



The Federal Democratic Republic of Nepal

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

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1. (A) Introduction

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizens' freedom of association are threatened.
- 1.2** In this document, CIVICUS outlines urgent concerns related to the environment in which civil society activists and human rights defenders (HRDs) operate in the Federal Democratic Republic of Nepal (hereinafter Nepal), and highlights threats faced in the exercise of the freedoms of expression, association and assembly.
- 1.3** CIVICUS is concerned by onerous bureaucratic measures imposed on civil society organizations (CSOs) and the targeting of organisations promoting the rights of Tibetan refugees resident in Nepal.
- 1.4** CIVICUS is alarmed by ongoing threats to free expression, particularly in the form of harassment, intimidation and attacks upon journalists, the proposal of a restrictive contempt of court bill and government employees' refusal to comply with access to information legislation.
- 1.5** CIVICUS is also concerned by violations of the right to freedom of peaceful assembly in Nepal; particularly the use of excessive force against protestors, unjustified arrests and unlawful limitations on where and when peaceful demonstrations can take place.
 - In Section B, CIVICUS highlights concerns related to the freedom of association and restrictions on civil society activities.
 - In Section C, CIVICUS expresses concerns involving harassment and arbitrary detention of human rights defenders.
 - In Section D, CIVICUS highlights concerns relating to the freedom of expression, independence of the media, restrictions on access to information and intimidation, harassment and attacks on journalists.
 - In Section E, CIVICUS highlights concerns regarding the freedom of assembly.
 - In Section F, CIVICUS makes a number of recommendations to address the concerns listed.

2. (B) Restrictions on freedom of association and impediments to civil society activities

- 2.1** Article 13 (d) of the Nepali 2007 interim constitution guarantees the right to establish associations and trade unions. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Nepal is a state party, guarantees freedom of association.
- 2.2** Several subsidiary laws regulate the registration, operation and reporting of civil society organisations in Nepal.¹ Although most organisations comply, these are not in line with international best practice as set forth by the UN Rapporteur on Freedom of Peaceful Assembly and Association² due to the complex layers of bureaucracy imposed on organisations at the district and national levels.
- 2.3** CIVICUS believes that the current legal framework in Nepal does not adequately facilitate freedom of association on four main fronts. Firstly, section 3 of the Associations Registration Act (1977) makes registration for CSOs mandatory and article 9 mandates that annual reports be submitted to the local authority. Failure to do so results in deregistration and there are stiff financial penalties for organisations that want to restart their registration after it has lapsed. Secondly, in practice the founders are required to submit their citizen certificates to the local authority before an association can be registered, thus creating a ban on foreigners founding organisations. Section 16 of the Social Welfare Act (1992) requires associations to obtain government approval before they can receive foreign funding. Finally, section 14 of the Association Registration Act provides that associations can be dissolved ‘for any other reasons whatsoever’.
- 2.4** CIVICUS is also concerned about the continuing anti-Tibetan stance of the government and the targeting by authorities of CSOs defending the rights of Tibetan refugees. International and regional civil society organisations have noted several instances of harassment of civil society activists who work to defend the rights of Tibetan refugees in Nepal. In 2013, Sudip Pathak, head of the Human Rights Organisation of Nepal (HURON), reported anonymous phone calls and pressure from the government aimed at putting a stop to their support for Tibetan refugees in Nepal. The media has also reported that this policy, heavily influenced by the Chinese government’s desire to clamp down on CSOs in Nepal promoting the rights of Tibetans, is continuing unabated.

¹ Most civil society organisations in Nepal are subject to the provisions of the Association Registration Act, 1977 (as amended), and the Social Welfare Act, 1992.

