but the case was widely discussed as a significant attempt to silence the media in Nepal.

In similar circumstances, Shivahari Ghimire of the daily Nagarik received a threat over news of illegal deforestation on May 6, 2017. The president of the Saraswati Community Forest Conservation Committee and an official at the District Forest Office in Lalitpur threatened Ghimire over the phone after news of deforestation was published. Umesh Paudel, a journalist with Naya Patrika daily, was also threatened via phone by businessman GP Paudel, on September 11, 2017, regarding news on a crypto-currency business. Paudel is one of the two journalists who reported 'Gravity Currency' as fraud business and named GP Paudel as the head of that business.

PHYSICAL INSECURITY

There were a number of attacks on journalists; the most concerning on January 15, 2018 when Sudeep Kaini, a correspondent with Kantipur, was attacked by a group of five assailants. While reporting on illegal sand extraction in the Marsyangdi river that was endangering local settlements, he was manhandled by the assailants, his camera and cell phone were snatched and his photos deleted. They also warned him not to reveal the incident. Kaini sustained a neck injury before being rescued by local residents.

Since May 2017, the Federation of Nepali Journalists (FNJ), has recorded 61 incidents of press freedom violation. Among those, were 27 journalist arrests; 9 attacks; 13 threats; 12 cases of seizure of media equipment and 10 incidents of verbal abuse. The FNJ concluded that although the number of press freedom violations has decreased over the past few years, the trend continues and there has not been any improvement in security or mechanisms to protect journalists. As a consequence, impunity and self-censorship remain the main issues of press freedom.

Another press freedom watchdog, the Freedom Forum, in a review of 2017 concluded that the election campaigning and activities failed to show due respect to freedom of expression and press freedom, thereby witnessing a surge in the number of violations.

AWAITING REDRESS

Longstanding issues of press freedom in Nepal, meanwhile, still await redress. The regulation of online media, and social media, continues to draw attention. The controversial Online Media Directives, issued in February 2017, remain despite hefty criticism from the major media and unions. The directives are restrictive in nature and give arbitrary powers to the Department of Information (DoI) to restrict and harass online media, thus threatening freedom of expression.

Along with the directives, Clause 47 of the Electronic Transaction Act's (ETA), continue to pose a threat for freedom of expression and are used to harass journalists. The state is using Clause 47 to ensure the implementation of the directives by saying that the media platforms listed with the PCN do not attract the clause whereas any other online publication of content can be charged with the clause criminalising online expression.

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Further, the Local Government Operation Act has provisions for canceling the license of FM radio stations.

Impunity and self-censorship are two key issues that continue to impede free expression in the Nepali media community. According to the FNJ records, out of 36 journalists killed since 1996, only six cases have gone on to prosecution. The level of threat and harassment of journalists, and the impunity to perpetrators, has led to a situation where journalists, especially those out-side Kathmandu in regional areas, find it increasingly difficult to report on critical issues. In Kathmandu, the biggest media market, corporate interests are seen as playing an increasingly influential role in shaping content.

However, the biggest challenge for Nepal's media, journalists and unions is the changes expected to be brought about by the new federal structure. Each of 753 municipal bodies and seven provincial governments are authorised to devise regulations – including those to regulate media, especially local media – and there are already concerns regarding some of the draft regulations as they contain provisions that could be misused to curtail freedom of the press. The FNJ has taken the initiative to form a committee to devise model federal regulations relating to media, and having discussions with concerned central authorities to ensure that the proposed regulations do not curtail press freedom and journalists' rights.

CHALLENGING TIMES AHEAD

While Nepal's constitution is explicit in mentioning press freedom and other related freedoms, many state actors and authorities are yet to wholeheartedly accept it. The rise of social media, fake news and its viral spread online, have raised some issues that some state actors believe can only be controlled by tougher regulations.

The end of the political transition is a welcome phase as it will hopefully bring political as well as policy stability in Nepal. However, Nepal's Parliament now has hundreds of laws to be drafted and discussed. And alongside municipal and provincial governments, the parliament is also vested with the power to regulate local media. The years ahead will not be easy for Nepal's independent and critical media.



