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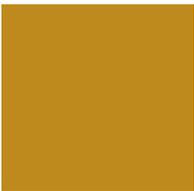
Assessment of Media Development in **Nepal**

Based on UNESCO's Media Development Indicators



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If readers wish to propose corrections to the evaluation of the media sector in Nepal, these may be taken into account in a second version of the report. This revised version will, where appropriate, be published in electronic form and accessible on the UNESCO website.

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Preface

Nepal's Comprehensive Peace Accord sets out an ambitious peace-building framework through its transformational agenda on equality, inclusion, accountability, good governance and a restructuring of the state. These issues need to be addressed through long-term development processes and interventions based on human rights and the rule of law.

Prominent among these overarching values are the right to freedom of expression and the respect of freedom of the press. Their enjoyment is an essential prerequisite for a successful peace process in Nepal. Only a free media can lend its voice to all groups in society, thereby mirroring Nepal's diverse interest groups and their particular needs.

Assessment of Media Development in Nepal accompanies Nepal in the process of democratic transition and contributes to the development of free, independent and pluralist media. The study applies the diagnostic instrument of UNESCO's Media Development Indicators (MDIs), which UNESCO's Intergovernmental Council for the International Programme for the Development of Communication approved in 2008.

Through detailed analysis of all aspects of the media landscape, they guide the efforts of different actors working for media development, as well as the formulation of policies in this field.

So far applied in more than ten countries, the MDIs are a tool to analyse the legal, regulatory and economic frameworks, in which Nepal's media operate, their democratic potential, training and skills development, and the information and communication infrastructure. While the analysis is based on international standards and good practices, the recommendations are adapted to the particularities of the national context.

The main part of the study was undertaken in 2011 and 2012, but the report also contains data collected in 2013. It provides a detailed picture of the topography of the country's media and contributes to present discussions on constitutional and legal reforms and media self-regulation mechanisms. It also provides a baseline for subsequent assessments of Nepal's media landscape using the five MDI categories.

The study was coordinated by a team of national experts and builds on analysis and suggestions made by representatives of government, professional associations and civil society.

I am confident that this assessment will help the media to contribute to fostering democracy in Nepal.

Axel Plathe

Head of the UNESCO Office in Kathmandu
UNESCO Representative to Nepal

Table of content

Preface	v
Introduction	viii
I. A system of regulation conducive to freedom of expression, pluralism and diversity of the media	6
A. Legal and policy framework	8
B. Regulatory system for broadcasting	18
C. Defamation and other legal restrictions on journalists	19
D. Censorship	24
II. Plurality and diversity of media, a level economic playing field and transparency of ownership	30
A. Media concentration	32
B. A diverse mix of public, private and community media	34
C. Licensing and spectrum allocation	38
D. Taxation and business regulation	41
E. Advertising	41
III. Media as a platform for democratic discourse	46
A. Media reflects diversity of society	48
B. Public service broadcasting model	51
C. Media self-regulation	53
D. Requirements for fairness and impartiality	58
E. Levels of public trust and confidence in the media	58
F. Safety of journalists	60
IV. Training of journalists	66
A. Availability of professional media training	68
B. Availability of academic courses in media practice	72
C. Presence of trade unions and professional organizations	75
D. Presence of civil society organizations	79
V. Infrastructural capacity is sufficient to support independent and pluralistic media	84
A. Availability and use of technological resources by the media	86
B. Press, broadcasting and ICT penetration	88
Conclusion	93

List of Acronyms

ACORAB	Association of Community Radio Broadcasters
CA	Constituent Assembly
CDO	Chief District Office
CPA	Comprehensive Peace Accord
CR-PAS	Community Radio Performance Assessment System
CRSC	Community Radio Support Centre
CSOs	Public and Civil Society Organizations
CTEVT	Council for Technical Education and Vocational Training
DAO	District Administration Office
DoI	Department of Information/Ministry of Information and Communications
FNJ	Federation of Nepali Journalists
HLCIT	High Level Commission for Information Technology
HLMC	High Level Media Commission
I/NGOs	International/Non-Governmental Organizations
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technologies
IMM	International Media Mission
IPDC	International Programme for the Development of Communication
ISP	Internet Service Provider
ITU	International Telecommunication Union
JICA	Japan International Cooperation Agency
MDI	Media Development Indicators
MoIC	Ministry of Information and Communications
NIC	National Information Commission
NPI	Nepal Press Institute
NPU	Nepal Press Union
NSP	National Spectrum Plan
NTC	Nepal Telecom Company
NTA	Nepal Telecommunications Authority
NTV	Nepal Television
PCN	Press Council Nepal
PSA	Public Service Announcement
PSB	Public Service Broadcaster
RTI	Right to Information
UCPN (M)	Unified Communist Party of Nepal (Maoists)
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
WJA	Working Journalist Act

Introduction

The media in Nepal can play an influential role in peace building and democratization. The delay in drafting and promulgating a new constitution has posed serious questions for the country's ability to institutionalize and strengthen democracy¹. The new constitution was expected to be a milestone in institutionalizing human rights, inclusion, non-discrimination, equality, liberty and freedom as the achievements of the people's movement that ended with the restoration of parliament in April 2006². The restoration of parliament made way for the establishment of a coalition government that began negotiations with the Unified Communist Party of Nepal (Maoist) or UCPN (M), and this culminated in the signing of the Comprehensive Peace Accord (CPA) in November 2006.

The first printing press arrived in Nepal around the year 1850 and the first newspaper – *Gorkhapatra*, a weekly – began publishing in 1901. A 1901 decree issued by the then Prime Minister Dev Sumsher was the first policy related to media, stating what was and was not 'fit' to be published. The newspaper was effectively a mouthpiece of the regime. Its purpose was to inform people on state affairs, but the rulers did not provide people with a space to express themselves freely. Although one edict in the decree said 'not to shower praise on the incumbent ruler', in practice, the official newspaper's principal task was to lionize the deeds of the rulers³.

The Government of Nepal Act of 1948 was the first to mention 'Freedom of Press and Expression'. The act was triggered by the sweeping political changes in India that gained independence from the British Empire that same year. In 1948, the Fundamental Rights Act was promulgated, and it specified the procedures for establishing a printing press and registering a newspaper. It also specified matters that were restricted for printing and publication. However, there were no private newspapers until 1950, when democratic changes began.

¹ Constitution drafting began after the 2008 elections. However, the term of the Constituent Assembly, that was to have produced a constitution in two years, was extended several times before it ended on 27 May 2012, without promulgating a constitution.

² On 1 February 2005 King Gyanendra assumed executive powers and began ruling directly as chair of the Council of Ministers. The movement for democracy, led by the political parties, began in late 2005. The king dissolved parliament in 2002 and fresh elections remained postponed owing to security issues.

³ Grishma Bahadur Devkota, *Nepalko Chhaphakhana ra Patra Patrikako Itihas (History of the Press and Newspapers in Nepal)*, 1967. Pages 54-55

Democracy was introduced to Nepal in 1951. It marked the end of 104 years of rule by hereditary Rana prime ministers. The restoration of democracy brought political and media freedoms, which were institutionalized in the Interim Government of Nepal Act⁴. The period witnessed the development of private newspapers, and by 1958 there were 39 newspapers including 14 dailies – 12 of them privately published. The state-owned broadcasting station, Radio Nepal, began operations in April 1951⁵.

The first parliamentary elections were held in 1959, but King Mahendra dismissed the elected government in 1960, and in 1962 he promulgated a new constitution that consolidated his rule and made political parties and reporting on them and their activities illegal. For the next 30 years, the media was tightly controlled, but there were some party-affiliated newspapers that defied these restrictions and continued publishing on the parties' activities. The state-run news agency, Rastriya Samachar Samiti, was established in 1961, and the Press Council Nepal (PCN) in 1971.

A popular uprising in 1989-1990 led to the restoration of multiparty democracy and constitutional monarchy in Nepal. The new constitution promulgated in 1990 ushered in an era of liberal democracy and press freedom. Article 13 guaranteed the rights of the printing press and newspapers. It provided guarantees to the media against pre-censorship on publications, closure or confiscation of printing press outlets, or cancellation of the registration of a newspaper for publication of any material. Further, Article 16 guaranteed 'the right to demand and acquire information on any matter of public importance.' In 1992, the elected government formed a commission to recommend media policy and, based on its report, it enacted a law that allowed independent broadcasting.

Digital technology arrived in Nepal in 1971 when a computer leased by IBM was used for processing census data. In 2003, Nepal formulated a long-term Information and Technology Policy⁶ that prioritized the expansion of telecommunication infrastructure and the formation of a regulatory mechanism.

The internal armed conflict began in Nepal in 1996, and continued until 2006. During this period, the media and journalists faced attacks from both Maoist insurgents and government forces. The violent conflict ended with the Comprehensive Peace Accord,

⁴ Article 16, part II sub-clause (d). A New Press and Publication Act, 1952 replaced the previous Act of 1948.

⁵ Grishma Bahadur Devkota, *Nepalma Chhapakhana ra Patrapatrikako Itihas*, 1967.

⁶ <http://www.moic.gov.np/policies-directives/Long-term-Policy-of-Information-and-Communication-Sector-2059-eng.pdf>

in which the government and the Maoists agreed on promulgating a new interim constitution, holding the election of a Constituent Assembly (CA), managing arms and armies and establishing democracy and peace. The Interim Constitution of Nepal, promulgated on 15 January 2007, provided the basis for media freedoms after the end of the conflict. The CA elected in April 2008 abolished Nepal's 240-year-old monarchy and declared the country a Federal Democratic Republic.

After the 2006 political changes, the government formed the High-Level Media Recommendation Commission to recommend media policy. The commission submitted its report to the prime minister in September the same year⁷. The Commission's report on media policy has remained largely unimplemented.

Data maintained by the Federation of Nepali Journalists (FNJ) show that attacks against journalists escalated during the conflict and decreased considerably after 2006, but attacks on journalists and media workers have not completely stopped. Threats to and harassment of journalists has also continued, aided by a weak state and a general climate of insecurity in the country.

The Interim Constitution guarantees free expression, right to information and equal freedoms to the press, broadcasting and online media, and also extends this to communications technology, particularly telephones – which had been shut down during the royal takeover of 2005. The Committee on Fundamental Rights and Directive Principles of the CA had submitted its draft on media freedoms in November 2009, which provides an indication of what can be expected in the new constitution.

In 2013, Nepal had 3408 registered newspapers, 515 radio stations and 58 television channels. However, not all newspapers are published regularly. Among the 874 that the Press Council classified as regular, there were 165 dailies, four bi-weeklies, 559 weeklies, and 36 fortnightlies. With regard to broadcasting, 360 of the radio stations were on the air. Table 1 summarizes the development of the media in Nepal in terms of the number of different types of media in the country.

⁷ An Overview of Nepal's Media and Recommendations for Development Priorities, Building for the Future, International Press Freedom and Freedom of Expression Mission to Nepal, May 2008, p 15.

Table 1: The state of media, 2013 (2070 BS)⁸

	1951/58	1990	2013
Newspapers	37	456	340 ⁹
Radio stations	1	1	515 ¹⁰
Television channels	-	1	58 ¹¹

Methodology used

UNESCO's Media Development Indicators (MDI) were endorsed by the Intergovernmental Council for UNESCO's International Programme for the Development of Communication (IPDC) at its 26th session in March 2008. They provide an internationally approved framework for assessing how the media can best contribute to, and benefit from, good governance and democratic development. The media, for the purpose of the MDIs, refers to all those channels that carry news and public information, in various ways:

- 'As a channel of information and education through which citizens can communicate with each other
- 'a disseminator of stories, ideas and information
- 'a corrective to the "natural asymmetry of information" between governors and governed and between competing private agents,
- 'a facilitator of informed debate between diverse social actors, encouraging the resolution of disputes by democratic means,
- 'a means by which society learns about itself and builds a sense of community, and which shapes the understanding of values, customs and tradition,
- 'a vehicle of cultural expression and cultural cohesion within and between states,
- 'a watchdog of government in all its forms, promoting transparency in public life and public security of those with power through exposing corruption, maladministration and corporate wrongdoing, and
- 'an advocate and social actor in its own right while respecting pluralistic values'¹²

⁸ The Nepali calendar (Bikram Sambat) is 57 years ahead of the Gregorian calendar. Some conversions do not match the year because the Nepali month generally begins in the middle of the Gregorian month.

⁹ Press Council Nepal, Annual Report, 2013. The Council does not release circulation figures for newspapers.

¹⁰ MOIC, November 2013 <http://www.moic.gov.np/pdf/fm-list-2070-05-03.pdf>

¹¹ MOIC, November 2013 <http://www.moic.gov.np/pdf/tv-list-2070-07-07-final.pdf>

¹² IPDC/UNESCO. 2008. Media Development Indicators: A framework for assessing media development. Page 3

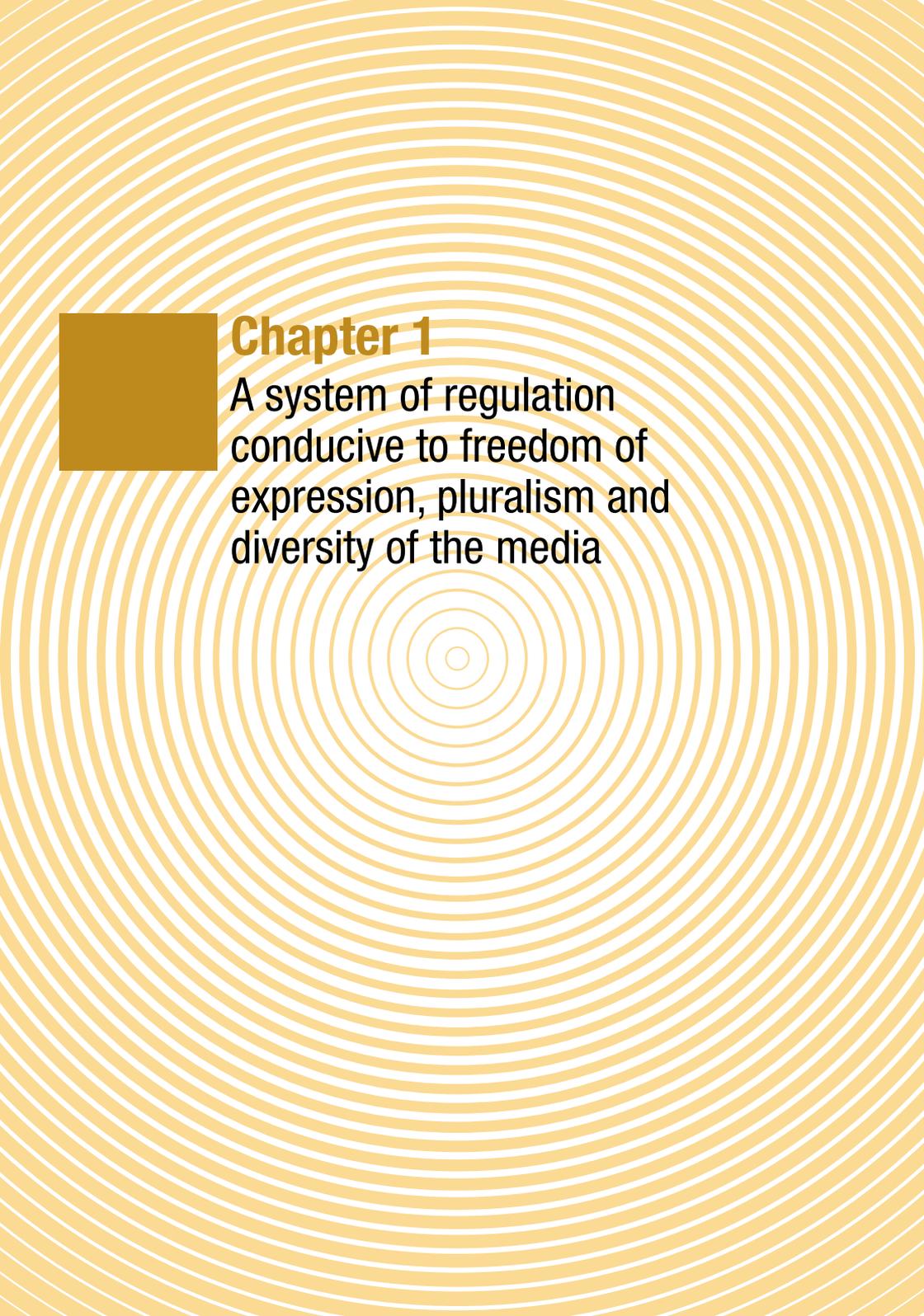


The MDIs are the culmination of extensive research, bringing together a number of ongoing methodologies and schools of thought regarding media development. The MDIs look at all aspects of the media environment, through five broad categories. They are:

1. A system of regulation conducive to freedom of expression, pluralism and diversity of the media
2. Plurality and diversity of media, a level economic playing field and transparency of ownership
3. Media as a platform for democratic discourse
4. Professional capacity building and supporting institutions that underpins freedom of expression, pluralism and diversity, and
5. Infrastructural capacity is sufficient to support independent and pluralistic media

Together the indicators provide an aspirational picture of the media ecology to be constructed in order to ensure freedom of expression, pluralism and diversity of the media.

The assessment deals with all indicators as they apply in the Nepali context, using a combination of research methods and the means of verification provided in the MDIs. The analysis is based on the data available during MDI research conducted between August 2012 and July 2013, with some additional inputs made during editing. The report has specific recommendations under each indicator and a general conclusion at the end of the summary.



Chapter 1

A system of regulation conducive to freedom of expression, pluralism and diversity of the media



KEY INDICATORS

A. Legal and policy framework

- 1.1 Freedom of expression is guaranteed in law and respected in practice
- 1.2 The right to information is guaranteed in law and respected in practice
- 1.3 Editorial independence is guaranteed in law and respected in practice
- 1.4 Journalists' right to protect their sources is guaranteed in law and respected in practice
- 1.5 Public and civil society organizations (CSOs) participate in shaping public policy regarding the media.

B. Regulatory system for broadcasting

- 1.6 Independence of regulatory system is guaranteed by law and respected in practice
- 1.7 Regulatory system works to ensure media pluralism and freedom of information

C. Defamation and other legal restrictions on journalists

- 1.8 The state does not place unwarranted legal restrictions on the media
- 1.9 Defamation laws and other legal restrictions on journalists
- 1.10 Other restrictions on freedom of expression, whether based on national security, hate speech, privacy, contempt of court laws and obscenity should be clear and narrowly defined in law and justifiable as necessary in a democratic society, in accordance with international law

D. Censorship

- 1.11 The media is not subject to prior censorship as a matter of both law and practice
- 1.12 The state does not seek to block or filter internet content deemed sensitive or detrimental

Chapter 1

A system of regulation conducive to freedom of expression, pluralism and diversity of the media

This chapter assesses the capacity of Nepal's media regulation system to contribute to freedom of expression, pluralism and diversity of the media. It analyses the existing legal and policy frameworks and regulatory systems for broadcasting, and analyses other legal provisions that may restrict the work of journalists. The assessment also contains specific recommendations for improving Nepal's media regulation system.

A. Legal and policy framework

Indicator 1.1

Freedom of expression is guaranteed in law and respected in practice

The Interim Constitution of Nepal of 2007 guarantees freedom of expression. Article 13 (3) (a), which deals with fundamental rights, guarantees every citizen 'freedom of opinion and expression'. However, it also allows the government to impose 'reasonable' restrictions on acts that could 'undermine the sovereignty and integrity of Nepal, or which may jeopardize harmonious relations between people of various castes, tribes, religions or communities, or on any act of defamation, contempt of court or incitement to an offence, or on any act which may be contrary to public decency or morality'¹³. These rights were also guaranteed by the 1990 Constitution, but it had fewer restrictions than the Interim Constitution of 2007. These differences were analysed by the International Media Mission (IMM) in early 2012¹⁴, which compared restrictions in the different constitutions, as well as the proposal for a new constitution being discussed by the CA (Table 2)¹⁵.