² A/HRC/20/27, (21 May 2012), Report of the Special Rapporteur on the rights to freedom of assembly, and of association Maina Kai, <http://freeassembly.net/rapporteurreports/report-best-practices-in-promoting-freedoms-of-assembly-and-association-ahrc2027/>

2.5 In 2013, activists promoting Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people were in some cases subjected to arbitrary arrests, harassment and threats. In 2013, UN High Commissioner for Human Rights Navi Pillay wrote to the government to express her concerns. She highlighted “the arrest and degrading treatment of some 50 transgender persons and LGBT activists by the police ... [including] verbal abuse, severe beatings and indiscriminate body searches.”³ The media has been used to vilify the leadership of the Blue Diamond Society, an umbrella of LGBTI organisations. As a result of several media reports on alleged corruption at the organisation, their bank account was frozen and the renewal of their registration was halted for nine months until 26 June 2014. This forced the Blue Diamond Society to temporarily close down their operations and suspend the provision of essential services including HIV/AIDS support.⁴

3. (C) Concerns involving harassment, intimidation and attacks against human rights defenders and civil society activists

3.1 Article 12 of the UN Declaration on Human Rights Defenders (HRDs) mandates states to take necessary measures to ensure protection to HRDs. The ICCPR further guarantees their freedoms of expression, association and assembly. Although INSEC reports a substantial decrease in reported cases of HRD violations⁵, it is of concern that HRDs, who are engaged in legitimate activities, continue to face harassment, intimidation, and threats. In particular, HRDs advocating for a more accountable form of transitional justice, LGTBI rights, minority and women’s rights have been disproportionately targeted. Although both state and non-state actors have been implicated in these attacks, the government of Nepal has a duty to protect its citizens in all cases. It is troubling therefore that the government has failed hold the perpetrators of attacks on HRDs accountable.

3.2 HRDs advocating for accountability for human rights violations committed during the conflict between 1996 and 2006, are particularly susceptible to threats, harassment and arbitrary detention. In the course of January-February 2013 Members of the Accountability Watch Committee (AWC) were threatened in the media for their work on transitional justice. Maoist- affiliated newspapers Lal Rakshak and Krishnasenonline have accused the AWC members of being traitors and “dollar-mongers” and encouraged the readers to take “people action” against them.⁶

³ BuzzFeed (5 April 2013). Nepal, once a Leader on LGBT Rights is Backsliding.

<http://www.buzzfeed.com/lesterfeder/nepal-once-a-leader-on-lgbt-rights-is-backsliding#.awKQJm39>

⁴ One Equal World (10 April 2013). LGBT Tensions Rise in Nepal.

<http://www.oneequalworld.com/2013/04/10/lgbt-tensions-rise-nepal/>

⁵ According to INSEC, there were 126 reported cases in 2013, and 76 in 2014. INSEC (2015, 2014), Human Rights Yearbook. <http://www.inseconline.org/index.php?type=publications&lang=en&id=1>

⁶ Ibid.

3.3 Human rights defenders investigating violations in the Terai region face threats and harassment from state and non-state actors, while their access to information from police is severely hampered, as illustrated in a recent report by the Terai Human Rights Defenders Alliance (THRD Alliance).⁷ On 22 May 2012 a HRD in Janakpur was gagged and punched by three police officers.⁸

4. (D) Concerns regarding freedom of expression, independence of the media, restrictions on access to information and intimidation, harassment and attacks on journalists

4.1 Article 12 (3) (a) of the interim constitution protects the freedom of expression in Nepal. Article 19 of the ICCPR further provides that everyone shall have the right to hold opinions, freely express ideas and exchange information. CIVICUS recognises that the ability of citizens to exchange information has improved through the great strides made in the Nepalese media sector over the past two decades. Nepali citizens can today access news from hundreds of private newspapers and radio stations and dozens of television stations. Despite this rapid increase in media diversity, there are several remaining obstacles to the full realisation of the right to freedom of expression.

4.2 In 2014, the UN Human Rights Committee expressed its concerns about the ‘vague and overbroad’ restrictions on freedom of expression imposed by article 12 of the interim constitution.⁹ In the same communication, the Committee highlighted a spate of worrying attacks, harassment and reprisals against journalists and human rights defenders.