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MEDIA VIOLATIONS: MAY 2017 - APRIL 2018

Killings of journalists: 0

Threats against the lives of journalists: 0

Other threats to journalists: 4 (Male: 4, Female: 0)

Non-fatal attacks on journalists: 5 (Male: 5, Female: 0)

Threats against media institutions: 0

Attacks on media institutions: 0

Other Threats against lives of journalists

May 6, 2017: Kathmandu Anjaan Dahal of online portal Filmkykhabar was threatened over news by an unidentified person on May 6. The caller expressed dissatisfaction over news written by Dahal and threatened him with action if the news was not removed.

May 6, 2017: Kathmandu Shivahari Ghimire of Nagarik daily, received a threat over news of illegal deforestation. The president of the Saraswati Community Forest Conservation Committee and an official at the District Forest Office in Lalitpur threatened Ghimire over the phone.

August 4, 2017: Kathmandu Gopal Khadka, the Managing Director of the Nepal Oil Corporation (NOC), threatened journalist Dilip Paudel of Nagarik daily in the premises of the Ministry of Supplies, where Paudel was on a reporting assignment. Paudel had first reported misappropriation of funds by Khadka while buying land for NOC. The Parliamentary Public Audit Committee had ordered an inquiry into the matter, concluding that proper procedures were not followed while buying the land.

September 11, 2017: Kathmandu Umesh Paudel, a journalist with Naya Patrika daily, was threatened over a phone call by GP Paudel regarding news about a fraud business of crypto-currency. Paudel is one of the two journalists who reported 'Gravity Currency' as fraud business and named GP Paudel as the head of the business.

Non-fatal attacks on journalists

October 6, 2017: Kalikot Journalist Arjun Prasad Bhattarai was attacked by three people while he was playing a game of carrom in Manma, Kalikot. The district headquarters houses the police, courts and administration, and is a source of local news for journalists.

October 16, 2017: Accham Yagya Raj Dhungana, the consulting editor of Radio Accham, was attacked by the police while he was participating in advocacy against corruption in police.

November 26, 2017: Sindhupalchowk A gang led by a cadre of a political group on the eve of the first phase of the general election, attacked Dinesh Thapa, correspondent of OnlineKhabar.com at his home in Sindhupalchowk. Thapa sustained injuries on his chest and back.

January 15, 2018: Gorkha A group of five assailants attacked Sudip Kaini, a correspondent of Kantipur and The Kathmandu Post dailies at Abu Khaireni while he was reporting on the illegal sand extraction in the Marsyangdi river that endangered local settlements. The assailants manhandled the reporter, snatched away his camera and cell phone, and deleted photos threatening him not to reveal the incident. Kaini sustained a neck injury and was rescued by local residents.

February 6, 2018: Kaski Prakash Dhakal, a journalist with Adarsha Samaj daily, was attacked by the police when he was reporting on the demonstration by students of the Prithvi Narayan Campus in Pokhara, western Nepal. During the police's attempt to disperse the demonstrators, the police charged on Dhakal despite him showing his Press ID card. Dhakal received a minor injury on his leg.

Other notable incidents / developments

Arrest/Detention

May 2, 2017: Rukum Hari Bishnu Oli, editor of Sikhchya Sanjal weekly, was arrested in Rukum district ahead of the local elections.

May 4, 2017: Parbat Journalist Gopal GC of Nabadristi Online was arrested in Parbat district ahead of local elections.

May 8, 2017: Rolpa Pustaman Gharti, a provincial delegate member of Federation of Nepali Journalists (FNJ), was arrested in Rolpa district ahead of local elections and charged with public offence. He was freed after 56 days.

May 10, 2017: Makwanpur Tilak Adhikari, editor of Janata Jindabad weekly, was arrested at his residence in Makwanpur district ahead of the local elections.

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May 10, 2017: Kathmandu Thakur Prasad Timalsina and Gambhir Pathak, FNJ members in Kathmandu district, were arrested ahead of the local elections.