¹³ Nepal Law Commission. Interim Constitution of Nepal 2007. <http://www.lawcommission.gov.np/>

¹⁴ The IMM is a group of over a dozen international media development and freedom of expression organizations, which has worked closely with Nepali media development partners on media rights and development. The mission members included AMARC, ARTICLE 19, Centre for Law and Democracy (CLD), Committee to Protect Journalists (CPJ), International Federation of Journalists (IFJ), International News Safety Institute (INSI), International Media Support (IMS), International Press Institute (IPI), Internews, Open Society Foundations (OSF), Reporters sans Frontières (RSF), South Asia Free Media Association (SAFMA), South Asia Media Solidarity Network (SAMSN) and UNESCO.

¹⁵ Toby Mendel. 2012. International Fact Finding and Advocacy Media Mission to Nepal: 23-27 February 2012. Analysis of Constitutional Proposals on Freedom of Expression, Media Freedom and the Right to Information (unpublished)

Table 2: Comparison of the restrictions to free expression (1990-2012)

Issue	1990	2007 (additions)	CA Proposal (additions)
Restrictions on FOE	<ul style="list-style-type: none"> - undermine sovereignty and integrity; - jeopardize harmonious relations among various castes, tribes or communities; - any act of sedition, defamation, contempt of court or incitement to an offence; - any act which may be contrary to decent public behaviour or morality 	<ul style="list-style-type: none"> - religion added to list for harmonious relations - sedition removed from the list 	<ul style="list-style-type: none"> - nationality and independence added - relations among federal units added

Source: Adapted from Toby Mendel's analysis for the IMM

The guarantee of freedom of expression and opinion in both the 1990 and the 2007 constitutions is more limited than under international law in several ways. First, the 2007 Constitution applies only to citizens, as opposed to everyone. This limit is important because Nepal hosts a large number of non-citizens. Second, the constitutional proposal does not provide absolute protection for opinions. Third, it does not elaborate on key characteristics of rights made explicit in international laws, such as the Universal Declaration of Human Rights (UDHR).

Article 19 of the UDHR says: 'Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinion without interference and to seek, receive, and impart information and ideas through any media regardless of frontiers'¹⁶. Such explicit explanation is not included in Nepal's Interim Constitution.

The IMM stressed that the provisions in the Interim Constitution and in the draft constitution prepared by the CA include illegitimate grounds for restricting freedom of expression by using vague terminology such as 'harmonious relations' as a basis for controls.

¹⁶ Universal Declaration of Human Rights is available at <http://www.un.org/en/documents/udhr/index.shtml> Article 19 of the International Covenant on Civil and Political Rights (ICCPR), available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, also has similar provisions.

Free expression is no longer only a matter related to citizens expressing themselves through various 'traditional' media, but also on the internet. The UN Special Rapporteur for Freedom of Expression underlined the importance of the internet as a vehicle for exercising free expression in his annual report¹⁷. According to the Special Rapporteur, even though access to the internet has yet to be recognized as a right by international human rights law, states are required to create enabling environments for all to exercise free expression using the internet.

This is echoed by the UN Human Rights Committee in its September 2011 comment on the International Covenant on Civil and Political Rights¹⁸. It notes that online speech should only be limited – as in the case of offline expression – if certain conditions are met¹⁹. These are transparency (there should be a clear legal basis), proportionality (the restrictions should not be blanket), and for a legitimate purpose like protecting other rights (e.g. reputation) or public health, safety, morals and national security.

Provisions for the control of online expression in Nepal are included in the Electronic Transactions Act of 2007. Clause 47 of the Act prohibits publication of matters 'which may be contrary to the public morality or decent behavior or any types of materials which may spread hate or jealousy against anyone or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes and communities'. The legislation falls short of defining these terms, which allows for misuse of these limitations. They are also disproportionate: punishment for violation is up to 100,000 rupees (approximately 1,000 US dollars), five years in jail or both.

In terms of international instruments, Nepal ratified the International Covenant on Civil and Political Rights (ICCPR) in 1991²⁰, the (first) Optional Protocol to the ICCPR, providing for individuals to take cases alleging breaches of its provisions directly to the UN Human Rights Committee, and the UN Convention Against Corruption²¹, which provides, among other things, for openness in government.

¹⁷ UN Special Rapporteur's report. A/66/290. 10 August 2011. (downloaded from: <http://www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf>)

¹⁸ Nepal ratified the ICCPR in 1990.

¹⁹ See, CCPR/C/GC/34; available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

²⁰ UN Convention Against Corruption; available at http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

²¹ International Institute for Human Rights, Environment and Development (INHURED). 2007. Preliminary Status Report ICCPR. (unpublished)

Indicator 1.2

The right to information is guaranteed in law and respected in practice

Right to Information (RTI) is guaranteed by Article 27 of Nepal's Interim Constitution. The provision states, 'every citizen shall have the right to demand or receive information on any matter of his or her interest or of public interest'. This applies to all information, except that 'deemed to compel any person to provide information on any matter of which secrecy is to be maintained by law'. The Right to Information Act (2007) and Rules (2009) formalise this right.

Generally, the law provides for a basic level of RTI. The law scored 105 out of 160 on a rating carried out by the Centre for Law and Democracy in 2007, and is currently in the 19th place globally, out of 95 countries whose RTI laws were assessed until 2013²², despite the fact that Clause 3 (3 a-e) of the law has broad restrictions. The law requires public bodies to release information both proactively and on demand, maintain updated information and appoint an information officer. Those who are refused information can appeal to the National Information Commission (NIC) that has the authority to order its release, or impose fines on the erring information officer or head of the public body.²³ The law also provides for compensating for damages caused by delays in providing information.

Case 1

In 1993, before the promulgation of the RTI law, the Supreme Court made a landmark judgement setting the rules and procedures for seeking information. It came in the context of a public interest litigation, in which information was being sought on the Arun III hydroelectric project. The court decided that such information was in the public interest and ordered the government to provide it, while requiring all development projects to comply with the order²⁴. There have also been other information requests dealt with in court, where judges have decided on behalf of the petitioner²⁵.

The exercise of the right, however, has been limited, owing largely to low awareness of the law on both the demand (public and civil society) and supply (government) sides. Awareness of the existence of the law is generally low, and there has been little or no outreach to make

²² See <http://www.law-democracy.org/live/wp-content/uploads/2012/08/2013-Chart-RTK1.pdf>

²³ Right to Information Act 2007. Clauses 19 and 32.

²⁴ Gopal Siwakoti vs Government of Nepal Ministry of Finance, Nepal Law Reporter 1995, Verdict No 4895. Page 255. The Supreme Court had alluded to the Right to Information in an earlier case on the Tanakpur project

²⁵ Kashi Raj Dahal vs Government of Nepal Secretariat of Council of Ministers, Supreme Court bulletin, Year 5, Issue No 24. Page 15

citizens aware of their rights and of the processes required for seeking information from government.²⁶ This may be an outcome of the NIC's low human resource capacity, and the fact that it is a relatively new organization that was set up on 4 June 2008.

In addition, the RTI law lacks adequate clarity. The FNJ, Freedom Forum and Article 19 have recommended clarifying and elaborating a number of provisions in the law, including its scope, exceptions, information requesting procedures, complaints and appeals, measures to promote openness and on disclosures in good faith.²⁷

Case 2

In 2011, the Supreme Court was involved in ensuring information access related to a complaint regarding a decision of the NIC. An educator, on behalf of the Tribhuvan University Office of the Controller of Examinations, had challenged the NIC's decision ordering the university to allow a student to see his own examination answer sheet²⁸. The student had appealed to the NIC seeking access to his marked exam papers and the commission had ordered that the petitioner be provided with 'certified copies'. The Supreme Court ruled in favour of the NIC²⁹, sending a strong message to all public institutions.

In terms of scope, they recommend the need for clarity to ensure that the act covers the executive, judiciary and parliament and also private bodies providing public services. They also consider that the law should apply to everyone and not only citizens. On exceptions, they found a 'strong harm test' missing, which it said should apply in all cases: it recommended including a public interest override for releasing information, including a time limit for exceptions to cease to apply. They also recommended that there should be no system for classifying information, and that decisions to disclose information should be made on a case-by-case basis rather than on classification status.

Case 3

One important case decided by the NIC relates to the list of companies that had evaded payments of Value Added Tax. The NIC decided on 14 October 2011 that the petitioner

²⁶ Vinaya Kumar Kasajoo, Chief Information Commissioner, National Information Commission, Nepal: a working paper, "implementing RTI Law in Nepal: Experience, Challenges and Future Strategies of the National Information Commission" at 1st National Convention on Right to Information Kathmandu, Nepal, 28-29 March, 2011. Page 15

²⁷ Article 19, FNJ and Freedom Forum. 2008. Memorandum on the Right to Information Act of the State of Nepal.

²⁸ Registrar Bhim Raj Adhikari on behalf of the TU Office of the Examination Controller vs. National Information Commission, Nepal Law Reporter, Verdict No. 8594.

²⁹ <http://www.nic.gov.np/english.php>

had the right to receive information other than what was protected by the RTI Act itself.³⁰ In many of these cases, the government had not provided the information sought by the petitioners, leading to appeals. There were details on thirty-nine appeals to the NIC by petitioners who had not been provided the information as requested, after the NIC had ordered the government to do so³¹.

The NIC's annual report for 2012/13³² states that even four years after the promulgation of the act, implementation is unsatisfactory as the administrative mechanism was not prepared for it, the information officers were under-resourced and untrained, and often even the information officers themselves did not have access to information they were expected to provide to the public. The earlier NIC annual report of 2009/10³³ also suggested that the government should consider replacing the practice of taking an 'oath of secrecy' when taking office with an 'oath of transparency'. Field studies carried out as part of the MDI assessment suggested that there was a general apathy of public officials towards citizens' RTI. Participants at the consultations said there was low awareness and knowledge on making information requests, and also about the provisions in the law.

There are tendencies in government to restrict access to information, which was evident in a classification of information circular issued in December 2008, which included 24 categories of secrets, and 116 types of information that were declared secret for the next 30 years.

Immediately after its release, the NIC stated that the list was against the letter and spirit of the act and proposed amendments. The classification would have set precedence and allowed the government to classify any document as secret.

The classification, prepared without consulting stakeholders outside government agencies, was to come into effect on 15 January 2012. Among other things, it would have rendered information on treaty ratification, meetings with foreign dignitaries and ministerial documents secret. It was, however, averted following protests and lawsuits at the Supreme Court. On 31 January 2012, the court issued an interim order asking the government not to implement the classification until the cases could be heard.³⁴

³⁰ Taranath Dahal vs. Krishna Hari Baskota, Secretary Ministry of Finance and Bhimsen Timilsina, information officer. Full decision can be viewed at http://www.nic.gov.np/details_page.php?id=145

³¹ See http://www.nic.gov.np/details_page.php?id=136 for details on the cases that were appealed by petitioners after they were denied information

³² National Information Commission (April 2011). Annual report 2068/69, available at http://nic.gov.np/uploads/pdf/Annual_Report_2068_-_2069.pdf

³³ National Information Commission (April 2009). Annual report 2066/67, available at http://nic.gov.np/uploads/pdf/annual_report_2066-2067.pdf

³⁴ International fact finding and advocacy media mission to Nepal. February 2012. Safeguarding media rights

Indicator 1.3

Editorial independence is guaranteed in law and respected in practice

Editorial independence broadly opposes formal, informal or extra-legal influences on journalists and media that could impact content. While this is difficult to verify and record, particularly in countries where professionalism in media and among journalists varies widely, in Nepal there exists circumstantial evidence of state agencies, publishers or their agents and advertisers influencing journalists to publish content they would not otherwise.³⁵

In individual interviews, journalists also reported instances when they had not published or broadcast stories to ‘comply’ with ‘requests’ from peers. While the above applies mainly to larger, more organized corporate media, smaller partisan weeklies and media owned – directly or indirectly – or supported by political parties are confronted with a lack of editorial independence when covering issues related to other parties, and their reports in this area are often closer to propaganda than journalism.³⁶ The fact that Nepal has state-run media implies the risk that government or its agents can influence content. This is illustrated by the observation that state media priorities have shifted with every change in political leadership.

In the mid-1990s, when the government began licensing independent radio stations, it issued conditions requiring them to broadcast certain content, such as relaying primetime news bulletins from state-run radio. Radio Sagarmatha, the first independent radio licensee, was for example required to carry only news produced by the state broadcaster and was barred from broadcasting advertisements. Though this has changed after a Supreme Court verdict in 2002, the law allowing the government to impose conditions while issuing licenses remains unamended. This is not done in independent media environments. The National Broadcasting Act that applies to radio broadcasters also governs television broadcasters. The fact that the government is the licensing and regulatory authority includes the risk that the government may favour private media outlets that report favourably on its actions.

and ending impunity in Nepal. Page 19

³⁵ Discussions at meetings on self-censorship organised by the Alliance for Social Dialogue in Ilam, Birgunj, Dhangadhi and Kathmandu in 2011 (unpublished draft)

³⁶ An estimate suggests that 40 per cent of local radios are owned to some extent by zonal leaders of different political parties; similarly 60 per cent of the stations in the districts have district level political party leaders as owners. (See: CRSC/NEFEJ. 2011. Community MHz: Assessing Community Radio Performance in Nepal – A pilot assessment of 15 stations. Page 26.) The ownership/influence of political parties on smaller printed media is almost an open secret in Nepal.

Nepal's Interim Constitution does not allow the government to seize control of the media during emergencies or to suspend free expression. However, the government can suspend Article 27 on RTI and Article 28 on the Right to Privacy³⁷ during emergencies on the basis of an order issued by the president, upon recommendation by the government.

Indicator 1.4

Journalists' right to protect their sources is guaranteed in law and respected in practice

Nepal has no specific law giving journalists the right to protect sources. However, Clause 4 (3) of the Code of Journalistic Ethics³⁸ states that they should 'not to disclose confidential sources of news', and that protecting confidential sources is a duty of journalists. It states that source identity can be revealed only with the permission of the source.³⁹

Case 4

In early 2011, the Supreme Court asked journalists at Sagarmatha Television to reveal their sources on a report that made public the assets of the Chief Justice. The station responded that the sources that could be disclosed had already been named in the news report itself and that it was unable to make further disclosures.⁴⁰ The court did not press contempt charges.

Case 5

In 2011, a petition at the Administrative Court sought disclosure of a source in a case against a civil servant. The court ruled against the request. The Nagarik daily newspaper had refused to disclose the source of an op-ed article in the form of an open letter to the prime minister, written by a civil servant. Following its publication, the government began departmental action against an official suspected of having written the piece. The official challenged this accusation in court. The Administrative Court ruled that it was the

³⁷ Interim Constitution of Nepal 2007. Part 19. Emergency Power. Article 143 (7). The President may, at the time of making a proclamation or order of a state of emergency pursuant to Clause (1), suspend the fundamental rights as provided in Part 3 for as long as the proclamation or order is in operation. Provided that clauses (1) and (2) of Article 12 and Sub-clauses (c) and (d) of Clause (3), Articles 13 and 14, Clauses (2) and (3) of Article 15, Articles 16, 17, 18, 20, 21, 22, 23, 24, 26, 29, 30 and 31 and the right to constitutional remedy in relation to such Articles pursuant to Article 32 and the right to the remedy of habeas corpus shall not be suspended.

³⁸ It is issued and enforced jointly by the Federation of Nepali Journalists and the Press Council Nepal

³⁹ <http://www.presscouncilnepal.org/codeofconduct.php>

⁴⁰ Binod Bhattarai. 2011. 'Protecting Sources'. 22 February 2011 (http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=28484)

newspaper's 'duty' to protect its sources and also instructed the government to develop source protection laws in accordance with international best practices and to clarify if source protection is an 'absolute privilege' or a 'qualified privilege' in consultation with stakeholders.⁴¹

Section 29 of the RTI Act 'protects whistleblowers – individuals who expose wrongdoing – from sanction.'⁴² A similar legal protection is required for journalists who may have to protect their sources.

Indicator 1.5

Public and civil society organizations (CSOs) participate in shaping public policy regarding the media.

There is a large number of CSOs working on media freedoms and media development in Nepal and many of them have been represented in processes of drafting policies on media. Nepal has a fairly easy process of registering CSOs, which are expected to be non-partisan. The largest representative organization of journalists is the FNJ, with a membership of over 8000⁴³, and it has played a role in most efforts to develop media policy. The FNJ claims it works with other CSO partners for major advocacy and policy initiatives. Such initiatives were especially important in 2005 and 2006, when the FNJ organized several international media missions that included representatives of international media rights organizations such as the International Federation of Journalists, Article XIX, Reporters Without Borders and UNESCO, to support local advocacy for restoring press freedoms. FNJ has ex-officio representation in the Press Council Nepal, a regulatory body. Participation of CSOs in policy making on media was particularly pronounced before the promulgation of both the RTI and the Working Journalists Act in 2007. They were then actively engaged in lobbying and advocacy and later in negotiations with teams preparing and finalizing the drafts.

However, the process of making appointments to policy-making platforms has not been transparent and is often driven by partisan interests. For example, the High Level Media Commission, formed in 2006, included the representatives of media unions and the media owners' organization, but no representatives of CSOs. Moreover, there

⁴¹ Administrative Court of Nepal Bulletin, Year 11, 2011, Silver Jubilee Special Issue of Judgement, pp15-18

⁴² Article 19. Freedom Forum. FNJ. 2008. An Agenda for change: The Right to Freedom of Expression in Nepal. Page 32

⁴³ FNJ. Press Freedom Annual Report 2011/12. Page 31

was no call for participation and the appointments were made by the cabinet at the recommendation of the Ministry of Information and Communications (MoIC). In effect, the nominees did represent organizations that had been involved in various movements for establishing media rights during the royal rule, but there was no formal process for seeking nominations.

Case 6

In early 2012, a draft media policy document appeared on the website of the MoIC, seeking comments from the public. This draft was intended to replace the existing policy. Even the FNJ was previously unaware of the document and about who had been involved in its preparation.⁴⁴ The document – which was prepared within the framework of a project supported by the Japan International Cooperation Agency (JICA) – did not explain the process of its formulation, but recommended policies for print, broadcasting, cinema and advertising sectors. An international media mission reviewed the document and found its content ‘inadequate’ because, among other reasons, it failed to address the issues of independent regulation and protection of freedom on the internet. The mission had called on the ministry to develop a new policy through an inclusive, pluralistic and gender-sensitive consultation process.⁴⁵ The MoIC withdrew the draft policy and restarted the consultation process for drafting the new media policy in 2013.

⁴⁴ MoIC. ‘Media Policy 2012 (Rev.0.3)’ The policy draft in Nepali and English remained on the MoIC website until August 2012 <http://www.moic.gov.np/pdf/media-policy-eng.pdf>

⁴⁵ Joint Statement of the International Fact Finding and Advocacy Media Mission to Nepal (IMM), 27 February 2012 in ‘Safeguarding Media Rights and Ending Impunity in Nepal’ (Mission Report), May 2012

B. Regulatory system for broadcasting

Indicator 1.6

Independence of regulatory system is guaranteed by law and respected in practice

The National Communication Policy, adopted by the government in September 1992, opened up the licensing process for independent broadcasters. It also recommended broadcasts in different national languages – not only Nepali – after which the state broadcaster, Radio Nepal, began broadcasts in ten languages, in addition to Nepali.