4.3 Frequent harassment and physical attacks on journalists remain a primary concern.¹⁰ On November 20th, 2014 news correspondent Narayan Adhikari was attacked by unidentified assailants wielding sharp weapons, resulting in Mr Adhikari’s hospitalisation for injuries to his right arm. On 20th January 2015 several journalists including cameraman Shrijana Kuikel and reporter Sharmila Thapa were attacked or had their equipment vandalized by enforcers of a nationwide strike. This follows the attack by protestors on journalist Sushil Bandhu Thapa on January 13th 2015 in Bhaktapur district. On the 12th of January

⁷ Terai Human Rights Defenders Alliance (March 2014). Continuing Extrajudicial Executions in the Terai. <http://www.taraihumanrights.org/publication.php?alld=1>

⁸ Ibid, p.35

⁹ Concluding observations on the second periodic report of Nepal, CCPR/C/NPL/CO/2, 15 April 2014, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fNPL%2fCO%2f2&Lang=en.

¹⁰ Ekantipur (21 January 2015). Attacks on media condemned.

<http://www.ekantipur.com/2015/01/21/capital/attacks-on-media-condemned/400622.html>

2015, Bharat Rakal, a journalist in Myagdi district received facial injuries during an attack at a fair.

- 4.4** Sharing information or critical views over social media is also becoming more dangerous in Nepal. Local rights group Nepal Monitor has documented instances of harassment, threats and violence against citizens and journalists over the past two years. These free speech violations are being perpetrated by government officials, members of the security services, businessmen and individuals. On June 1st 2014 the police arrested a youth who complained on facebook that he had had to pay a bribe to secure the return from police of his motorcycle. He was subsequently kept in custody for 19 days and later transferred to Kathmandu to be charged.¹¹
- 4.5** CIVICUS is also concerned by the introduction in 2014 of a draft contempt of court bill. If made law, this bill – especially sections 4, 5 and 8 - would place undue restrictions on the media’s ability to investigate or publish information on miscarriages of justice. Civic activists and media practitioners alike are concerned that this is a dual attack on press freedom and citizens’ right to access information.¹² We welcome the decision of the parliament to send the controversial Bill for discussion among the public.
- 4.6** In an additional threat to free speech, authorities are targeting individuals who share critical views on social media. On June 1st, 2014, businessman Abed El Rahman was arrested after posting a comment on Facebook that highlighted an instance of police corruption. Incensed by El Rahman’s reference to them, local authorities jailed him for 20 days. CIVICUS believes that these kinds of attacks on individual citizen’s civil liberties create a dangerous chilling effect.¹³
- 4.7** Tibetans living in Nepal are subject to unlawful restrictions on their right to free expression. This clampdown is part of the broader set of rights restrictions imposed upon Tibetans by the Nepalese government in recent years. In practice, Tibetans are now unable to freely share ideas, opinions and information connected with their situation or the political situation in Tibet. Doing so puts Tibetan refugees at risk of imprisonment or ‘refoulement’ to their place of origin, a practice that violates interational refugee law. Because of restrictions on travel at the border, it is difficult to document actual cases of refoulement. Concerns persist however and a 2012 report from HURON alleges that Tibetan refugees are

¹¹ Nepal Monitor (20 June 2014). Youth who wrote against police on Facebook taken to Capital. <https://nepalmonitor.org/index.php/reports/view/3326>

¹² EKantipur (13 September 2014). Balancing Act. <http://www.ekantipur.com/the-kathmandu-post/2014/09/13/free-the-words/balancing-act/267424.html>

¹³ The Hindu (25 June 2014). Arrests over Facebook posts cause alarm in Nepal. <http://www.thehindu.com/news/international/south-asia/arrests-over-facebook-posts-cause-alarm-in-nepal/article6148761.ece>

sometimes captured, marched to the border and ordered by police to return to China.