June 17, 2017: Kanchanpur Editor Khem Bhandari and executive editor Ganesh Bhatt of Manaskhanda daily were arrested for publication of a news report and charged under the Public Crime and Punishment Act in Bhimdatt Municipality, Kanchanpur, western Nepal. The news in question is a report about the police arrest of two women whom the newspaper claimed to be innocent. Police released Bhandari and Bhatt after 28 hours of detention on June 18.

July 19, 2017: Bajura Chakka Bahadur Malla, district correspondent for Image Channel TV, was arrested and taken into custody by the police in Bajura. He was in the process of registering a case with the police after he was attacked along with four municipal officials of the Budinanda Municipality on July 13. A gang attacked them near the district headquarters. Malla received injuries and was recovering when he was arrested after a police complaint was registered against him. The police registered a case of rape against Malla, in which the District Court, on April 1, cleared him due to lack of evidence.

November 26, 2017: Various At least eight journalists including Khem Thapaliya of Jaljala monthly, Jitendra Maharjan of Nihugu Jwojalapa monthly, Dipesh Shahi of Madhyanha daily, Kalibahadur Mahatara of Janaprabhat weekly, Jagadish Nath Yogi, Prakash Dumre of Garjan Post weekly, Jayashwor Acharya and Padam Prasad Pokhrel of Pyuthan Mission monthly were arrested from different parts of the country in November in connection with the election security.

February 20, 2017: Dharan Sangarashasil Lamjel and Jamuna Shrestha from Prabodh weekly, and Mina Tamsuwa from the Morning Times daily were arrested and booked under the Some Public (Crime and Punishment) Act. They were released on bail after one weeks’ detention.

Harassment

August 17, 2017: Kathmandu Gopal Khadka, the Managing Director of state-owned Nepal Oil Corporation (NOC) filed a defamation case against Nagarik daily, claiming NPR 800 million (USD 780,000) in damages with an intention to silence the media house from publishing reports about his corruption. The Kathmandu District Court official served a notice to the daily’s directors Binod Raj Gyawali and Shova Gyawali, editor-in-chief Guna Raj Luintel and correspondent Dilip Paudel on September 1.

August 17, 2017: Kathmandu (CONT.)

Nagarik daily published a series of investigative stories on corruption involved in the procurement of land by NOC in various parts of the country, the daily’s sister publication Republica reported. A parliamentary probe committee has investigated the issue and concluded that procurement procedures were not followed in purchase of the lands. The media house filed a counter-claim of Rs 1.5 billion.

Regulations

July 31, 2017: Kathmandu The Election Commission issued a circular to the Press Council of Nepal ‘to present the chief editor of the Deshantar weekly before the EC within three days’ for clarification on two news items that the constitutional body claimed to be ‘false’ and ‘baseless’. The news items in question were published on July 23 and 30 accusing the EC of financial misconduct. The EC also directed PCN to take action against the Chief Editor Kabir Rana.

November 21, 2017: Kathmandu A ruling of Patan High Court in Nepal backed attempts by police to force editors of online media to reveal their sources. The Crime Division of the Metropolitan Police Office in Kathmandu wrote to several online media platforms asking them to disclose the source of the secret appraisal reports of top police officials, following a controversy about the appointment of the Inspector General of Police (IGP). The online media agencies filed a complaint against the police’s request claiming that it infringed press freedom. But the Court ruled that the police action didn’t violate freedom of the press. The police is investigating the unlawful access to the files and the alleged tampering with the secret appraisal reports.

February 25, 2018: Kathmandu The Nepali Supreme Court ordered the country’s Press Council to ban the publication of news criticising the chief justice. Kantipur daily published a series of articles about discrepancies in the date of birth of Nepal’s Chief Justice Gopal Parajuli. The articles alleged that he might be close to retirement age. Chief Justice Parajuli heard the case – despite the issue being about him– and entered an interim order, calling on the Press Council of Nepal (PCN) to probe news reports published by Kantipur mentioning discrepancies about his birth date in official documents. The order asked the PCN to investigate if the news violated journalists’ code of conduct and to ensure that no news criticising the Chief Justice is published again.