The National Broadcasting Act 1993 does not provide for an independent regulator of broadcasting. Under the law, the government is the licensing agency and regulator, while it also exercises control on state broadcasting stations, both radio and television. The law gives the government the power to prevent the broadcast of any programme, and to cancel licenses in the ‘national interest’ or for contravening the act and rules framed under the law. The government used these provisions to control broadcasters during the state of emergency in 2005. While the law says there will be a ‘reasonable opportunity’ to appeal against the cancellation of licensing, appeals are to be reviewed by the government itself or, in cases where penalties are to be paid, by the designated court of appeals.⁴⁶ The provision on powers to prevent broadcasting, however, is inconsistent with Article 15 of the Interim Constitution (2007), a sub-article of which says that no means of communication will be ‘interrupted’ except in accordance with the law, and another which bans censorship of any kind. The National Broadcasting Act, however, had not been amended. Similarly, the provision for cancelling licenses is unclear, and leaves much room for interpretation.

Nepal does not have transparent plans for allocating frequencies to government, commercial, private and community broadcasters. The frequency allocation plan outlines the distribution for different locations, but does not reserve frequencies for different types of stations.

Case 7

After the royal takeover in February 2005, the government invoked Section 7 of the National Broadcasting Act to require broadcasters to abide by its content rules on what

could and could not be broadcast, at the risk being barred from broadcasting.⁴⁷ At the time, the government had banned all news and current affairs programmes on radio. Nepal has no separate code of conduct for broadcasters; the Code of Journalistic Ethics mentioned in section 1.4 applies to all media.⁴⁸

The Nepal Telecommunications Authority (NTA) was established under the Telecommunications Act 1997 as a body appointed by the government. It is not structurally independent, even though the law says it is to be an ‘autonomous and corporate body’. The members of the authority come from the following fields: ‘financial and technical, market management, accounts and auditing, or legal fields related to telecommunications’. The law does not categorically require private sector or CSO representation. Most of the appointees so far are serving or former government officials.

Indicator 1.7

Regulatory system works to ensure media pluralism and freedom of information

The pluralism that can be observed in Nepal’s media landscape is not the result of the regulatory system. After 1990, when multiparty democracy was established, diverse groups began to join the media industry. CSOs and industry associations have been demanding the establishment of an independent regulator since the introduction of independent broadcasting (television in the early 1990s and radio in 1997), but to date these demands have not been met.

C. Defamation and other legal restrictions on journalists

Indicator 1.8

The state does not place unwarranted legal restrictions on the media

The Press and Publication Act 1991 contains a provision for journalists to obtain accreditation from the government.⁴⁹ The Department of Information (DoI) issues press accreditation to journalists upon submission of a letter of appointment from a

⁴⁷ Binod Bhattarai, 2004. *Nepali Press Under Emergency: A survey of the first six months*. Center for Investigative Journalism. Himal Books. Pages 2-3

⁴⁸ See: Article 19. Freedom Forum. FNJ. 2008. *An Agenda for Change: The Right to Freedom of Expression in Nepal*.

⁴⁹ Press and Publication Act 1991, Section 20

media organization and other relevant documents. The holder of this accreditation is recognized as being a journalist, while the card is required as proof for journalists to access many government offices, including Singha Durbar – the major administrative premises housing most of ministries. The accreditation is not valid for accessing all news sources, because different agencies, such as the former parliament secretariat, can determine their own system of access. The Press and Publications Rules 1992 stipulate the basic qualifications for editors and journalists.⁵⁰

Indicator 1.9

Defamation laws and other legal restrictions on journalists

Nepal has had a Libel and Slander Act since 1959, last amended in 2010 under the Republic Strengthening and Some Nepal Laws Amendment Act 2010. The law applies to everyone, including journalists. The law contains ambiguous terms, including a clause which states that ‘an accusation made satirically or un-straightforwardly (indirectly)’ could amount to a libelous act⁵¹.

The law has special sections dealing with defamation of minors and women, which entail less severe penalties than those dealing with similar cases of defamation against other groups. The Act contains provisions for ‘reasonable’ compensation in its First Amendment (1980), but this provision has not been used so far. The maximum fine for defamation is 5000 rupees (approximately 50 US dollars), but the law also allows a judge to sentence those guilty to up to two years in prison⁵² making defamation a penal instead of a civil offence. Defamation laws have not been applied actively and where they have, the accused have been punished with fines, which have usually been small. Freedom Forum has compiled a database of cases in which journalists faced defamation charges, which shows that those affected have tried to seek legal redress. There are also claims that the low fines explain why the aggrieved parties have often resorted to physical harm against journalists, instead of seeking legal recourse⁵³.

⁵⁰ Press and Publication Act 1992, Rule 15

⁵¹ Libel and Slander Act, Clause 1959, clause 2

⁵² Libel and Slander Act 2016 (1959), clause 5. Clauses 6-10 contain provisions for ‘lesser’ offences.

⁵³ Ramkrishna Nirala. Kabita Pokhrel. 2065. (BS) Patrapatrikabata Bhayeka Gali-Beyjattaisambandhi Faisalharu (Decisions on defamation cases against newspapers). Freedom Forum. Kathmandu.

Indicator 1.10

Other restrictions on freedom of expression, whether based on national security, hate speech, privacy, contempt of court laws and obscenity should be clear and narrowly defined in law and justifiable as necessary in a democratic society, in accordance with international law

Nepal's Public Security Act 1951 allows the government to issue an order to prevent a person from engaging in any activity against 'national interest' and also gives it powers to detain persons suspected of such activity without bail. A sub-clause allows the government to 'control transmitting any news or expressing any'⁵⁴. In 2001, the government invoked this law to detain the editor and publishers of a newspaper for publishing an article by a Maoist leader. The existence of this law, which gives authorities broad discretion in its interpretation, remains a major challenge to free press and expression, as the concept of 'national interest' can be subject to a variety of interpretations.

Nepali laws do not define hate speech and obscenity. Instead, the laws include ambiguous language such as 'harmonious relations', creating uncertainties as to the boundaries of media freedoms. The prohibitions under the Interim Constitution Article (3) (a), Section 14 (d) of the Press and Publications Act 1991 and Section 15 of the National Broadcasting Act go beyond restrictions allowed by international law, which calls for banning only intentional incitement to hatred, discrimination or violence. There are cases in which the law on sedition has been used against journalists and publishers.

Case 8

On 6 June 2001 the government arrested the editor and publishers of Kantipur Publications Pvt. Ltd. on charges of 'sedition and treason' against the monarch in an op-ed article by a Maoist leader, Baburam Bhattarai, (who later served as prime minister from 2011 to 2013) on politics after the massacre of Nepal's royal family earlier the same month. The editor, Yubaraj Ghimire and his publishers were detained for ten days before the government pressed charges at the Special Court. The case was eventually withdrawn following a change in government, but the existence of the law allows the state to misuse it against journalists and the media. Ghimire underlined that the article was in line with the

⁵⁴ This order can be issued to 'prevent a person from involving any activity which is in (sic) against of maintaining national interest or public order or supplying essential goods and commodities to the community or running any public work'. (see: <http://www.lawcommission.gov.np>)

*newspaper's policy to oppose violence, promote dialogue and publish opinions in order to bring the positions of different political actors into the public domain*⁵⁵.

The Interim Constitution grants the Supreme Court the power to 'initiate proceedings and impose punishment in accordance with the law for contempt of itself and of its subordinate courts or judicial bodies.'⁵⁶ The Supreme Court Act 1991 also mentions contempt of court:

(1) Supreme Court may impose punishment up to one year imprisonment or fine up to ten thousand rupees or both to the person convicted, in a case wherein the Supreme Court has initiated the proceeding of its own contempt or contempt of subordinate courts or judicial authorities

(2) Notwithstanding anything contained in Sub-Section (1), if the accused or convict apologises to the satisfaction of the court, the Supreme Court may pardon or excuse, remit the punishment imposed or may suspend the punishment with conditions determined by the Court and if the conditions as are fulfilled, the court may order not to execute the penalty.

The Freedom Forum has records of seventeen contempt of court cases between 15 February 1957 and 14 December 2006⁵⁷.

Case 9

*There have been instances in which journalists have been detained and fined for contempt. The most well-known case concerned a cartoon that appeared in the Bimarsha weekly newspaper on 6 November 1992*⁵⁸, *which was said to have harmed the public image of the court as an impartial institution. It was one of the first cases on contempt after the promulgation of the 1990 Constitution*⁵⁹. *The court ruled that the*

⁵⁵ Interview with Yubaraj Ghimire, former editor of Kantipur. (18 June 2012). The first instance when sedition charges were made against a journalist after 1990 was that against Mathabar Singh Basnet for publishing a photograph of a royal family member with an Indian actor. It was also used against a pro-Maoist newspaper and journalists during the insurgency (1996-2006).

⁵⁶ Interim Constitution of Nepal 2007 Article 102 (3)

⁵⁷ Taranath Dahal, Rishiram Ghimire, Subash Sharma (Eds.) 2065. (Nepali Year) *Sarbochha Adalatbata Pratipadit Suchana tatha Sanchar Sambandhi Najirharu*. (Supreme Court Precedents on Information and Communication litigations). Decision by the joint bench of justices Rudra Bahadur Singh and Mohan Prasad Sharma.

⁵⁸ The case was filed by Thir Prasad Pokhrel an employee at the Supreme Court. It was decided on November 15 1992.

⁵⁹ Taranath Dahal, Rishiram Ghimire, Subash Sharma (Eds). *Sarbochha Adalatbata Pratipadit Suchana Tatha Sanchar Sambandhi Najirharu* (Supreme Court Precedents on Information and Communication litigations). Decision by the joint bench of justices Rudra Bahadur Singh and Mohan Prasad Sharma. Pages 475-493. Verdict no 4604. Supreme Court.

editor be jailed for seven days and be fined 500 rupees (approximately 5 US dollars) unless he made a public apology on the first page of the newspaper, which he refused to do.

Contempt of court is not defined in the Interim Constitution or in law. However, there are several laws that protect the judicial system and judges from criticism⁶⁰. There was, however, a legal case in which the court defined contempt as follows:

Willful disobedience to judgments, orders and directions of courts, willful breach of an undertaking given to court, scandalizing the authority of court, interference with due course of judicial proceedings, obstruction to administration of justice, and prejudicing the fair administration of justice by commenting on pending proceedings before judicial authority or sub judge matter⁶¹.

The absence of a law on contempt leaves no boundaries for judges to exercise their authority. Further, according to Agenda for Change, even though the courts have tried to establish principles for legislating on contempt, they are neither comprehensive nor applied consistently.⁶²

A bill on the law of contempt is awaiting parliamentary approval. While the bill tries to define contempt, the terminology used in the draft is broad and leaves room for interpretation. An example is the proposed Section 4 (2), which uses phrases such as opinion that could 'create confusion among the general public [about the courts and their work]', and 'confusing and false descriptions.'⁶³

Nepal's Interim Constitution also has provisions that impinge upon free expression by protecting speeches made at meetings of the legislature parliament (Article 56) and Constituent Assembly (Article 77). Furthermore, it also gives parliament the authority to determine whether the rule was breached and to impose a prison sentence of up to three months or a fine of up to 10,000 rupees (approximately 100 US dollars)⁶⁴. The situation is therefore one in which the arbitrator is also a party in the dispute.

⁶⁰ See Agenda for Change for details. Page 27

⁶¹ Semanta Dahal. 'When the press prejudices the rules of sub judge?' The Himalayan Times. 24 July 2011. (<http://www.thehimalayantimes.com/fullNews.php?headline=Free+press+vs+court+contempt&NewsID=296787>)

⁶² The document on policy recommendations for Nepal was prepared through a consultative process involving media stakeholders in Nepal as well as international organizations. See: Agenda for Change, page 27

⁶³ Parliament Secretariat. (undated) Adalatko apahelana sambandhama byabastha garna baneko bidhayek. (unpublished).

⁶⁴ Agenda for Change... (2008) page 28-29.

Obscenity in Nepal comes under the umbrella of ‘public decency or morality’⁶⁵, which has not been defined and therefore gives the government discretion that can be harmful to free expression. The use of terms that are largely undefined is a matter of concern because, according to Agenda for Change, the rules ‘suffer both from excessive vagueness and from incorporating unduly low standards, which are not based on harm but simply on offense’⁶⁶.

Article 28 of the Interim Constitution (2007) guarantees the right to privacy of ‘any person, his or her home, property, document, data, correspondence or matters relating to his or her character or matters relating to his or her character shall be inviolable,’ except as provided by law. However, Nepal has neither a privacy law nor clear rules for implementation. Care should be taken to ensure that protection of privacy does not affect freedom of expression, particularly where the latter is justified as being in the public interest⁶⁷.

In terms of other legal restrictions, the DoI began accrediting up to three journalists per radio station after the director of information and communications committed to providing accreditation during a discussion programme on Radio Sagarmatha in 1998. Today, the government still accredits only three radio journalists per station, while there are no such restrictions on the print media⁶⁸.

D. Censorship

Indicator 1.11

The media is not subject to prior censorship as a matter of both law and practice

Nepal has constitutional protections against prior censorship. Article 15 (1) of the Interim Constitution declares that ‘No publication, broadcasting or printing of any news item, editorial, feature, article or other reading and audio-visual material through any means whatsoever including electronic publication, broadcasting and printing shall be censored.’ However, it comes with a condition:

⁶⁵ Interim Constitution of Nepal. Article 15 (1). Nepal Law Commission. Page 9 (Internet version downloaded from: www.lawcommission.gov.np/)

⁶⁶ Agenda for Change... (2008) Page 29

⁶⁷ See Agenda for Change (2008), Page 26 for a fuller discussion

⁶⁸ Interview with Raghu Mainali, CRSC. He was one of the guests on the talk show. (28 August 2012)

Provided that nothing shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities, or on any act of treason, defamation, contempt of court or incitement to an offence, or on any act which may be contrary to public decency or morality.

The main problem here is that the constitution envisages censorship under basically the same conditions as other (post-publication) restrictions on freedom of expression, whereas prior censorship is far more problematic and should, as a result, be subject to far more stringent limitations.

Section 12 of the Press and Publication Act says that any 'news, article or reading material' will not be subject to censorship 'except on conditions as referred to in Sections 14 and 15'. These two sections have the same language used in the constitution and seemingly allow the government to censor matters

(a) Undermining the sovereignty and integrity of Nepal, (b) Disrupting security, peace and order in Nepal, (c) Creating enmity among the people of the various castes, tribes, religions, classes, regions, communities and spreading communal disharmony, and (d) Hurting decency, morals and social honour of the people generally

Section 15 gives the government the authority to issue an order prohibiting the publication of 'news, information or other reading material relating to any specific subject, event or area for the specified period'.

The terminology used to describe the restrictions allow too much room for interpretation.

During the state of emergency in 2006, the government issued 'guidelines' invoking Section 15 (1) of the Press and Publications Act 1991 to control the content of both the print and broadcast media⁶⁹.

Earlier, the government directly censored content at both print and broadcast institutions. Nepali law requires the registration of newspapers in a two-step

⁶⁹ Binod Bhattarai. 2004. Nepali press under emergency: A survey of the first six months. Center for Investigative Journalism. Himal Books. Pages 2-3

process. The applicant first applies for a temporary certificate at the District Administration Office (DAO). This process involves registering a name – which has to be vetted by the DoI to make sure that there is no newspaper already registered with the same title⁷⁰. A new publication has to publish for six months before qualifying for a permanent certificate. While the above applies to individuals wanting to publish newspapers, companies have to first register at the Department of Industry and then at the DAO.

The law requires the government to appoint an independent press registrar but this has not been done, despite a Supreme Court ruling⁷¹. Further, the requirement that newspapers have to be registered at the DAO, which comes under the Ministry of Home Affairs, also indicates that the government still views the media from a security perspective.

Indicator 1.12

The state does not seek to block or filter internet content deemed sensitive or detrimental

During the royal takeover in February 2005, the government shut down telephones and forced Internet Service Providers (ISPs) to close services. The government also required them to block some websites operated by UCPN (M) in the early 2000s.

Nepal did not have a law to control content on the internet until 2008. The Electronic Transactions Act 2008 contains provisions that could stifle free expression⁷². The provisions in Article 47 of the Act seek to prevent the publication of ‘illegal materials in electronic form’, and also those ‘which may be contrary to public morality or decent behaviour or any type of materials which may spread hate or jealousy against anyone or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes and communities’. Those found guilty are liable to punishment, including fines not exceeding 100,000 rupees (approximately 1000 US dollars), imprisonment for up to five years, or both. Section 47 (2) makes it possible to increase the punishment of repeat offenders by one-and-a-half times for each offense.

⁷⁰ Given that there are over 6000 publications registered, and those not publishing are not removed from the register, coming up with names for new ventures can prove difficult.

⁷¹ Supreme Court verdict (Taranath Dahal vs. Government of Nepal) of 15 May 2008 where it ordered the government to appoint a Registrar rather than designating an official and to set up the office.

⁷² Section 47 (1&2) of the Electronic Transaction Act 2008, available at <http://www.tepc.gov.np/uploads/files/12the-electronic-transaction-act55.pdf>

In 2012, the government was advertising sections of this law via different media, providing telephone numbers where people can report violations, including to the police. Furthermore, the (NTA) has required ISPs to collect detailed information on service users, indicating there are attempts to officially systematise records, which could also be misused to enforce controls. In Nepal, all ISPs must obtain a license from the NTA.

Case 10

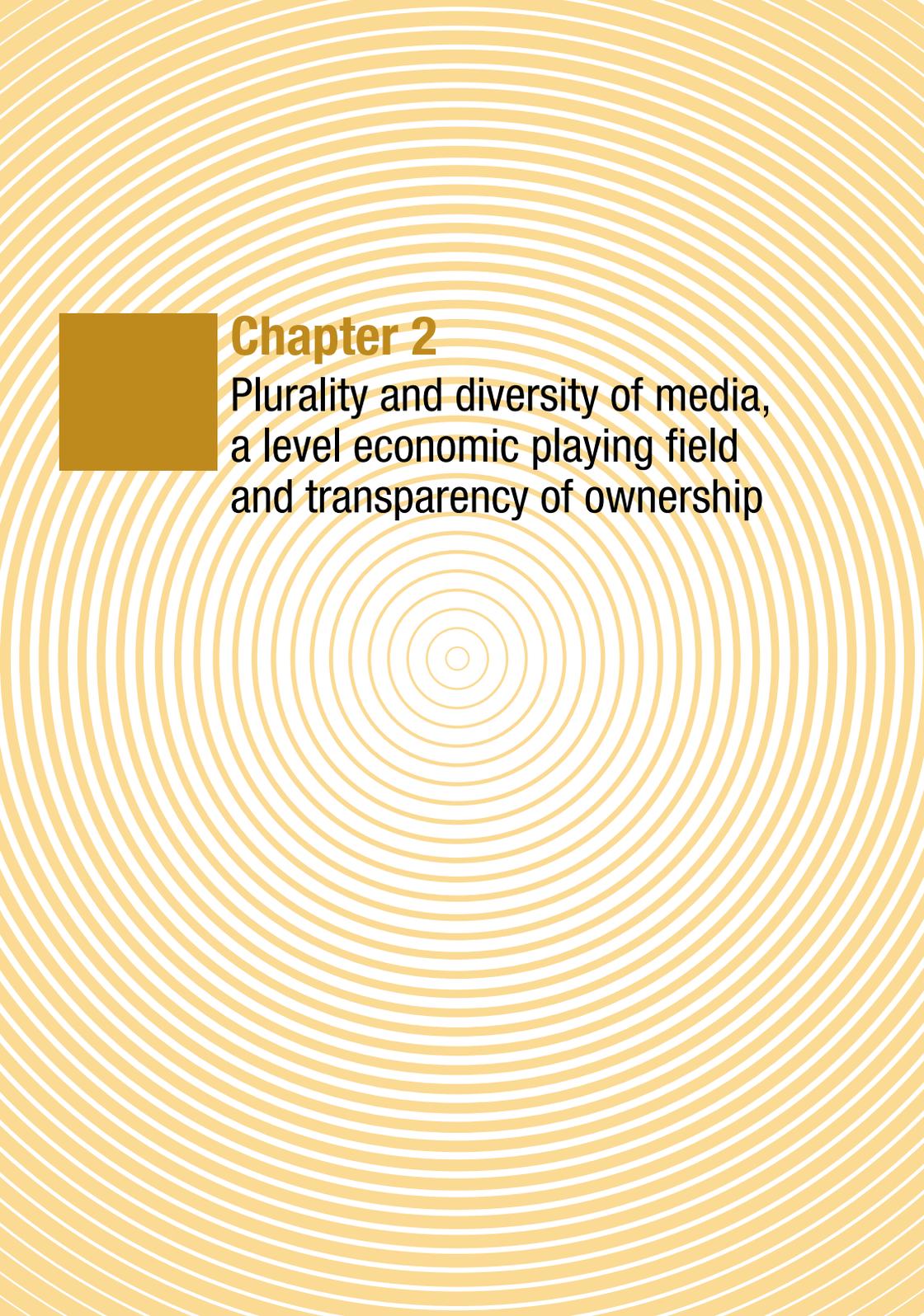
On 25 October 2010, the Nepali Times weekly newspaper reported that the NTA had written to ISPs asking them to block several dozen⁷³. The list included a large number of sites with explicit sex or violent content but also sites 'such as huffingtonpost.com and the website of the rock band Sex Pistols'. Another site included on the list was sfsi.org, run by San Francisco Sex Information, which trains people to become sex educators and operates a free information and referral switchboard. The ISPs blocked access to the websites in accordance with NTA directives.