5 (E) Concerns regarding freedom of peaceful assembly

- 5.1** Article 21 of the International Covenant on Civil and Political Rights (ICCPR), guarantees the freedom of peaceful assembly. In addition Part 3, section 12 (3) (b) of the 2007 Nepali Interim Constitution proclaims that “every citizen shall have the freedom to assemble and peaceably without arms”, de facto limiting the freedom of assembly to Nepali citizens. On several occasions, peaceful demonstrations have been met with excessive force from security forces, while organisations working on Tibetan issues and Tibetan refugees have been denied their right to enjoy their freedom of assembly due to Nepal’s ‘one-China’ policy.
- 5.2** On 13 September 2014, Chandra Kant (C.K.) Raut – a Madheshi rights activist – was arrested in Morang under the Public Offence Act and charged later with treason and “anti-nation” activities. Although later released on bail after a Special Court verdict, Raut was detained several times in the subsequent months. Having attempted to hold a demonstration, he and 36 other Madheshi activists were arrested on 25 and 26 November, just prior to the South Asian Association for Regional Cooperation (SAARC) summit in Kathmandu.¹⁴
- 5.3** In June 2013, a peaceful sit-in of Kamlari girls in Kathmandu protesting against the Kamaiya traditional system of bonded labour resulted in the injury of six people after the police used batons to disperse the protesters.¹⁵ The injuries included head wounds and fractured bones. Additionally 8 female protesters were sexually assaulted by police. 42 protesters were arrested, and released after five hours. On 3 June 2013, a peaceful demonstration in Dang was violently dispersed by police forces, resulting in several injuries.¹⁶
- 5.4** On 8 and 9 April 2013, 14 activists were arrested during the Baluwatar Satyagraha or Occupy Baluwatar protests, a movement that protested daily from 9:00 AM to 11:00 AM at the prime minister’s official residence in Kathmandu against the widespread impunity for perpetrators of gender-based violence.¹⁷ They were

¹⁴ Nepal News (27 November 2014). C.K. Raut arrested again. <http://www.nepalnews.com/index.php/politics-archive/41568-ck-raut-arrested-again>

¹⁵ EKantipur (2 June 2013). Six Kamlaris injured in police intervention. <http://www.ekantipur.com/2013/06/02/headlines/Six-Kamlaris-injured-in-police-intervention/372634/>

¹⁶ Al Jazeera (28 September 2013). Nepal’s slave girls. <http://www.aljazeera.com/programmes/101east/2013/09/20139249536331927.html> ; The Guardian (14 June 2013). Nepal belatedly takes action on slavery following Srijana Chaudhary tragedy. (<http://www.theguardian.com/global-development/2013/jun/14/nepal-action-slavery-srijana-chaudhary>)

¹⁷ The Himalaya Times (9 April 2013). 13 Occupy Baluwatar Activists Released after 2 hours Detention. <http://www.thehimalayantimes.com/fullNews.php?headline=13+%27Occupy+Baluwatar%27+activists+release+d+after+2hrs+detention&NewsID=372178&a=3>

released two hours later. Weeks prior to the arrests, on 17 March 2013, police harassed and intimidated protesters.

5.5 Tibetan refugees are now facing restrictions on their right to assemble peacefully, under influence of the “one-China policy” of the Government of Nepal. The Government of Nepal has used several strategies to prevent Tibetans from protesting such as the deployment of security forces on certain sensitive dates and preventive detention. When demonstrations do occur, protesters are often arrested. On 10 March 2014, 10 Tibetan refugees were arrested for staging a protest in front of the Chinese embassy on the 55th anniversary of uprising of Tibet against China.¹⁸ On 5 March 2013, four Tibetan refugees were arrested and charged under the Public Offence Act for participating in a public protest in front of a hospital in Kathmandu where Doman Dukche, a Tibetan monk, had died following an act of self-immolation.