⁷³ <http://www.nepalitimes.com/blog/thebrief/2010/10/28/nepal-bans-huffingtonpost-com/> The site has the complete list of websites that NTA wanted to be blocked. 9viewed on 28 August 2012)

Recommendations

- a) Conduct a thorough review of media policy, media laws and constitutional and legal restrictions on freedom of expression to bring them in line with international standards.
- b) Ensure that the new constitution provides full right to freedom of expression and of the media.
- c) Amend the RTI Act and regulations to expand their scope and to clarify that all public authorities – including the legislative and judicial branches of government – are covered.
- d) Review and amend other laws that contradict the RTI Act.
- e) Simplify the information seeking process, particularly the section requiring applicants to provide ‘reasons’ for the request.
- f) Include an override in the act for disclosure of information when it is in the public interest, and add an overall time limit for exceptions.
- g) Give the National Information Commission a broader mandate and enhance its capacity.
- h) Establish an RTI implementation, monitoring and coordination agency in government.
- i) Carry out extensive awareness and knowledge-raising sessions on editorial independence, including issues related to media ownership, cross-holdings and commercial and government influences on journalists.
- j) Enact a law and formulate rules for ensuring the right of journalists to protect confidential sources in accordance with international best practices.
- k) Ensure clear provisions in policy and law for full CSO participation in formulating and implementing policies related to media freedoms, free expression and RTI through a transparent process involving all stakeholders.
- l) Ensure representation includes members of diverse social groups, including traditionally excluded groups, in policy making and implementation mechanisms – and to the extent possible, equal representation of women and men in these mechanisms.
- m) Establish an independent regulator for broadcasting and bring all private, community and public service broadcasters under the oversight of the regulator in terms of licensing and spectrum use.
- n) Establish an independent mechanism for regulating content of broadcast media whose terms of reference should not go beyond setting standards in different areas (violence, protection of children, quotas of broadcasting in local languages, etc.)
- o) Ensure that identity cards issued by media organizations and journalists’

- associations will lead to the accreditation of journalists.
- p) Review the provisions of the Libel and Slander Act to remove discretionary terminology.
 - q) Decriminalize libel and ensure adequate protection by civil defamation laws without harsh punishment, such as imprisonment or a criminal record.
 - r) Limit rules restricting criticism of institutions of the administration of justice by applying them only to cases where this is strictly required to maintain the authority and/or impartiality of the system.
 - s) Abolish rules prohibiting statements about parliament and its members, ensuring that parliament is not given the power to prosecute in this area.
 - t) Establish clear rules of law prohibiting obscene materials based on the idea of harm, rather than mere offensiveness or moral values.
 - u) Abolish any form of prior censorship of media.
 - v) Amend Article 47 of the Electronic Transactions Act to remove the provisions relating to content restrictions.
 - w) Ensure that judicial orders are required for the banning and blocking of websites.
 - x) Enact a data protection law for communication over the internet to, among other things, end blanket access of security agencies to the personal communications of the public and to require them to obtain court orders to do so.
 - y) Review registration requirements on ISPs and make them compatible with international standards.



Chapter 2

Plurality and diversity of media,
a level economic playing field
and transparency of ownership



KEY INDICATORS

A. Media concentration

- 2.1 State takes positive measures to promote pluralist media
- 2.2 State ensures compliance with measures to promote pluralist media

B. A diverse mix of public, private and community media

- 2.3 State actively promotes a diverse mix of public, private and community media
- 2.4 Independent and transparent regulatory system
- 2.5 State and CSOs actively promote development of community media

C. Licensing and spectrum allocation

- 2.6 State plan for spectrum allocation ensures optimal use for the public interest
- 2.7 State plan for spectrum allocation promotes diversity of ownership and content
- 2.8 Independent and transparent regulatory system

D. Taxation and business regulation

- 2.9 Taxation and business regulation

E. Advertising

- 2.10 State does not discriminate through advertising policy
- 2.11 Effective regulation governing advertising

Chapter 2

Plurality and diversity of media, a level economic playing field and transparency of ownership

This chapter assesses the level of plurality and diversity of media, the provisions in place to create a level economic playing field and the transparency of ownership. In particular, it analyzes the situation as regards media concentration, discusses the measures in place for licensing and spectrum allocation, and reviews the existing taxation and business regulations as well as advertising regulations and practices.

A. Media concentration

Indicator 2.1

State takes positive measures to promote pluralist media

Media ownership in Nepal is diverse in terms of numbers, types of media and ownership. Nepal has newspapers, magazines, radio stations, television channels, a news agency, cinemas, and an expanding online media. These media are variously owned by the government, private sector businesses and communities.

Such diversity became possible after 1990, when Nepal promulgated a democratic constitution that removed most of the controls on media and freedom of expression. The National Communication Policy 1992 opened up broadcasting to the private sector. The government began licensing independent broadcasters after the enactment of a new law: first television in 1993 and then radio in 1997. Some media organizations own and operate both television and radio stations. The state and privately owned Kantipur group own all three types of media – television, radio and newspapers.

Nepal has no clear laws on media ownership, hence there is no mechanism to address the issue of media concentration. Commercial interest of media ownership has now led media owners to control and influence news media content that was previously controlled by the state. Therefore, transparency within the media industry is essential to safeguard public interests⁷⁴.

Nepali media is owned by the central government, private individuals who often double as editors and publishers, companies, non-profit companies, community groups organized as NGOs or cooperatives, and by elected local government bodies (village development committees and municipalities). Community ownership of media, however, is not recognized by law and community media is subject to the same laws as other media.

Until 1997, Nepal had only one state radio station broadcasting in shortwave, medium wave and FM frequencies. In 2011, Nepal had 335 independent FM radio stations run either by private companies or community groups, including those run by NGOs, cooperatives or local government units.

By 2012, Nepal had issued 51 licences for television stations. Structurally, the broadcast media is more organized: the institutions owning them are licensed either as companies, NGOs, cooperatives, or local government bodies. Newspapers, meanwhile, are often registered by individuals, while only the larger ones are registered as private companies. The Association of Community Radio Broadcasters (ACORAB) had a list of 214 community radio stations in early 2012.

Nepal has no rules for foreign ownership of media. One newspaper company is said to have Indian ownership. The High Level Media Commission (HLMC) formed in 2006 recommended allowing 49 per cent foreign ownership of newspapers and other media⁷⁵. It also recommended that the government classify radio stations into commercial, community and public service categories, as well as reserving frequencies for allocation to different categories of broadcasters.

Generally, the media is pluralistic in terms of diverse content and ownership pattern, but in the absence of ownership data it is difficult to properly assess the situation. FM stations are diverse in terms of ownership, as licenses were issued to differently constituted organizations and private groups but they were not licensed in different categories.

Indicator 2.2

State ensures compliance with measures to promote pluralist media

Nepal has no laws on media ownership. Therefore, the issue of media concentration is not dealt with. Moreover, few studies have been conducted into the relationships between editorial content and media ownership.

⁷⁵ http://www.moic.gov.np/reports/final_report_of_hlmac.pdf

B. A diverse mix of public, private and community media

Indicator 2.3

State actively promotes a diverse mix of public, private and community media

Nepal does not have legal, administrative and financial mechanisms to support media diversity, including community media and broadcasting in local languages.

Many of the provisions of the Long-term Policy on the Information and Communication Sector 2003 are yet to be implemented, partly as a result of the country's unstable political environment. Successive governments have talked about converting the state-run media into public service media, but little work has been conducted.

The long-term policy proposed restructuring the ownership of the state-run Rastriya Samachar Samiti (national news agency) and Gorkhapatra Corporation (Newspaper Corporation) by opening them up to private investment, but this has not yet happened.⁷⁶ It also recommended the establishment of a National Broadcasting Agency with the participation of the private sector, but this never materialized. It also said Radio Nepal and Nepal Television (state broadcasters) would be developed as 'national' broadcasting organizations, but did not address the independence of these institutions. Finally, it included a policy on advertising, but this did not come with action plans and has, therefore, remained largely unimplemented.

Pluralism in Nepali media – particularly print and radio broadcasting – was not a product of public policy, but rather something resulting from the enthusiasm of and initiative taken by different CSOs, private enterprises and investors. Stakeholders in the field of broadcasting have requested the government to prepare a framework of regulation that would recognize diverse types of broadcasters – public, private and community – as well as addressing ownership and operational issues.

Indicator 2.4

Independent and transparent regulatory system

Nepal does not have an independent and transparent regulatory system for broadcasting. The government has multiple roles as a broadcaster, a licensing agency, a regulator and operator of state-run media – a situation where interests could easily conflict. Even though the Communication Policy of 1992 recommended opening up broadcasting to the private sector, the government first began FM broadcasting through the state-owned Radio Nepal in 1995, without a proper licence. It sold block time to private broadcasters to shore up its revenue, only licensing the first independent radio station (Radio Sagarmatha) in 1997.

While the government began licensing independent radio stations thereafter, the process has largely been a prerogative of the MoIC, which also has the mandate to impose conditions on independent stations, which it has done selectively.

Not all applicants for radio licenses were granted permission to broadcast in a similar manner⁷⁷. All licenses issued so far require stations to have ‘informative, educational and musical programmes’. During the state of emergency in 2005, the government invoked this clause, interpreting it to prevent radio stations from broadcasting news.

Since licensing has been the prerogative of the government, there is no publicly available criteria for determining the procedures, particularly in situations where there are competing interests. The government has not publicly discussed plans for allocating spectrum to broadcasters in a fair and equitable manner. Broadcast licenses are served on a first-come-first-served basis and the process is not transparent.

Since the spectrum was not planned before licensing, there were no limits; most of the licenses were issued based on who applied first, and the ability of the applicant to convince authorities to make a decision in his or her favour.

However, the fact that in some cases those who applied before others did not receive licenses also suggests that the process was ad hoc and influenced by other factors, particularly the political influence of applicants. The MoIC, lists all licensed stations on its website, but the stations have not been categorized in terms of diversity, type of station, content type or focus, which makes it almost impossible to determine if there

⁷⁷ Other issues such as political influence also determined who was licensed and who was not.

was a procedure for promoting diversity in the decision-making process. Almost all available frequencies in Kathmandu Valley were awarded in 2009, and because there is no term for licenses, this makes it practically impossible for another broadcaster to compete to provide better services.⁷⁸

Case 11

In June 2012 the government dismissed a senior official at Nepal Television for having broadcast an opposition protest live, even though the government station had also broadcast a rally of the ruling party some days later.⁷⁹ Further, the government also asked an independent radio station to stop broadcasting a programme after it received a complaint on the government hotline (Hello Sarkar) that said the programme was not impartial. Following orders from the prime minister's office, the MoIC wrote a letter to that effect to the station.⁸⁰

The licensing procedures are fairly transparent and detailed in the National Broadcasting Rules 1995 for stations of different transmitter capacities. Responding to demands from radio stations, the government has made some changes in fee structures for different types of licenses based on the capacity of transmitters.

However, in the absence of adequate legal protections for pluralism, free expression and freedom of information, there have been periods in the past where the government has resorted to using existing laws (Print and Publication Act, National Broadcasting Act) to impose controls on the media. While some editors were jailed during the conflict years for media content, the most severe controls were in place during the states of emergency, declared in 2001 and 2005.

Indicator 2.5

State and CSOs actively promote development of community media

Nepali laws and policies do not actively promote community media, as Nepal does not distinguish between different types of broadcasters. In addition, there are no specific reservations of frequency spectrum for community broadcasters. Even though the number of community broadcasters is high, this diversity did not result from state

⁷⁸ Binod Bhattarai. Ghanendra Ojha. 2010. What's on Air? Community Radio Support Centre. Nepal Forum of Environmental Journalists. Kathmandu. Page 11

⁷⁹ FNJ statement Asar 4 (June 18)

⁸⁰ This issue was raised in another statement by FNJ and officials at the stations confirmed the news reports that had appeared in different media.

intervention, but was driven more by the enthusiasm of Nepali broadcasters supported by CSOs. UNESCO was instrumental in assisting the establishment of the first independent community radios and has continued to support training, capacity building and assessments.

Nepali community radio stations pushed their way through and now outnumber commercial stations as there are 234 community radios among the 360 on the air. Community radio stations viewed the pricing structure as discriminatory, because their incomes were significantly lower than those of private stations and also because they do not operate to pursue commercial interests.

The government revised the license fees in response to the demands of community stations and CSOs after the political changes of 2006. The new license fee structure supports diversity. For example, an FM broadcaster wanting to run a small station has to pay 1000 rupees (approximately 10 US dollars) as a license fee, while a radio station broadcasting with a 20 to 50 watt transmitter would have to pay twice as much. Similarly, the license fee for stations broadcasting at 250-500 watts is 300,000 rupees (approximately 3,000 US dollars), while for stations with 500-1000 watt transmitters it was 750,000 rupees (approximately 7,500 US dollars) and for stations broadcasting with 1000-2000 watt transmitters 1,000,000 rupees (approximately 10,000 US dollars).

Community FM radio stations in Nepal can be broadly categorized as follows: those run by NGOs, by cooperatives and by local government bodies. There are also some stations that are run by academic institutions. They have different governance models, depending on the nature of the organization. For example, a station run by an NGO could have a board at the parent organization and not necessarily at the radio station. Some NGOs set up only to run radio stations have a board of directors that looks after station affairs. However, the roles of directors are not uniform across all of these stations, as was demonstrated in the pilot studies conducted in the Community Radio Performance Assessment System (CR-PAS).⁸¹ For academic institutions, the boards set broad policies, while editorial decisions were taken by faculty and student bodies. Similarly, the bodies taking decisions on behalf of local governments are elected representatives, while staff could be running the station but have no representation in the decision-making body⁸².

⁸¹ CRSC/NEFEJ. 2011. Community MHz: Assessing community radio performance in Nepal. A pilot assessment of 15 stations.

⁸² Nepal has not had an election of local bodies after 2002. So in practice, the Secretary at these bodies (a government appointee) is the authority that takes decisions.

In 2011, the Community Radio Support Centre (CRSC) assessed fifteen stations using its CR-PAS, based on a set of seven composites, covering sixty indicators including participation, ownership and governance. The indicators included questions on community membership, governing boards reflecting community composition, consultation processes to set up membership fees, public hearings, clear volunteer policies and mechanisms for receiving community feedback. None of the fifteen stations scored any points on deciding on fees with community consultations, while eight stations did not have a policy to mobilize volunteers and many stations had not developed mechanisms for community involvement in station management⁸³.

This has important implications in terms of community involvement and sustainability of a station. Many CSOs and donor organizations – including UNESCO – continue to provide support to community radio in Nepal. Among them, the CRSC/Nepal Forum of Environmental Journalists was at the forefront of efforts to support stations, from licensing to operations. The CR-PAS assessment was a part of its ongoing efforts to assist the stations in organization development and sustainability. ACORAB performs a similar function, but is more geared towards advocacy and lobbying on behalf of its constituents.

In August 2012, the government had licensed at least four television stations that had community orientation. Three licensees had the word ‘community’ reflected in their name, while the fourth was licensed as a cooperative.

C. Licensing and spectrum allocation

Indicator 2.6

State plan for spectrum allocation ensures optimal use for the public interest

According to a report by the MoIC published in June 2013, Nepal had fourteen terrestrial analogue and seventeen satellite broadcasting TV stations. The state broadcaster, Nepal Television (NTV), had nineteen transmitting stations. Furthermore, there were seven licenses for direct to home operations, of which one licensee was operational. There were approximately 5.1 million households with TV sets. Nepal had four medium

⁸³ CRSC/NEFEJ. 2011. Community MHz: Assessing community radio performances in Nepal. A pilot assessment of 15 stations. Pages 54-56.

wave transmitting radio stations, one 100 kW shortwave transmitter (covering the entire country) and 449 FM transmitters. Among the FM transmitters, 46 had power of 1kW or above and one (operated by a private broadcaster) had 10kW power. The MoIC data said there were 768 TV cable operators. A 2012 ITU report stated that Nepal did not have a proper spectrum allocation plan; the existing one dated back to 2004.

According to the National Frequency Plan 2004, the band 470 to 862 has been allocated for fixed, mobile and broadcast radio transmissions, while lower frequencies up to 540 MHz have already been assigned to NTV and other private terrestrial television broadcasters⁸⁴. The ITU report states that countries around the world are trying to vacate the 700 MHz band in order to fulfill the demands of future technologies and therefore it is high time for Nepal to revise its policy to allocate frequencies, including 700 MHz, in an efficient manner.

Furthermore, because licensing rules in Nepal do not include term lengths, license holders can continue to occupy the frequencies as long as they renew their license on time, excluding those who may want to provide better programming. The ITU report mentions that the 'first-come-first-served' approach of frequency allocation has resulted in misuse of the frequency spectrum, and recommends revisions.

Finally, there is another rule (Rule 21 a) that allows the government to exempt state-owned broadcasting institutions from license, broadcasting or distribution fees, which is against the spirit of diversity does not assist in creating a level playing field for all broadcasters.

Indicator 2.7

State plan for spectrum allocation promotes diversity of ownership and content

The media policy presently being prepared by the government needs to be thoroughly discussed with stakeholders, in order to better promote diversity of ownership and content.

The fact that a station could use state-owned Radio Nepal's news bulletins free of cost – as a license condition – was beneficial to new stations, which were established when news on the state broadcaster was popular. The broadcasting law allows the government

⁸⁴ ITU. February 2012. Roadmap for the transition from analogue to digital terrestrial television broadcasting in Nepal. Report. Page 64

to require broadcasters to carry specific messages during natural calamities and other emergencies. There are no ‘must-carry’ obligations on satellite and cable carriers that one can discern from public documents. If they exist as individual license conditions, it was difficult to access this information as part of this assessment. Broadcast regulations require stations to provide one-quarter of their time, or one channel out of four, to the government for carrying special messages in times of natural calamities.

The government set up a frequency recommendation working group in 2010 to review the spectrum and the existing National Spectrum Plan (NSP). According to the International Telecommunications Union (ITU), so far three VHF channels and five UHF channels have been used for TV broadcasting, and Nepal has allocated an additional eight UHF channels for digital broadcasting in simulcast mode, thus allowing a total of 13 UHF channels. Public consultations on this plan have not been carried out, which ITU said was needed for revising the NSP.⁸⁵

As regards the multiplex that digital terrestrial broadcasting allows – having multiple channels broadcasting simultaneously from one transmitter – who owns it and how it is to be used is also yet to be defined. The ITU report said that there would initially be one multiplex owned by the regulator and operated by Nepal Television, the state broadcaster, with the possibility that major private sector companies could also be made multiplex owners at a later date.

Indicator 2.8

Independent and transparent regulatory system

Broadcasters, both TV and radio, have to first register as an organization or company at the Chief District Office (CDO) and then apply for renewal within six months. If they do not apply for renewal as required, their license is cancelled. More than fifty radio licenses have been cancelled under the provision and, once cancelled, the broadcasters are required to apply for a new license, and pay all applicable fees again. This provision is a problem for stations located outside Kathmandu, as their representatives have to travel to the capital to renew their licenses.

As mentioned earlier, the government is the sole regulator of broadcasting – no other independent mechanism exists. Even though the application process and formats are fairly transparent, there are no published rules for selection, and therefore there is no

guarantee that all applicants will be treated equally based on publicly-known criteria. There is no practice of publishing the criteria for evaluating competing license applications.

D. Taxation and business regulation

Indicator 2.9

Taxation and business regulation

There are no tax and business regulations aimed at encouraging media development in a non-discriminatory manner, except the state subsidy on imports of newsprint. The state no longer subsidizes equipment used by media, as it did in the 1990s. There are also no differential tax measures for media companies. In the past, many of the facilities and subsidies extended to the print media were not available to broadcasters; a policy that the government has now begun changing.

Broadcasters still have to pay a royalty fee of 2 per cent of their total transactions, or 10 per cent of gross profit – a fee that does not apply to other media. The Communication Corporation Act 1972 grants the state broadcaster, NTV, exemption from local taxes on its transactions (Section 31 a), which is a form of undue favour and is against the spirit of diversity.

E. Advertising

Indicator 2.10

State does not discriminate through advertising policy

Until 2009, the state did discriminate against broadcasters, particularly FM stations, through its advertising policy. Previously, the DoI provided Public Service Advertisements (PSA) to the print media and not to broadcasters, but began providing PSAs to broadcasters after 2010. The amount of total PSAs to be provided by state to broadcasters was fixed at 20 million rupees (approximately 200,000 US dollars)⁸⁶ per year.

⁸⁶ Interview with Raghu Mainali on 28 August 2012.

In 2010/11, the DOI allocated 80 million rupees (approximately 800,000 US dollars) to the print media, and the distribution was based on classifications made by the PCN. The PSAs for broadcasters are handled by the MoIC, and represent just one quarter of the amount allocated to print media. The government provides budgetary grants to state-run broadcasters (both Nepal Television and Radio Nepal), which also carry advertising. Such an arrangement gives state broadcasters a competitive edge for the pricing of advertisements, although there are no specific studies on advertisement pricing and comparable viewership surveys⁸⁷ to make any conclusions on whether state media are undercutting private broadcasters because they receive government subsidies. A comparison of the advertisement rates of Kantipur TV and NTV showed that the latter's rates for advertising during news programmes are slightly lower than those of Kantipur for the segments before the news and headlines, while other rates of NTV are higher.⁸⁸ There are also no studies on the proportion of government PSAs among private and state broadcasters. Furthermore, government agencies can provide advertisements to state broadcasters without organizing a bidding process, while they need to make bids for advertising in the private media.

One major, yet controversial, function of the PCN has been the classification of newspapers based on which ones the government allots public service advertisements to. The PCN classifies newspapers into different categories that define what volume of government-paid advertisements they will receive. The classification, however, is neither transparent nor participatory, and categories have been changed at whim.

In July 2012, the PCN said it had revised its classification rules and would no longer include larger newspapers with over 20 million rupees in investments and over 100 full-time staff among the recipients of government PSAs. It added that the new classification would include newspapers published in remote regions by women, Dalit (formerly untouchable groups) and Jajanati (indigenous peoples) editors. It also said it would not classify 'mouthpieces' of political parties and their 'brother' organizations.⁸⁹ While the intention to support media in less developed regions is commendable, the decision to exclude larger newspapers does not serve to ensure a fair distribution of public advertising.

There are also state rules that affect the allocation of advertisements to print media, and favour the larger dailies. For example, finance regulations state that tender notices have to be published in national daily newspapers. Moreover, the distribution of

⁸⁷ Proprietary data on audiences is not available in the public sphere

⁸⁸ Based on a comparison of rates provided by a Kathmandu-based advertising company on 16 August 2012.

⁸⁹ <http://mediamanch.net/profiles/blogs/6389732:BlogPost:17031>

advertisements of public corporations is also often influenced by the political party in power, which tends to reward its supporters, rather than ensure a fair allocation of government advertising while also considering the audiences and reach of different media. Advertising by local government bodies is not transparent either.

Indicator 2.11

Effective regulation governing advertising

There is no separate law on advertising. There have been demands made by the media on the government to develop a policy on state-funded advertisements, but this has not yet been done. The industry also wishes to have a separate law on advertising.⁹⁰

Certain laws exist, however, that can be interpreted as governing advertising, for example, Section 13 of the Broadcasting Rules, has provisions that allow the government to fix the advertising fees charged by broadcasters, but these have not been implemented. However, the very existence of this clause clashes with the principle of free enterprise and competition. There are other regulations that influence advertising such as those included in the Broadcasting Act and regulations, and the mandatory provisions on government agencies to advertise procurement and vacancies.

The Advertising (Agency) Association of Nepal was set up in 1990. Its declared purpose 'is to protect rights, promote mutual cooperation, and enhance professional ethics of the advertising fraternity'⁹¹. However, while it claims to work towards enhancing professional ethics in advertising, which can be viewed as a form of self-regulation, this is not reflected in its published objectives, which are largely about protecting industry interests.

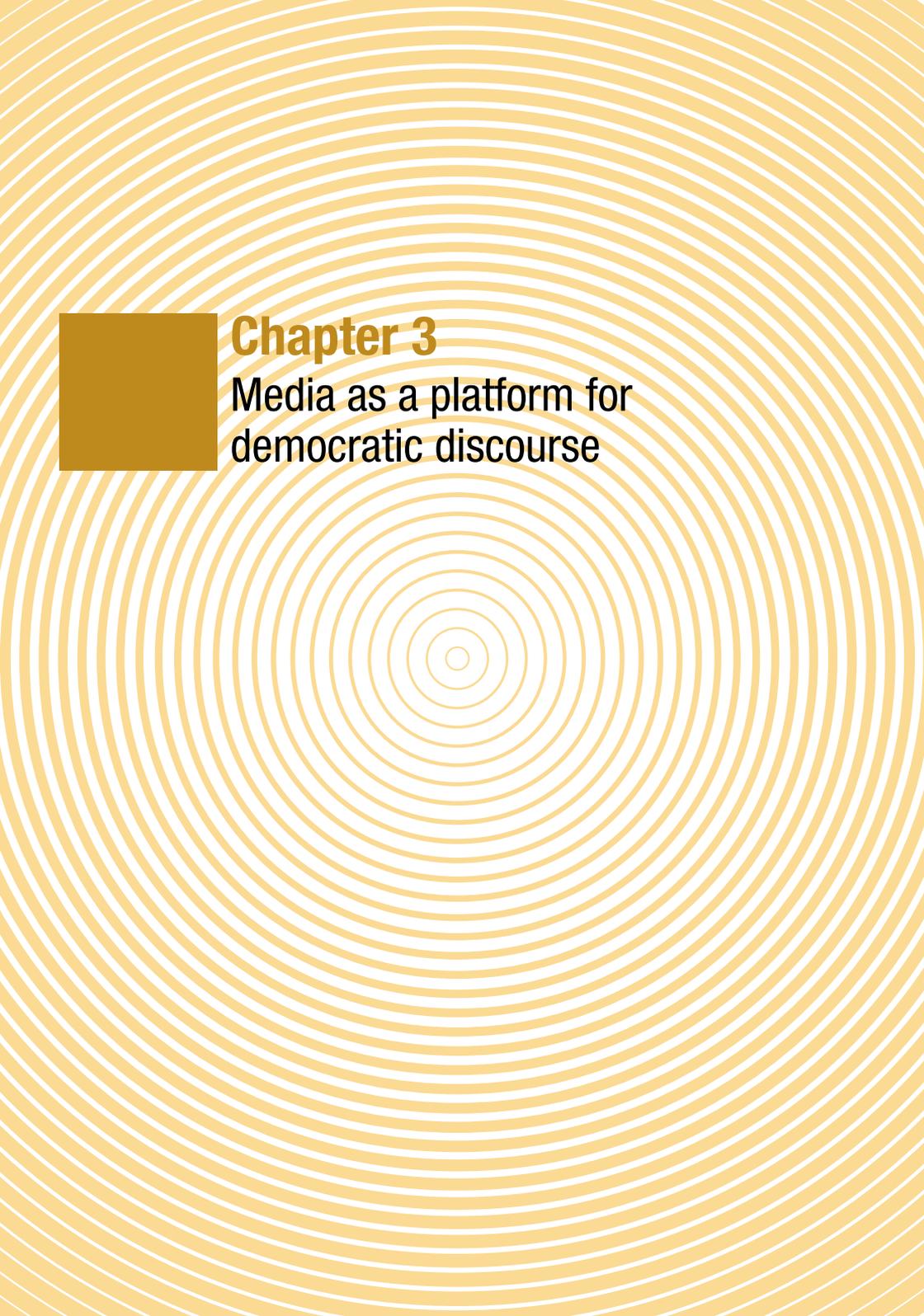
⁹⁰ "Ad industry now requires an independent law and regulations to manage." Interview of Raj Kumar Bhattarai. President Advertising Association of Nepal in Advertising. Vol. 4 Year 2011. Page 13.

⁹¹ <http://www.adnepal.org.np/contents.php?mainid=308> (viewed 9 July 2012)

Recommendations

- a) Conduct a study on media ownership and its impact on policy formulation and legislation that fosters greater pluralism and diversity in media.
- b) Prepare a frequency management plan and undertake steps to classify broadcasters and allocate frequencies (as recommended by the HLMC) with the participation of stakeholders.
- c) Enact a new broadcasting law with adequate differentiation between types of broadcasting (private, community and public service).
- d) Review the licensing system and make it transparent, fair and equitable to all broadcasters.
- e) Encourage media to declare the political affiliations of their owners and editors where applicable.
- f) Formulate, through a consultative process, an information and communication policy in the context of the social and political changes underway in Nepal, with a particular focus on ensuring a diverse mix of public, private and community media.
- g) Transform state broadcast media into Public Service Broadcasters (PSBs), and end government ownership of newspapers and news agencies through a consultative process.
- h) Recognize the differentiation among broadcasters, particularly in radio (public, private and community) and use these categories for reserving frequencies and allocating spectrum.
- i) Support media with a public service remit (particularly public and community media) in a fair, transparent and equitable manner.
- j) Establish an independent regulator for handling licensing, and ensure that the body is free from political and commercial interference by ensuring proportional participation of all stakeholders.
- k) Carry out an assessment of all community radio stations in Nepal to better understand their operational status for directing future support. The assessment can also result in information for strengthening lobbying and advocacy for policy related to community stations.
- l) Explore the possibility of using the telecommunications service charge the government collects on every phone bill for supporting community broadcasters that meet the requirements of an indicator-set used to measure their performance.
- m) Assess the status of community TV channels in terms of their structure and broadcast plans to explore possible support to start-ups that are geared towards serving specific local communities.

- n) Prepare a spectrum allocation plan in consultation with media stakeholders.
- o) Review the frequency allocation policy to devise a mechanism that can allow for better serving the public interest to ensure that it promotes diversity of ownership and content.
- p) Review the National Broadcasting Act and licensing rules to include clauses on license terms and open up licensing to all aspirants at the end of the license period.
- q) Use tax measures to support media serving communities and larger public interest in terms of programming content and ownership (community-run media and public service media) based on an independent evaluation of their content, membership and organization structures.
- r) Ensure that PSA targeting takes into account penetration of different media.
- s) Amend Section 13 of the Broadcasting Rules that allows the government to fix advertisement fees because it contravenes the spirit of free enterprise and independence of the media.



Chapter 3

Media as a platform for
democratic discourse



KEY INDICATORS

A. Media Reflects Diversity Of Society

- 3.1 The media – public, private and community-based – serve the needs of different groups of the society such as women, indigenous groups, Madhesi, Dalit and marginalized groups.
- 3.2 Media organizations reflect social diversity through their employment practices.

B. Public Service Broadcasting Model

- 3.3 The goals of public service broadcasting are legally defined and guaranteed
- 3.4 The operations of public service broadcasters do not experience discrimination in any field; Since Nepal does not have any real public service broadcasters at present.
- 3.5 Independent and transparent system of governance
- 3.6 PSBs engage with the public and CSOs

C. Media self-regulation

- 3.7 Print and broadcast media have effective mechanisms for self-regulation
- 3.8 Media displays a culture of self-regulation

D. Requirements for fairness and impartiality

- 3.9 Effective broadcasting code setting out requirements for fairness and impartiality
- 3.10 Effective enforcement of broadcasting code

E. Levels of public trust and confidence in the media

- 3.11 The public displays high levels of trust and confidence in the media
- 3.12 Media organizations are responsive to public perceptions of their work

F. Safety of journalists

- 3.13 Journalists, associated media personnel and media organizations can practice their profession in safety
- 3.14 Media practice is not harmed by a climate of insecurity

Chapter 3

Media as a platform for democratic discourse

This chapter analyzes the capacity of Nepal's media to serve as a platform for democratic discourse. It assesses how media reflects the diversity of society, looks at the status of public service broadcasting in Nepal, analyzes the media's capacity for self-regulation and assesses how far media is able to respond to the requirements for fairness and impartiality. The chapter also explores the levels of public trust and confidence in the media and looks at the safety of journalists in Nepal.

A. Media Reflects Diversity Of Society

Indicator 3.1

The media – public, private and community-based – serve the needs of different groups of the society such as women, indigenous groups, Madhesi, Dalit and marginalized groups.

Nepal's media have evolved in a way that addresses the needs of diverse sections of society, although this is not a result of public policy. There are newspapers in various languages and FM stations broadcast programming in different languages and targeting different social groups. The government-owned newspaper, Gorkhapatra daily, has been providing space to publish content in different languages, and different languages groups like Limbu, Rai, Tamang, Tharu, Gurung etc. have been publishing newspapers in their own language⁹². Similarly, regional groups like Madhesi have been publishing newspapers in their own languages, like Maithili, Bhojpuri etc. Similarly, most of the FM stations have been producing programmes in the local languages of their respective areas. However, in the absence of an independent regulator, market research companies or NGOs dedicated to continuously monitoring content, it is almost impossible to quantify the extent of the coverage. The existing laws do not categorically

⁹² Tamang, Pratik Ngesur. 2006. Tamang sanchar samuha mathi ek dristhi. Media Adhyan journal 1, Deveraj Humagain, Pratyus Onta, Shekhar Parajuli, Komal Bhatta, Krishna Adhikari eds. Pages 207-224, Kathmandu, Martin Chautari, and Sarbahari 2007 Sarbahari, Krishnaraj. 2007. Tharu patrapatrikako bigat ra batraman. Media Adhyan Journal 2, Devraj Humagain, Pratyus Onta, Shekhar Parajuli, Komal Bhatta eds. 1-33 Pg, Martin Chautari, Kathmandu.

require media to provide content for specific social groups, nor are there incentives for producing content in different languages. An assessment carried out by UNDP in 2009 found that indigenous peoples in Nepal felt that the media did not adequately meet their needs and concerns (the coverage was ‘low and superficial’) and said that there were issues of access to media and media jobs.⁹³

The Broadcasting Act however, includes the term ‘educational’ programming, albeit without definition. Rule 8 (d, e, and f) of the Broadcasting Act requires broadcasters to use one quarter of broadcasting time for educational content produced by government-owned institutions. This clause is problematic because requiring independent media to broadcast content produced by state-run institutions can be interpreted as an attempt to favour the voice of government, irrespective of audiences preferences. Further, such a clause also infringes upon independent decision-making in media institutions.

Indicator 3.2

Media organizations reflect social diversity through their employment practices.

According to the national census conducted in 2011, there are over 125 ethnic, caste and religious groups in Nepal, with none of the groups accounting for over 16.6 per cent of the population. Among them the ‘dominant’ groups made up 28.77 per cent of the population, indigenous people about 37.2 per cent, and Dalits, 13 per cent. There is also strong religious diversity, with Hindus comprising 80.8 per cent of the total population.⁹⁴

The 2011 census reported 123 different languages in Nepal.⁹⁵ However, until 1990, Nepali was the only official language and the language used by most media. The government began broadcasting in other languages after 1992, opening up job opportunities for speakers of languages other than Nepali. In 2011 Radio Nepal was broadcasting in Magar, Gurung, Tamang, Rai Bantawa, Limbu, Newari, Bhojpuri, Tharu East and Tharu West, Avadhi, Sherpa, Maithili, Kham Magar, Rana Tharu and Doteli besides Sanskrit, Nepali, English, Hindi and Urdu languages. There were only a few people from groups whose mother tongue was not Nepali in the media, because media jobs required proficiency in Nepali, which was difficult for people from groups with other mother

⁹³ UNDP, CFSC. UNDEF. 2009. Communication for empowerment in Nepal: An assessment of communication and media needs among indigenous peoples. Page 49

⁹⁴ Nepal Population Report-2011, Government of Nepal, Central Bureau of Statistics, published in 2013

⁹⁵ Nepal Population Report-2011, Government of Nepal, Central Bureau of Statistics, published in 2013

tongues. According to the census, only 44.6 per cent of the population considers Nepali its mother tongue, while 11.7 per cent uses Maithali, 6 per cent Bhojpuri, 5.8 per cent Tharu, 5.1 per cent Tamang, and 3.2 per cent Newari. With the growth in numbers of publications in languages other than Nepali, there are greater opportunities for people proficient in other languages to seek media jobs. However, most of these jobs are in small newspapers that barely pay expenses – a situation that has remained largely unchanged. According to the PCN, there were about 20 newspapers published in indigenous languages in 2011.⁹⁶

The Interim Constitution declares the state's commitment to inclusion and envisages quotas for candidates from excluded groups in public services and state institutions. The commitment includes 33 per cent representation of women in all state agencies, including state media. This policy has begun to have an effect on private sector employers who have started hiring more members from excluded groups. However, the lack of adequate capacity building programmes for members of these groups tends to limit the progression of their media careers and their ability to influence content and policies. Numerically, most media companies are still dominated by employees coming from 'dominant' groups. Representation of women in the media is at 24 per cent on average.⁹⁷ The data, however, does not provide a true picture of the situation in the media outside Kathmandu. An earlier report by Sancharika Samuha (2005) said female journalists made up 12 per cent of the workforce⁹⁸.