6. (F) Recommendations to the Government of Nepal

CIVICUS calls on the Government of the Nepal to create an enabling environment for civil society to operate, in accordance with the rights enshrined in the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state’s duty to protect. In light of this, the following specific recommendations are made:

- The Government of Nepal is urged to respond to the three communications made by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association between March and June 2013. The government should also take appropriate action to investigate these abuses and bring perpetrators to account. The Special Rapporteur’s communications highlight serious instances of harassment of HRDs, obstruction of the freedom of association of an LGBTI organisation and violations of the right to freedom of peaceful assembly.
- The government should do everything in its power to make sure that the new constitution is introduced as soon as possible and that it provides for the protection of fundamental rights in line with Nepal’s international obligations.

¹⁸ Hindustan Times (10 March 2014). Tibet uprising: Nepal arrests 10 activists for anti-China protests. <http://www.hindustantimes.com/world-news/nepal-beefs-security-to-prevent-protests-by-tibetans/article1-1193203.aspx>

- A standing invitation should be extended to the UN Special Procedures, particularly to the Special Rapporteur on Freedom of Expression, the Special Rapporteur on Freedom of Peaceful Assembly and Association and the Special Rapporteur on the Situation of Human Rights Defenders.

6.1 Regarding restrictions on the freedom of association

- The Government of Nepal is urged to revisit the legal framework governing the civil society sector, with a view to reducing bureaucratic restrictions. This should be done in close consultation with Nepali civil society organisations, which have proposed amendments to the Social Development Act. The government should also refer closely to the recommendations made by the special rapporteur in his report on best practices referred to above.
- The unwarranted targeting of civil society organisations working to promote the interests and defend the rights of Tibetan refugees living in Nepal should cease immediately. The government should revisit its decision not to ratify the 1951 Refugee Convention and in doing so it should uphold the fundamental rights of Tibetan refugees, in addition to civil society activists seeking to assist them.
- CIVICUS welcomes the moves recently made to enshrine stronger protections for the LGBTI community in the forthcoming constitution. We urge the Government of Nepal and the constituent assembly to do everything possible to ensure that LGBTI organisations are allowed to register and operate freely and that they receive the necessary legal protections to guard against intimidation and violence from members of the public.

6.2 Regarding the arbitrary detention and harassment of civil society activists

- Civil society members and human rights activists should be provided with a safe and secure environment to carry out their legitimate activities. All instances of their violations should be independently investigated.
- The Government of Nepal should investigate and bring to justice perpetrators of violence against human rights defenders

6.3 Regarding restrictions on freedom of expression and access to information, and intimidation, harassment and attacks on journalists

- The Government of Nepal government should do more to protect journalists and citizens exercising their right to free speech on social media. The government must ensure that its officials are not responsible for abusing the right to free expression. Where they do, they must be held to account. Where non-state actors are responsible for violating the right to free speech, they must be arrested, charged and prosecuted.
- Constitutional protections should be extended to members of the public and citizen journalists sharing information, ideas and opinions via the internet and social media. The government should impose penalties on law enforcement officials who take the law into their own hands and arbitrarily detain members of the public for expressing critical views over the internet and social media.
- The government should revisit the draft Contempt of Court Bill to bring it in line with Nepal's interim constitution and with international law. The bill should be redrafted in a way that adequately protects the right to free speech, transparency in the administration of justice and citizens' right to access information.
- In line with its duty to uphold the rights of all people – citizens and foreigners alike – the government of Nepal should ensure that Tibetan refugees are allowed to freely express their views through public meetings or the media. This should be the case regardless of whether those views conflict with the foreign policy of Nepal.

6.4 Regarding restrictions on freedom of assembly

- The use of excessive force by security forces in the dispersal of protests should be publically condemned and a formal investigation into such instances should be launched;
- The government of Nepal should uphold the freedom of peaceful assembly, without restrictions, for Tibetans and Tibetan organisations