There are efforts to make the Nepali media more inclusive, in particular with regard to women, Dalits⁹⁹, indigenous people, and people from the plains that have begun to identify themselves as Madhesi¹⁰⁰. However, the coverage of excluded groups remains low, largely because they continue to be underrepresented in the media. A study revealed that, between 14 April 2010 and 13 April 2011, issues related to Dalits were reported from only fifty-nine districts in seven major daily newspapers, even though caste-based discrimination and untouchability is widespread across all seventy-five districts.¹⁰¹

⁹⁶ Media Foundation Nepal. 2012. Media and Nepali Public: Survey assessments of media capacity, credibility and literacy. Final Draft Report. Page 20.

⁹⁷ Sancharika Samuha. 2012. Kathmandu upatyakama karyarat mahila sancharkarmiko abastha. Research Report. Page 18

⁹⁸ The Status of women journalists in Kathmandu Valley

⁹⁹ Dalit community has been politically excluded economically deprived and socially discriminated and treated as untouchable in the society. Dalit have 13 percent population and scattered all over the country (JB, Biswokarma. Nepali Mediama Dalit Bisayabastu ra sahabhagita, Martin Chautari: Kathmandu)

¹⁰⁰ It includes both caste and ethnic groups.

¹⁰¹ Kundan Aryal, Dimensions of Discrimination against Dalit, Kathmandu: NNDSWO, 2011. Pages 37-38.

In general, the media tends to be dominated by better educated, urban residents. District-based reporters work either as stringers or in part-time positions, taking up other vocations to make ends meet. Even though data disaggregated by gender, caste and ethnicity is not available, general observation suggests that just as there are fewer women than men working as journalists, there are also fewer journalists from traditionally excluded groups (Dalits, Janajatis, religious minorities, etc.). This could be a result of inequalities in access to education, among others, as well as of the need to be proficient in both the Nepali and English languages to join the media. The language used by the majority of media – Nepali – remains a barrier in access for journalists who are from communities with mother tongues other than Nepali.

According to a study conducted by ACORAB in 2010, men from the Brahmin and Chhetri castes dominate the community media. The study noted that 76 per cent of the board and management committee members of the stations covered in the study were men, with very few women in key positions (chairperson, vice chairperson, secretary or treasurer).¹⁰² However, owners of major national-level media belong to many of the excluded groups, while editors and senior journalists tend to be from the so-called ‘privileged’ groups.

During the consultations, stakeholders said the diversity of Nepali society is yet to be fully reflected in media both in terms of content and employment. Similarly, Nepal’s linguistic diversity is also yet to be adequately reflected in media.

B. Public Service Broadcasting Model

Indicator 3.3

The goals of public service broadcasting are legally defined and guaranteed

The government has tried to equate public service broadcasting with state-run broadcasting and therefore there is no law specifying the requirements of a PSB or defining a clear remit or mandate for it. Most ruling parties have tended to use the State-run media (including newspapers) to serve their interests, even though the media are funded through public resources. There are separate acts governing Radio Nepal

¹⁰² Association of Community Radio Broadcasters. 2010. Gender Equality and Social Inclusion in Community Radios in Nepal.

and NTV. In September 2009, the government's investment as equity in Nepal Television was over 1.41 billion rupees. The same year the government provided NTV with about 15 per cent of its annual budget of 351.8 rupees.¹⁰³ NTV was established under the Communication Corporations Act 1972 while Radio Nepal, since 17 August 1984, has been operating under the Development Board Act.

Indicator 3.4

The operations of public service broadcasters do not experience discrimination in any field; Nepal does not have any real public service broadcasters at present.

Case 12

A UNESCO project on public service broadcasting carried out by the Freedom Forum in 2011 outlined policies and recommended a bill for PSBs. Its main recommendation was transforming both of Nepal's state broadcasters, Radio Nepal and NTV, into independent PSBs, with clear legal mandates and a budget approved by parliament. It also recommended a PSB authority be formed and that the two agencies be managed by an autonomous body.

Indicator 3.5

Independent and transparent system of governance

Nepal's state-run broadcasters are corporate entities, governed under separate laws¹⁰⁴ or under the Communication Corporations Act. The government appoints their chief executives and their board of directors. Even though NTV is said to be an 'autonomous' corporate entity by law, the same law also requires it to follow government directives. However, the provisions are too broad and could eventually be used to stop the broadcast of programmes, depending on how they are interpreted. Such all-encompassing powers of the state are against the notion of both independence and transparent governance.

The directors of the state-run media function according to the interests of the government (or rather the political parties in government) that appointed them. Even though the Communication Corporations Act allows the corporation to sell shares to employees and the general public, this has not been done and the board of directors

¹⁰³ Nepal Television Karmachari Sangh. September 2009. Teleawaj. Page 3-4

¹⁰⁴ For example the State-run newspaper is run under the Gorkhapatra Corporation Act, Radio Nepal, under the Development Board Act.

representing these two groups are also been appointed by the government. The law also requires the corporation to seek government approval on financial matters.¹⁰⁵ Further, Section 30 of the act gives the government power to issue directives to the corporation that it is expected to follow. Radio Nepal comes under the Development Board Act, under which is an entity created by the government that is also bound by its rules. Development boards are described as ‘corporate’ entities and corporations formed under the Communication Corporations Act are said to be ‘autonomous’.

Many of the directors of these agencies often micro-manage as executive heads, leaving little or no editorial independence for journalists, particularly on political matters. This is not in line with the requirements for PSBs, where governing boards provide the overall accountability mechanism while leaving the day-to-day programming decisions to the management.¹⁰⁶

Indicator 3.6

PSBs engage with the public and CSOs

There is no CSO involvement in state-run broadcasting other than as passive audiences or clients. Given that Nepal does not have a proper PSB, this is one aspect that will need to be taken into account while formulating laws and policies for PSBs. It will be important to look at ways of the involving CSOs with the board of directors. It will also be important to ensure that there are legal requirements for PSBs to engage directly with the public, particularly for feedback and for addressing complaints.

C. Media self-regulation

Indicator 3.7

Print and broadcast media have effective mechanisms for self-regulation

Self-regulatory bodies and news ombudspersons independent of government and commercial interests do not exist in Nepal. Self-regulatory bodies are those that are made

¹⁰⁵ See: Communication Corporation Act 1972.

¹⁰⁶ Toby Mendel. Applying UNESCO’s Media Development Indicators: A practical Guide to Assist Researchers, Page 19

up of journalists and media industry representatives and function independently from the government. An ombudsperson would typically be an individual examining complaints from members of the public who feel they have been treated unfairly by media organizations.

The PCN regulates content of the print media, primarily for enforcing the Code of Journalistic Ethics (2003).¹⁰⁷ The PCN is not solely a self-regulatory body, because its members are appointed by the government. There are other regulatory institutions, such as the DoI, which is involved in the registration of newspapers and in accrediting journalists, and the office of the Chief District Officer (CDO), under the Ministry of Home Affairs. Newspapers are also required to register at the District Administration Office (DAO) and the CDO is empowered to implement a large number of laws, including security laws that have often been invoked to regulate media. The Broadcasting Act gives this power to the government. The Code of Journalistic Ethics applies to all journalists and there have been instances where parties who have felt wronged by broadcasters have filed complaints against them at the PCN. No Nepali media house has a separate code of conduct.

A report by the PCN from 2068 (2010/11) states that it received thirty-seven complaints; thirty-two complaints made 'elsewhere' were also copied to the PCN and twenty-one cases were pointed out by the monitoring unit.¹⁰⁸ While the PCN report narrates the decisions taken, it does not indicate whether or not the media complied with its directives. It also does not elaborate on to whom the other complaints were made. The PCN mostly regulates print media, but has also begun to look into complaints relating to broadcast media. The PCN has the power to 'enforce a code of conduct ...', to advise the government on the development of journalism, to maintain circulation records of newspapers and to take 'necessary actions' on complaints received on the content of newspapers.¹⁰⁹ The actions have included requiring print media to publish corrections and recommending discontinuation of PSAs from the government for media that do not comply.

Case 13

The PCN report lists some of the problems it faces in reinforcing the Code of Journalistic Ethics, which include:

¹⁰⁷ The proper name of the code is 'Code of Journalistic Ethics 2003' and is used as a synonym of a code of conduct. Therefore, no distinctions are made in the analysis even though ethics are generally aspirational, while codes of conduct tend to be enforceable.

¹⁰⁸ Press Council Nepal. Barshik Pratibedhan 2068. (Nepali Year) Page 22

¹⁰⁹ Section 7. Press Council Act 2048 (1992). Functions, duties and powers of the Council. Pages 4-5. (Downloaded from <http://www.lawcommission.gov.np/>.)

- The inability to include broadcast media in monitoring compliance of the Code of Conduct.
- The ineffective monitoring of the Code of Conduct, because of its centralised approach.
- An inability to make a non-controversial classification of newspapers (based on which the distribution of government funded PSAs is decided).
- An inability to enforce sanctions¹¹⁰ on violations of the Code of Journalistic Conduct, and
- An inability to make the content of newspapers inclusive.¹¹¹

The sanctions advocated against newspapers that violate the Code of Conduct are compensation, the issuing of press releases on the credibility of specific newspapers, temporarily barring newspapers from government advertising, cancelling the classification of newspapers and confiscating the press passes of journalists who are working for the newspaper.¹¹²

However, the PCN is not a self-regulatory body in a strict sense. Its objectives also include functions such as ‘to create an appropriate atmosphere for the development of healthy journalism, to prescribe the code of conduct for journalism with a view to prohibiting the misuse of freedom of press, to maintain cordial relations between the Press and Government of Nepal, to maintain public morality and the dignity of citizens, and to make continuous efforts to prohibit the interference with the decencies of press freedom and journalism.’¹¹³ The government nominates and appoints all members, while the chairperson of the Federation of Nepali Journalists (FNJ) is an ex-officio member. The appointees are journalists, publishers, editors, working journalists, and two members are credited with ‘distinguished journalism service’, and another is a ‘literary journalist’¹¹⁴. While the government is required to hold consultations with journalists’ associations for nominating the candidates, these consultations, if conducted at all, have not been transparent or broad-based. The law also has provisions for forming an Audit Bureau of Circulation to audit the circulation of newspapers. This bureau is also appointed by government.

¹¹⁰ The PCN report does not specify the type of sanctions.

¹¹¹ Press Council Nepal. 2068. (Annual Report 2011). Page 107.

¹¹² Ibid. Page 108

¹¹³ Nepal Law Commission. Press Council Act 1992.

¹¹⁴ The term is undefined. The law says this member is recommended ‘by associations concerned with literary journalism’.

ACORAB has a code of conduct that was prepared before the Constituent Election of Nepal April 2008. The code states what community broadcasters should and should not do, but does not specify mechanisms for audiences to register complaints and for the fair hearing and resolution of grievances.

In general, both the PCN and the ACORAB codes have not been adequately defined and communicated widely for greater use by the public. Therefore, they need to be reviewed and updated in a consultative process that is inclusive of all stakeholders. The PCN has stated that it was unable to enforce the Code of Journalistic Conduct without the support of media organizations and journalists.¹¹⁵

Indicator 3.8

Media displays a culture of self-regulation

Nepal's media do not have institutional mechanisms to listen to audiences, respond to reader complaints or apply the 'right of reply'.¹¹⁶ Media in general have tended to view corrections as an obligation rather than an act of showing responsibility for their errors – a conclusion that can be drawn from where they place apologies – usually on the inside pages of their publications, where they could be easily missed. The practice of nominating an ombudsmen has yet to begin in Nepal, and a 'culture of self-regulation' is largely absent.

Readers of print media can respond to published content through letters to the editor, but it is difficult to ascertain if the letters that were sent also included complaints and, if so, how they were addressed. There are no mechanisms for complaining against the broadcast media, other than through written correspondence. The PCN has received some complaints against the broadcast media, but its regulatory role in terms of broadcast content is not clearly specified by law. There is no mechanism for verifying if broadcasters received complaints and how they addressed them.

Generally, editorial values and the integrity of the Nepali media have been rooted in the foundations of professionalism such as 'responsibility', accuracy, truth, honesty, impartiality, fairness and 'good taste'¹¹⁷ – and these values are upheld by the Code of Journalistic Ethics. However, individual media outlets have not made discernable attempts to enforce the code.

¹¹⁵ Barshik Pratibedan 2067 [Annual Report] (Nepali Year), Press Council Nepal, Kathmandu, 2011. Page 5.

¹¹⁶ <http://www.article19.org/pages/en/right-of-reply.html>

¹¹⁷ Charles Fletcher, Nepal Media Guidelines, British Embassy, Nepal Press Institute and Caledoni Media, Kathmandu 2007, p. 13.

Case 14

In the absence of adequate right-of-reply mechanisms, it is not uncommon to see companies or individuals buying advertising space, which they then use to contradict news stories or even publish press releases in the purchased space. While this reflects a conflict of interest in media practice, it is also an indication of the media not providing space for the public to have their grievances redressed. One recent example of this was a quarter-page advertisement by Ruparantaran Nepal, an NGO, that appeared in the Kantipur daily. The advert presented the NGO's position on allegations the media had made against its selection in a bid for carrying out a forestry project, in which it had been accused of improprieties.¹¹⁸

Fairness and impartiality of content is an issue in Nepal. According to a 2006 paper, 'though there are no specific studies, political interests of the owners have generally been reflected in how the newspapers have covered certain political parties, when in government and when outside, in terms of focus, news positioning and space allotted to them, especially after 1990'.¹¹⁹

Case 15

There have been instances in which politicians have tried to use media through means that are in violation of the Code of Journalistic Ethics which have gone largely uninvestigated. In October 2011 some newspapers reported that Rajendra Mahato, Minister for Health, handed out envelopes containing between 5,000 and 8,000 rupees (approximately 50 to 80 US dollars) to journalists with greetings cards during the Dashain festival¹²⁰ According to a news report in Nagarik daily, on 1 October 2011, the reporter and as many as fifty journalists had been invited to the Minister's residence and were handed envelopes with greetings cards and money. The FNJ issued a statement describing the incident as a case of misuse of the government treasury and called on the anti-corruption body to investigate. However, there was no information on any investigation and the minister continued to remain in office.¹²¹

¹¹⁸ Kantipur. 15 August 2012. Page 20

¹¹⁹ Binod Bhattari, Nepal's Media: To Dictatorship and Back, Asia Media Report: A Crisis Within, Inter Press Service Asia-Pacific, Bangkok, 2006, pp.143.

¹²⁰ This is the time when people give cash and blessings to relatives, among others.

¹²¹ Nagarik Daily, Nagad Bandanu "Satta durupayog". 3 October 2011.

D. Requirements for fairness and impartiality

Indicator 3.9

Effective broadcasting code setting out requirements for fairness and impartiality

Nepal has no code for broadcasting, relying only on provisions that are included in law. In the absence of proper codes, in 2005 the government used a clause in the National Broadcasting Act to issue a notice instructing radio stations on what they could and could not broadcast. The government invoked Section 8 (f) and (j), which give it powers to require stations to ‘broadcast only those programmes as directed by the Ministry in times of war or emergency situations,’ and ‘to abide by other terms and conditions as prescribed by the ministry as it deems necessary.’

Indicator 3.10

Effective enforcement of broadcasting code

Even if, as mentioned already, ACORAB has a code of conduct, it does not address specifics in terms of programming and content, or sanctions and the adjudication process. Also, there is no evidence that the code is actually enforced.

E. Levels of public trust and confidence in the media

Indicator 3.11

The public displays high levels of trust and confidence in the media

Despite all the inefficiencies described above, Nepal’s media enjoys a fairly high level of public trust. Opinion surveys carried out in February and June 2011 show a relatively high level of public trust in media compared to other public institutions.¹²² The survey asked 3,000 respondents to rate their trust and confidence in 18 different public institutions on a scale from 1 to 10 (0 = untrustworthy, 10 = very trustworthy). Only respondents who said they knew something about the organizations and institutions were asked to rate them. Some of the comparative scores are reproduced below.

¹²² Sudhindra Sharma and Bak Krishna Khadka. December 2011. Nepal Contemporary Political Situation – VI, VII & VIII: Opinion Poll Report. Interdisciplinary Analysts. Kathmandu. Page 69

Table 3: Public trust in various institutions, Feb and June 2011

Institution/organization	Feb 2011	June 2011
Cabinet (Council of Ministers)	4.0	3.4
Political parties	3.6	2.6
Police	5.4	4.5
Government (civil service)	5.0	4.5
Television	6.7	6.1
Radio	6.1	6.5
Newspapers	7.1	5.7

Source: Interdisciplinary Analysts, 2011

Circumstantial evidence of public participation in media is quite high, with a number of call-in programmes on certain radio stations and TV channels (while the engagement is highest in entertainment programming, there are broadcasters that have popular talk and discussion programmes). Audience engagement is also evident in the large volume of letters that appear in some of the major newspapers. However, there is no data available on matters such as relevance of content to the information needs of the people, access to media and their level of satisfaction with the participation they have in media.

While there is citizen participation in debates and discussions on the broadcast media, the talking heads are often the same politicians and CSOs based in urban centres. Some broadcasters, however, particularly radio stations, have discussion platforms that allow ordinary villagers to express their concerns and hold public officials accountable. One community radio station, Radio Rupakot, has a committee to hear audience grievances and a committee to evaluate programmes with community participation, but its effectiveness could not be determined as part of this study.

Indicator 3.12

Media organizations are responsive to public perceptions of their work

Some media organizations carry out audience surveys, but these are proprietary in nature and are not readily available. Radio Nepal is one such broadcaster.

Many community radio stations participating in the CR-PAS assessment suggested that they received audience mail, phonecalls and feedback through other informal channels. The broadcast media are more participatory in nature, given that they organize debates and discussions both on location and in their studios. Many such programmes have active audience participation. However, the manner in which they select audiences

depends on the station and information on how the public can participate is not readily available. Occasionally some print media companies commission surveys on different issues, but it is unclear whether they have attempted to assess public perceptions of their work.

F. Safety of journalists

Indicator 3.13

Journalists, associated media personnel and media organizations can practice their profession in safety

Despite the restrictive provisions that still remain in law, Nepal's media laws are fairly open and free but the operating environment has often been violent and unsafe for journalists. According to the FNJ, thirty-three journalists and media workers have been killed since 2001, and three have disappeared or their whereabouts are unknown. In most of these cases, investigations have not been carried out or remain incomplete; when investigations have been carried out, those accused have generally not been punished. In many cases, political parties whose cadres were accused of the murders and disappearances have carried out their own 'investigations'. The FNJ also maintains data on all types of threats and harassment against journalists, which have in recent years declined but not stopped.

In 2012/13 the FNJ reported 227 violations of press freedoms: two murders, one disappearance, thirty-two attacks, sixty-five instances of manhandling, twenty-eight threats, eight instances of disruption of publication or broadcast, four instances where newspapers were burnt, ten cases where the free flow of information was obstructed, one case of unlawful dismissal from job, fourteen attacks on media companies and forty-two instances where vehicles owned by the media were vandalised.¹²³ According to the 2010 report of Reporters without Borders,

Media workers in towns and cities believe themselves to be in less danger than their counterparts in rural areas, where armed groups make life difficult. Acts of violence are common in the mountains of the east and south. In the southern region of Terai, media organizations have been partially censored and some are entirely under the

control of local political groups and influential individuals (...). In 2010, several local politicians, including members of the Constituent Assembly, issued death threats against journalists in the region, coercing them to write favourable reports about the activities of their political groups'¹²⁴

The report adds that 'physical assaults are frequent and generally go unpunished, despite the good intentions expressed by the government. Some leaders grant political protection to those behind the threats and assaults.'

Case 16

Some progress was made in 2011, particularly the district court's decision in Dhanusha that sentenced two suspects to life imprisonment for the murder of journalist Uma Singh in Janakpur in January 2009. On May 30, the district court in Bara sentenced Mainekar Giri and Ram Ekwel Sahani to life imprisonment and ordered the seizure of their assets for the kidnapping and murder of Birendra Sah, another journalist killed in 2007. However, one person suspected of plotting the murder, was still absconding.

Indicator 3.14

Media practice is not harmed by a climate of insecurity

Security remains a major challenge in Nepal, particularly as a result of weak governments and protracted political transition. During the conflict years (1996-2006), the media faced attacks from clearly identifiable sources: the insurgents and government security forces. However, since 2006 there has been a rise in multiple interest groups including underground armed groups, sister organizations of political parties, criminal groups, etc. that have also threatened and attacked journalists. Often these groups have attacked media, forcing them to comply with their interests, which have included requiring media to publish their statements in full and without alterations. FNJ monitoring data for 2005-2008 show a total of 1812 instances of attacks, threats or harassment of journalists and media, against only 294 cases for the period 2009-2012.¹²⁵ Most of the attacks took place in 2006 (1139 incidents) and decreased substantially in 2007 (only 441 incidents registered); they have since continued to decline but have not stopped. The high level of attacks in 2006 resulted partly from the political instability and weak law enforcement. While law enforcement has improved, a sense of insecurity still prevails among media

¹²⁴ <http://en.rsfsf.org/report-nepal,72.html>

¹²⁵ FNJ data discussed at the IMM meeting, February 2012.

largely because of the impunity of members and supporters of different political parties that have attacked journalists and media.

The climate of insecurity has led to increased self-censorship, as pointed to in reports from the FNJ¹²⁶ and PCN, 2010/11¹²⁷. The PCN report observes that the criminalization of politics, increasing hooliganism and growing impunity had affected editorial independence and encouraged self-censorship. It added that even though there were no murders during that period, there had been attacks on journalists from individuals that had political protection.¹²⁸

The economic insecurity of journalists also affects their ability to perform without fear. As per the report of Minimum Wages Fixation Commission of 2011, 74.4 per cent of print journalists worked under weak contracts or provisional appointments that could be easily ended by their employers. The proportion of such contracts was 82.2 per cent and 83.1 per cent for television and radio stations, respectively.¹²⁹ The Minimum Wage Committee report noted that 79 per cent of all journalists worked at media companies and over 77 per cent of them worked as full-time staff, but usually under weak contracts and provisional appointments,¹³⁰ which journalists want changed to permanent appointments. The remuneration of journalists is low compared to other sectors, causing them to seek additional employment opportunities to meet their needs. Furthermore, employers have been seeking more authority to dismiss journalists based on performance.

¹²⁶ The meaning of 'Unduly' is in an inappropriate, unjustifiable, or improper manner:

¹²⁷ <http://www.fnjnepal.org/media/wp-content/uploads/2013/01/FNJPressFreedomAnnualReport2068.pdf>

¹²⁸ Press Council Report 2068. Page 9

¹²⁹ Nepal Sarakar Nyunatam Parisramik Nirdharan Samiti (2011). Sramjivi Patrakar: Media Adhayan Pratibedan, 2067 [Working Journalists Media Study Report 2011]. Kathmandu, p 93.

¹³⁰ Ibid 95 (The journalists in Nepal are demanding that all journalists be hired as permanent staff)

Recommendations

- a) Amend broadcasting laws to support diversity in view of serving the needs of all groups of society, and introduce incentives for print media for diversity of content.
- b) Annul the clause allowing the government to exempt the license and other fees of state-run broadcasters, as that would give them undue competitive advantages, or take measures to ensure that state broadcasters provide complimentary programming in areas that are not adequately covered by private media in exchange for exemptions from fees.
- c) Broadcasters should produce awareness-raising programmes on the values of diversity for media owners and senior journalists.
- d) Media institutions should make special arrangements for journalists from underrepresented groups to study journalism as a strategy to increase the number of qualified candidates from these groups that can apply for media jobs.
- e) Encourage media companies to formulate and implement gender and social inclusion policies.
- f) Enact a PSB law, and define the remit and mode of financing of PSBs within the overall objective of converting State-run broadcasters into public service broadcasters. PSBs should be guaranteed autonomy in line with international best practices.
- g) PSBs should have independent governing boards and mechanisms for ensuring that they are protected from government influence and for ensuring that management and staff are editorially independent.
- h) Make appointments to PSB governance boards open, transparent and free from direct government interference or control by any political or economic interests.
- i) Pending the enactment of a new law, review and amend the Development Board Act and the Communication Corporations Act to remove sections that give the government disproportionate power over the operations of state broadcasters.
- j) Carry out a thorough review of broadcasting laws and establish an independent regulatory body for broadcasting and online media.
- k) Review and update the Press Council Act to make provisions for effective self-regulation of the media with clear rules and processes.
- l) Guarantee the autonomy and independence of the regulator from government, political and commercial influences.

- m) Conduct an independent assessment of the effectiveness of the regulatory functions of the PCN to make arrangements for professional self-regulation of print media content.
- n) Review the role of the PCN as an organization that classifies newspapers and instead transfer that role to an Audit Bureau of Circulation (that the Supreme Court has ordered the government to establish as a separate legal entity) and ensure that the classification criteria and processes are developed in consultation with stakeholders and are widely disseminated.
- o) Encourage all media institutions to establish self-regulatory mechanisms and inform readers and audiences of their complaints handling mechanisms.
- p) Encourage and assist media organizations to develop institutional codes and systems for enforcing them.
- q) Establish a code of conduct for broadcasters with sanctions that are proportionate and an independent system for dealing with public complaints.
- r) Enforce regulations with due regard to editorial freedom and independence.
- s) Develop indicators for measuring public perceptions of media content and carry out periodic studies on access and participation of audiences and readers in media.
- t) Design and test a system to assist the media in interacting with and gathering feedback from their audiences and readers.
- u) Encourage CSOs to organize consultations with the media to inform them about the benefits of interactivity.
- v) Support the establishment of an independent media research organization for carrying out regular surveys on public perceptions to provide feedback to the media.
- w) Establish a robust national mechanism to consistently follow up on attacks on journalists and to end impunity. Such a mechanism should develop a framework for continuously monitoring and reporting on attacks and threats against journalists and media.

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- x) Encourage editors and media owners to take all possible measures to ensure the physical safety of their staff, particularly journalists operating in areas of conflict, and on dangerous assignments, and provide them personal insurance, training and other support systems.
 - y) Continue coordinated advocacy on safety and protection of journalists and end impunity and political protection for suspects, as well as ensuring continuous follow-ups on outstanding cases.
 - z) Engage in dialogue with employers to come to an agreement on the modalities of employing journalists for ensuring fair work conditions, while also respecting the spirit of rewarding good performance and free enterprise.
 - aa) Utilize the opportunity of the UN Plan of Action on Safety of Journalists and the Issue of Impunity to bring all stakeholders together (UN, governmental and judicial bodies, parliamentarians, media owners, editors, journalists and civil society) to develop complementary approaches for ensuring the safety of journalists.



Chapter 4

Training of journalists

KEY INDICATORS

A. Availability of professional media training

- 4.1 Availability of professional media training
- 4.2 Media managers, including business managers can access training appropriate to their needs
- 4.3 Training equips media professionals to understand democracy and development

B. Availability of academic courses in media practice

- 4.4 Academic courses accessible to a wide range of stakeholders
- 4.5 Academic courses equip students with skills and knowledge related to democratic development

C. Presence of trade unions and professional organizations

- 4.6 Media workers have the right to join independent trade unions and exercise this right
- 4.7 Trade unions and professional associations provide advocacy on behalf of the profession

D. Presence of civil society organizations

- 4.8 CSOs monitor the media systematically
- 4.9 CSOs provide direct advocacy on issues of freedom of expression
- 4.10 CSOs help communities access information and get their voices heard

Chapter 4

Training of journalists

This chapter focuses on professional capacity building and supporting institutions that underpin freedom of expression, pluralism and diversity. It examines the availability of professional media training and academic courses in media practice and discusses the presence of trade unions, professional organizations and civil society organizations in the media profession.

A. Availability of professional media training

Indicator 4.1

Availability of professional media training

A large number of journalism training programmes are available in Nepal, but most of them depend on donor funding. Though, some training institutes organize regular short-term courses there is no coordination and collaboration between media houses and training institutions¹³¹. And, instructions at these have little scope for intensive coaching and mentoring and often graduates are not fully prepared for their jobs. Most of the training is provided either by media development NGOs or private institutions (particularly after the growth in broadcasting led to more jobs in radio and television). Some NGOs also offer journalists the possibility to specialize in subjects of interest through fellowships and coaching. Nepali journalists have also had opportunities to participate in a large number of international training programmes, fellowships and scholarships, and have access to distance-learning in programmes run by foreign universities, but these opportunities are mostly available only to Kathmandu-based journalists.

The practice of in-house training is more or less non-existent. Some media companies do organize programmes to orient staff at least once a year. These sessions, however, are more on organizational practices than on journalism topics and specializations. These training programmes are available mainly in the Kathmandu Valley, and most of them are irregular or available only as long as there is donor funding.¹³²

¹³¹ Nirmala Mani Adhikary. 2002. Media Houses and Training Institutions. The Kathmandu Post, November 1, p. 5.

¹³² See Shekhar Parajulee, Dev Raj Humagain, Arjun Panthi, Harshaman Maharjan. 2009. Media Training Trends

Section 34 (c) of the Working Journalists Act 1993 states that the government and media houses should make provisions for education and training for capacity building of working journalists, for which the government has offered to provide technical and financial assistance. To this end, media companies are required to allocate 1 per cent of their gross income for capacity building. However, most media organizations have largely ignored this section and enforcement of the law has not been strict.

The training courses available cover different journalism skills, mainly in print media and radio broadcasting. Capacity building programmes in television journalism are less frequently available, even though some private training centres began providing such training in early 2000. Some NGOs also provide TV training, depending on the availability of funds. The quality of the training provided by private sector institutions has not been independently assessed, but the fact that they remain in business suggests that there is demand for the service. These training programmes are generally focused on technical aspects rather than content. Training on new media is another area that has not received adequate attention, despite rapidly improving internet connectivity.

Access to training is not equal across the country. In the districts, training is constrained by lack of adequate materials and equipment and often, even when there is equipment available during the training, journalists may not have been able to use the equipment after the training is over, because their employers or they themselves are not able to acquire it due to high costs. The high concentration of training institutes in Kathmandu was identified as a major problem by participants during district consultations.

Furthermore, the majority of training available is for journalists working in print media. District-based journalists said that training tended to be lecture-based and largely focused on reporting and writing, while insufficient attention was given to skills such as copy editing, writing for the internet, and photojournalism. Other training-related issues identified were:

- A limited number of good trainers, inadequately prepared trainers and lack of training material, as well as little or no follow-up support.
- Under-resourced training providers in terms of equipment such as computers, cameras, recorders, studio hardware and software. As a result, trainees acquire some knowledge but not the vital hands-on experience.
- Training institutions generally organize training when they have donor support but

because they do not have sound sustainability plans, they have no mechanisms for continued investments in upgrading technology, and

- The monitoring and evaluation of training programmes are not designed to continuously inform future training courses.

There are also issues of trainer capacity, given the lack of mechanisms to enable them to update their knowledge and skills, particularly in the context of developments taking place in the media sector with the arrival of the internet. Trainers based in the districts receive fewer opportunities to improve their knowledge and skills.

The number of journalists trained by academic institutions and training centres is not available, due to the large number of institutions and poor knowledge management and institutional memory at those organizations. Even though a large number of organizations provide training in journalism, the quality of training varies and there are no readily available records of journalists that have benefitted from these trainings. In 2011, the DoI distributed survey forms seeking information from journalists on their qualifications and training with the application for renewing accreditations.

Most of the training in Nepal is carried out in Nepali language. Both Nepali and English are used for instruction at academic institutions, but most reference texts tend to be in the English language.

Nepal does not have a body or council to monitor the quality of training in media and journalism. Training to date remains an organization-specific activity, with little or no discussion for improving quality, through peer critiques and quality assessments. The Council for Technical Education and Vocational Training (CTEVT), a government organization that accredits and regulates training in different disciplines, is considering including journalism as one of the courses it covers. A proposal for a three-year vocational course in journalism submitted by the Nepal Press Institute (NPI) is under consideration. Thereafter, it would ensure some form of monitoring of the courses provided by institutions it would accredit. Training evaluations are usually done in-house, but because journalism training institutions have poor record keeping, there are no databases available on the numbers they have trained, the disciplines they have covered and the frequency of training courses. There has been one assessment on the types of training available, but researchers were unable to access the databases of training institutions they had consulted for the study.¹³³

¹³³ Shekhar Parajulee. Devraj Humagain. Arjun Panthi. Harsha Man Maharjan. 2009. Media Training Trends and Practices in Nepal. Report. Martin Chautari

Finally, because most training is provided almost free-of-cost (except nominal fees in some cases), training institutions respond to donor priorities (and themes are thus based on the funding available) rather than on local needs, and therefore face sustainability issues.

Indicator 4.2

Media managers, including business managers can access training appropriate to their needs

There are almost no training programmes available for media managers. While there are university courses in business management, there are no specific courses for media managers, including business managers. Academic courses do not offer specialized courses on media management and public relations, but a few companies have begun capacity building initiatives in these areas. The areas that training for media and business managers could cover are distribution and marketing, office management and administration. The CRSC has done some work in the area of training in managing stations and has also prepared an organization development guidebook and manuals in strategic planning and collective marketing.¹³⁴

Indicator 4.3

Training equips media professionals to understand democracy and development

Most of the regular training programmes available focus on journalism skills, but there have also been programmes that have sought to equip trainees with knowledge about democracy and development. These programmes have covered human rights, journalistic ethics, investigative journalism and safety (risk awareness and first aid, democracy, elections, right to information, parliamentary and court reporting). However, because these are offered by different organizations, there are no consolidated records on the disciplines covered. Further, most of these training programmes were organized when donor funding was available and have ended with shifts in donor interests. While 'development journalism' was the focus of training before the political changes of 1990, after 1990 there was a spurt of training on democracy and its processes. However, after the mid-1990s, the donor focus shifted to conflict reporting and peace. Since the 2006 political changes, various NGOs have once again been organizing training programmes on themes related to democracy and state building.

¹³⁴ These have been developed by CRSC/NEFEJ

Women journalists' groups, human rights organizations and some media development organizations have carried out training on issues such as gender, human rights and democracy, as well as longer-term journalism training programmes. However, most of these organizations have faced funding and sustainability issues and therefore the training has not been available regularly.

B. Availability of academic courses in media practice

Indicator 4.4

Academic courses accessible to a wide range of stakeholders

In general, Nepal has academic courses available for students at the School Leaving Certificate level (junior school level) and 10+2 level (high school level) as well as university courses, including at Bachelor's, graduate and post-graduate level qualifications.

Journalism education began with the introduction of journalism at the Intermediate Level (high school equivalent) at Ratna Rajya College under Tribhuvan University in 1976. The undergraduate and higher-level courses are widely available in Kathmandu Valley, as well as in the Kailali, Jhapa, Kaski, Makawanpur, Siraha and Morang districts.¹³⁵ The oldest provider of basic and higher level journalism education is Tribhuvan University, which introduced a Bachelor's degree in 1980. The High school (10+2) level qualification in journalism was introduced in 1997. Course books in college are mainly in English, though the language in which the courses are delivered may be Nepali. These programmes are theoretically available to all students. Courses offered by Tribhuvan University campuses are comparatively cheaper than those offered by private colleges and universities. Until recently, the undergraduate programme at Tribhuvan University was accessible only to students from a small selection of disciplines, but this has now changed. Currently, students from the humanities and social sciences, science, management and education faculties can now enroll for journalism education.¹³⁶ The university courses include both theory and practice. The different types of academic courses offered in Nepal are listed in Table 3. Nepal has no cross-industry or cross-sector training councils for journalism education and training.

¹³⁵ Nepal has four universities that offer journalism education: Tribhuvan, Pokhara, Purbaanchal and Kathmandu.

¹³⁶ <http://mediaeducators.blogspot.com/2012/07/blog-post.html>

Table 4: Courses offered by different academic institutions in Nepal

SN	Institute/University	Level	Courses
1	Tribhuvan University	Masters, Bachelors and Intermediate Level	MA-JMC BA-JMC IA-JMC
2	Purbanchal University	Masters and Bachelors	MA-MCJ BA-MCJ BMT
3	Kathmandu University	Bachelors	BMS
4	Higher Secondary Education Board (HSEB)	Intermediate	MCJ (+2)
5	Government of Nepal Board	School Leaving Certificate	Journalism, Part 1 and 2
JMC= Journalism and mass communication, BMT= Bachelor's in Media Technology, BMS= Bachelor in Media Studies, MCJ= Mass communication and journalism			

Source: Laxman Datt Pant¹³⁷.

There were only five higher secondary schools offering journalism courses in 2001. By 2009, the number of institutions offering journalism courses had increased to 210, covering 33 of Nepal's 75 districts. More than half of these institutions are located in Kathmandu Valley. The Department of Language and Mass Communication of Kathmandu University (KU) began offering a Bachelor's degree course in media studies in 2006. A PU-affiliated college, Shepherd College of Media Technology, has been offering courses in media technology since 2001. Likewise, one can earn a Master's degree in development communication at CJMC. Apart from these full-time courses, some basic journalism is also taught as an optional course at various levels, for example at the secondary level (i.e., grades 9 and 10). Similarly, in third year at the BA level at TU, students can select a course called media, journalism and mass communication. The MA English programme also includes a course called Media Studies.¹³⁸

Most of the educational institutions are poorly equipped in terms of the audiovisual

¹³⁷ Laxman Datt Pant. 2009. 'Journalism and Media Education in Nepal: A critical overview' in *Bodhi*, 3 (1) Pages 21-34. Kathmandu University

¹³⁸ Shekhar Parajulee. Devraj Humagain. Arjun Panthi. Harsha Man Maharjan. 2009. Media Training Trends and Practices in Nepal. Report. Martin Chautari

equipment and computers necessary to provide students with hands-on practical experience in the skills needed for modern-day journalism. Almost all major courses have provisions for internships, but academic institutions do not have partnerships with the industry and therefore have not been able to provide comprehensive industry-focused curricula. Courses are not available in local languages and as a result, students with a command of Nepali or English often emerge as top-scorers. These students are readily absorbed by the media industry in the capital, while the remaining students seek jobs in regional and community-based media houses – or follow another vocation.

There also are some private educational institutions and consultancies that offer academic programmes in communication studies, as extensions of foreign institutions. However, most of these institutions do not offer courses tailored to meet the needs of the Nepali media industry.

For example, the attention given to the Nepali language is inadequate and the courses in broadcast journalism are less available than those in print media.¹³⁹ The curricula, language of instruction, quality of trainers and teachers and infrastructure vary across colleges. Further, because the courses are not designed to meet the industry's needs, many graduates are not fully prepared to join the media workforce.

The absence of comprehensive, standardized and industry-linked media courses and the lack of adequate infrastructure are the main reasons for the low quality of human resources in journalism in Nepal. There is also a lack of adequate reference material (in Nepali) and most training programmes do not have adequate scope for coaching or mentoring and these have affected the quality of the output.

Indicator 4.5:
Academic courses equip students with skills and knowledge related to democratic development

Most journalism courses overlap with disciplines related to democracy and democratic development, but lack specific focus on subjects such as law, regulation and public policy. Most courses do not strictly require students to study human rights and democratic principles. Media and communication courses taught at the Nepali higher education institutes in journalism include computer technology, new media technology, print technology, television journalism, radio journalism, print journalism, photojournalism, reporting,

advertising and public relations. The foundational fields of study included are languages, literature, history, geography, economics, political science, law, ethics, psychology, philosophy, sociology, anthropology, human rights, globalization, entrepreneurship, public policy, information management, tourism and sports, among others.¹⁴⁰ However, not all courses are available in all universities.

Typically, higher education at Tribhuvan University relies on lectures, an internal assessment and an end-of-year examination. The independent writing assignments in journalism include producing news and feature stories at the lower levels and some research papers at the higher levels, which many students say is inadequate¹⁴¹. In the late 1980s, a student at Master's level did not have to write a single independent paper for evaluation throughout the two-year graduate programme. Then, the only writing involved was the internal assessment and end-of-year examination, and a thesis at the end of the second year. This, however, is changing and many universities have adopted the semester approach to education and also engage students in writing assignments that go beyond demonstrations of basic journalism skills.

There are no compulsory courses focused on assisting students in acquiring knowledge in areas like democracy, human rights and development; however, some colleges offer students the option to choose elective subjects across the social sciences. The course at Kathmandu University has specific courses such as social sciences, statistics and probability, media economics, philosophy, psychology, human rights and conflict management within its journalism curriculum.

C. Presence of trade unions and professional organizations

Indicator 4.6

Media workers have the right to join independent trade unions and exercise this right

Section 34A of the Working Journalists Act 1993 allows working journalists to form trade unions in their workplaces,¹⁴² for protecting and promoting professional rights and

¹⁴⁰ Draft report (unpublished) Page 34

¹⁴¹ Interview with Ghanendra Ojha a journalism graduate from Tribhuvan University. 11 August 2011

¹⁴² By definition, Section 3 of the Trade Union Act 1992 that allows enterprise-level workers to form trade

interests in accordance with the Trade Union Act 2049 (1992) of Nepal. The four major journalists' unions and associations are the Nepal Press Union (NPU), the FNJ, Press Chautari Nepal, and the Revolutionary Journalists Association of Nepal. There is also the National Union of Journalists, and Sancharika Samuha (Women Journalists Group), which is the largest membership organization of female journalists.

Another trade union of media workers, the Union of Media Employees Nepal, was registered at the Department of Labour in November 2011. It claims to have a membership of about 800 and brings together practitioners from both print and broadcast media.¹⁴³ There are conflicting opinions about whether the FNJ is a trade union or a professional organization, in particular because of the nature of its registration. The FNJ was registered under the National Directive Act 2018, Section 3 (3), on 20 July 2004 (2061/04/05) and at the Social Welfare Council, but not as a trade union under the Trade Union Act. Functionally, it tries to play both the roles of a trade union and of a media development organization, but it has rarely engaged in union-style collective bargaining. The FNJ claims to have a membership of over 8,000 people, and branches in most major media organizations as well as in the districts. The FNJ is a member of the International Federation of Journalists, as are the two other journalist unions – NPU and the National Union of Journalists.¹⁴⁴ The Nepal Press Union is registered under the labour law, while the National Union of Journalists is registered as an NGO. There are also other journalist associations, whose members are often also members of the FNJ. The larger among these associations are Press Chautari Nepal and the Revolutionary Journalists Association of Nepal. Press Chautari is in the process of registering as a trade union.¹⁴⁵ Meanwhile, employers have their own associations.

Among the larger associations, Press Chautari is widely understood to be an association of journalists close to the Communist Party of Nepal, Unified Marxist-Leninist, NPU close to Nepali Congress and the Revolutionary Journalists' Association close to Unified Communist Party of Nepal-Maoist. There also are associations organized around social identities such as journalists from among Dalits, indigenous peoples, women, and Madhesi groups.

unions to protect and promote "occupational rights", could also apply to journalism organizations.

¹⁴³ Interview with Raj Kumar Thapa. President of the ad-hoc committee.

¹⁴⁴ The IFJ website (<http://www.ifj.org/en/pages/ifj-members-asia-pacific>.) does not provide the status of FNJ's membership.

¹⁴⁵ Interview with Gagan Bista on 24 August 2011

The political tilts of these groups become visible during FNJ elections as well as at other times.¹⁴⁶ The partisan divides among journalists often influence and distort media content or result in lopsided coverage, also often exposing them to threats and violence from those on the 'other' side. Another outcome of these divides is that genuine workplace issues sometimes do not receive the appropriate level of attention from journalists.¹⁴⁷ Journalists' unions have not meaningfully engaged with employers on major legislation – such as the Working Journalists Act (WJA) – and have instead successfully lobbied for laws without adequate consultation with employers, which is also a reason why the WJA is not implemented effectively.

In addition there are unit-level media worker unions in larger media institutions, as well as unions of workers in printing and distribution at different media companies. These are sometimes affiliated with the main trade unions; themselves also organized along political party lines.

The Trade Union Act requires unions to be registered at the Office of the Registrar appointed by the government. Different media organizations have unions of journalists, media workers and administrative staff. Because the FNJ has not engaged in collective bargaining with employers on professional issues – although they are good at articulating demands and engaging in advocacy for worker rights, there have been instances where they have sat down with management to negotiate workers' demands. Because the FNJ has not taken a lead in negotiations on workers' rights, there have been instances where other unions of media workers have disrupted the operations of media, often leading to closures and publication hold-ups.¹⁴⁸

¹⁴⁶ Binod Bhattarai. Journalists gear up to vote – for the parties (21 April 2011). (http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=30492)

¹⁴⁷ There is a case of Ram Prasad Dahal, a journalist who was dismissed from his job in March 2005 and had challenged the decision at the Labour Court. Dahal publicly accused the FNJ of not taking up his issue with the seriousness he had expected in terms of support in litigation and advocacy. The journalist continued to pursue the case leading to the July 2012 Labour Court verdict that ordered his reinstatement. (For details on the case see: <http://asiapacific.ifj.org/en/articles/nepali-journalist-compensated-after-unfair-dismissal>)

¹⁴⁸ Media workers caused the publication of Kantipur publications to be disrupted in 2007

Working Journalists' Act

The WJA, established in 1993 and amended in August 2007, has the following provisions. It requires media companies to (i) employ 85 per cent of journalists as permanent staff and no more than 15 per cent on contracts, (ii) provide journalists on contract with access to a provident fund and other facilities available to permanent staff, (iii) provide medical treatment and compensation for journalists injured in the course of conducting professional duties, (iv) contribute one per cent of annual income to capacity building, (v) provide appointment letters; and (vi) provide journalists with the right to organise trade unions.

Penalties for non-compliance include fines up to NRs 25,000. A government committee set up in September 2007 to recommend a basic minimum salary made its recommendations to the government on 28 August 2008. On 20 February 2009 the government decided to require media houses to implement minimum wages for specific positions in large newspapers by mid-July 2009. Large media companies include all government media, television companies, radios with networking arrangements and companies running more than one station, and all A-category national dailies and magazines (weeklies and fortnightlies). However, the committee on the minimum wage has consistently reported that not all media provide the minimum wage, particularly the smaller weekly newspapers.

A Call to End Violence and Impunity, International Press Freedom and Freedom of Expression Mission to Nepal, February 2009.

Indicator 4.7:

Trade unions and professional associations provide advocacy on behalf of the profession

Nepal's trade unions and professional associations have been strong advocates for free expression and media rights. Journalists and media organizations led by the FNJ have organized protests for the restoration of democracy. After 2005, when Nepal had come under direct royal rule, the FNJ and other journalist groups organized continuous protests to challenge the restrictions on free expression and media. Journalists' associations, including NGOs, monitor attacks against journalists and media, organize fact-finding missions after attacks and engage with government and other civil society organizations on media-related issues. Individual members of most journalists' unions

and associations, and media organizations are represented in the FNJ's membership, making it the most representative organization.

The FNJ's seventy-five branches contribute significantly to campaigns on behalf of the Nepali media for defending media rights and the safety of journalists. Since 2006, the FNJ's campaigns have focused on addressing the issue of violence against journalists committed by groups affiliated with different political parties and identity groups. It has a national network for monitoring and reporting violations of the rights of journalists, media workers and media institutions. Its district volunteers report violations that are under investigation, especially those involving serious incidents, and undertake advocacy and lobbying for protection and safety, and for bringing those guilty to justice.¹⁴⁹

Nepal also has a large number of media development organizations with experience in training journalists, content production, research and other media development activities. These organizations have also carried out monitoring of attacks on journalists, as well as lobbying and advocacy for free expression, media rights and RTI. They have also organized debates on issues related to media freedoms, while debates on ethics and standards have been less frequent. Some of these organizations, such as the FNJ and the Freedom Forum, are also members of IFEX.¹⁵⁰

The different associations of employers in the media also lobby and advocate for industry concessions and join hands with journalists' unions when free expression and media rights are threatened. The FNJ has worked with media owners in times when media freedoms were threatened, but the same type of engagement has not been practiced around the implementation of the WJA, where both sides have not made any real attempt to negotiate. The FNJ has a legal desk to provide legal assistance to journalists.

Case 17

Freedom Forum provides legal support to journalists. In the case of Ram Prasad Dahal, who was fired in 2005 by his newspaper, it was this organization that supported him in litigation. The Bagmati Regional Labour Court took a decision on the reinstatement and compensation of Ram Prasad Dahal in July 2012, and also witnessed the compliance to the order. The case is the first in which a journalist has been both reinstated and compensated.

¹⁴⁹ A Call to End Violence and Impunity, International Press Freedom and Freedom of Expression Mission to Nepal, February 2009

¹⁵⁰ IFEX is a Canada-based international organization working for free expression. It had 90 independent organizations worldwide as members in August 2011. See: http://www.ifex.org/what_we_do/

D. Presence of civil society organizations

Indicator 4.8

CSOs monitor the media systematically

The FNJ and Freedom Forum monitor violations of free expression and RTI regularly and particularly pay attention to matters affecting media rights and violence against journalists. The reports are informative, but reliable data based on systematic monitoring is not readily available. The reports of both organizations list attacks by type, but these are sometimes inadequately defined. For example, there are no distinctions made between ‘manhandled’ and ‘attacked’; also, those journalists ‘murdered’ and those ‘found dead’ are counted together.

There are no media organizations that consistently monitor media content to inform the public about content quality or professionalism, which is important for educating citizens on the state of their media and to assist in developing media literacy. Some CSOs have made attempts to study media content, but their activities have depended on the availability of donor support. Examples include the monitoring of media content during states of emergency in the country. Martin Chautari, a research organization, does carry out studies on media practice and occasionally publishes books and reports. The NPI and the Himal Association / Centre for Investigative Journalism have also carried out occasional studies on media practice. However, these monitoring efforts have not been continuous and monitoring of media content in view of promoting pluralism and diversity is almost non-existent.

Indicator 4.9

CSOs provide direct advocacy on issues of freedom of expression

Nepali CSOs have been active partners in advocacy for freedom of expression. This was particularly so during 2005 and 2006, when organizations representing professionals including lawyers, university teachers, school teachers, doctors and engineers joined hands with human rights groups, media development organizations and the FNJ to protest against controls on expression. Generally, Nepal’s CSOs have supported the promotion of freedom of expression and of the safety of journalists, and have engaged with policy makers on media policy. However, these engagements have not been consistent, often due to a lack of adequate resources. Several organizations, particularly

those involved in training in broadcasting also produce content for distribution through local radio stations and newspapers covering a range of development issues, as well as issues related to free expression. However, most such activities are funded through donor support and do not continue after funding ends.¹⁵¹

Indicator 4.10

CSOs help communities access information and get their voices heard

Nepal has over 30,000 NGOs and civil society groups registered at the Social Welfare Council¹⁵². They engage with communities on a large range of issues related to development. Many of these groups focus on human rights, training and supporting different social groups (women, Dalits, and indigenous people, Madhesis, etc.) to voice their concerns. They have also been active in advocacy for greater representation of these groups in the media, but their effectiveness has varied. There have however been cases where issues that were receiving very poor coverage – particularly relating to violations of the rights of women and Dalits – became the object of media attention after CSOs took up the issues.

¹⁵¹ 2009 report on Media Training Trends and Practices in Nepal, published by Martin Chautari

¹⁵² http://www.swc.org.np/SWC_NGOs_Total.pdf (viewed 17 August 2012)

Recommendations

- a) Explore mechanisms for institutionalizing journalism training as a self-supporting initiative in consultation with media companies and other stakeholders, including the government.
- b) Enhance the capacity of journalist training institutions to maintain records and data on training activities.
- c) Engage training providers to explore sustainability options such as the possibility of ‘mergers’ of existing organizations and institutions, preparation of business plans, etc.
- d) Support the production of journalism training materials and references based on the local context and language for use by academic and training institutions.
- e) Explore possibilities of introducing media and business management curricula aimed at managers and senior editors at colleges providing graduate level courses in business management and administration.
- f) Until formal courses are established, work with colleges in business education to develop short-term modules on managing media businesses for implementation as executive development programmes.
- g) Introduce curricula on democracy and development in training as cross-cutting subjects and explore the possibility of introducing seminars on these subjects in undergraduate curricula at journalism colleges.
- h) Devise a mechanism for keeping records of different types of training supported by donors to avoid overlap and duplication, and for ensuring that training is available across the country and to journalists from different social groups.
 - i) Organize ‘immersion courses’ or training programmes on journalism and society, covering a range of social and political issues for young journalists to build a critical mass capable of influencing the quality of media content.
 - j) Carry out a thorough comparative analysis of curricula and infrastructure at different academic institutions in order to recommend changes based on international standards and good practices, and the model curriculum prepared by UNESCO, taking into account the needs of the local media market.¹⁵³
 - k) Support the publication of journalism textbooks and reference materials in Nepali and other national languages.
 - l) Introduce democracy and human rights as foundational courses in

- university curricula on journalism and mass communications.
- m) Consider a gender-audit of journalism schools as pioneered by UNESCO in Namibia.
 - n) Undertake a comprehensive capacity assessment of existing unions and associations of journalists and media in Nepal as a step towards supporting the development of independent, professional and representative organizations.
 - o) Engage employers in consultations on all laws and policies related to professional security of journalists and media workers to ensure their buy-in, which is essential for effective implementation of the Working Journalists Act.
 - p) Carry out awareness programmes on the independence of journalists and encourage unit-level unions to take leadership for addressing workplace related professional issues.
 - q) Encourage and assist journalist associations and unions as well as employers' associations to reach out and recognize each other as negotiating partners on both labour and professional issues.
 - r) Encourage employers to set professional standards and actively defend free expression.
 - s) Support media workers through media associations and media development organizations to actively debate professional ethics and standards, and issues of accountability of media.
 - t) Establish a professionally sound system for the systematic monitoring of media rights and freedom of expression.
 - u) Undertake studies to develop a framework for critically analyzing media, especially in relation to the representation of women and marginalized groups – Dalits, Indigenous Peoples, religious minorities, the poor, among others. Disseminate and use this information for enhancing media literacy among citizens.
 - v) Support CSO capacity in promoting freedom of expression, right to information and journalism safety and in engaging on public policy related to the media.
 - w) Engage and assist CSOs to undertake activities on increasing media literacy and for helping them to access and express their views through the media.



Chapter 5

**Infrastructural capacity is
sufficient to support independent
and pluralistic media**



KEY INDICATORS

A. Availability and use of technological resources by the media

- 5.1 Media organizations have access to modern technical facilities for newsgathering, production and dissemination.

B. Press, broadcasting and ICT penetration

- 5.2 Marginalized groups have access to forms of communication they can use
- 5.3 The country has a coherent ICT policy which aims to meet the needs of marginalized communities

Chapter 5

Infrastructural capacity is sufficient to support independent and pluralistic media

This chapter examines whether the infrastructural capacity in Nepal is sufficient to support independent and pluralistic media. It assesses the availability and use of technological resources by the media and examines the press, broadcasting and Information and Communication Technology (ICT) penetration, providing concrete recommendations for action.

A. Availability and use of technological resources by the media

Indicator 5.1

Media organizations have access to modern technical facilities for newsgathering, production and dissemination.

Internet access arrived in Nepal in the early 1990s. A private company, Mercantile Communications, began email services in 1992, and was formally registered as an ISP in 1995.¹⁵⁴ However, early internet connections were slow, unreliable and expensive. Nepal now has fairly good internet connectivity, except in very remote areas and areas without access to electricity.

According to the Nepal Telecommunication Authority, there are more than 7 million users of internet services, including those accessing them on mobile phones.¹⁵⁵ The government-owned Nepal Telecom and a large number of private companies provide internet services. GSM mobile technology theoretically covers the entire country (although there may be some pockets where coverage is disrupted by topography) and some companies provide internet connectivity on mobile phones. Nepal has a fibre-optic cable backbone connecting the plains, districts and neighboring India.¹⁵⁶

¹⁵⁴ http://www.nepalwireless.net/index.php?option=com_content&view=article&id=105&Itemid=99,

¹⁵⁵ Nepal Telecommunication Authority. MIS Report November 2013 <http://www.nta.gov.np/en/2012-06-01-11-33-01/mis-archives/mis-reports/nta-mis-78-pdf/download>

¹⁵⁶ UNDP. CSFC. UNDEF. 2009. Communication for Empowerment in Nepal: An assessment of communication and media needs among indigenous people. Pages 45-46.

Most media companies use the internet. The larger companies provide greater access to journalists. Running a media company without an internet connection has become almost impossible, as many sources now use it for communicating information. Most government departments and private corporations have an internet presence, and provide online access to documents needed by journalists. However, not all of them update their sites regularly. The larger media companies also have searchable content archives. Reporters and editors have acquired internet skills largely on their own, as there has not been much training for journalist focused on using ICT. Because training so far has not focused on internet-assisted reporting, many journalists lack the skills for efficiently accessing resources.

Consultations during the MDI assessment revealed that journalists in the districts lack adequate access to internet and reference materials. Even though there is some information available on the internet (for example, regarding laws, the Nepal Law Commission website has most prevailing laws and regulations in downloadable formats), there are issues that restrict access: mainly the costs related to technology (computers) and the internet. Many journalists use smart phones for sharing information.

Almost all community media organizations, except those in internet 'shadow' areas, in remote regions or in areas without electricity, have an internet connection and use it to exchange news, information and programme content. The Association of Community Broadcasters initially used the internet to deliver content to its network partners, and now does so using satellite. Private radio stations also use satellites to distribute content to stations in their networks.

A survey conducted by the FNJ on the use of social media by journalists found that 87.6 per cent of 1,079 respondents in 71 districts used the internet. A majority of respondents (45.3 per cent) were of the 20–29 age group and 35.2 per cent of the 30–39 age group.¹⁵⁷ Over 80 per cent of those surveyed use the internet in their offices, while over 50 per cent also use it at home and about 13 per cent used it on their mobile devices. More than 70 per cent of users used the internet to seek new information, 37 per cent use the internet as a research tool for their news stories and 28 per cent for verifying information.

Internet and ICT has enabled large newspaper companies to print copies in multiple regions, which has helped avoid high distribution costs. However, printing remains

¹⁵⁷ Ujjwal Acharya. 2012. Major Findings: FNJ Social Media Survey 2012. A presentation at a program organized by Federation of Nepali Journalists and Internet Society on August 11, Kathmandu.

expensive owing to the cost of other inputs – imported paper, electricity, etc. Physical distribution of printed media remains a major challenge in Nepal, owing to its mountainous topography and poor transport infrastructure.

ICT has enabled media companies to use multiple platforms to deliver content. Some of the larger companies use satellite publishing, as well as ICT for sharing and distributing broadcast content. Most large media outlets have websites carrying print and broadcast content. Some companies have begun integrating social networking tools as part of their content delivery platforms.

B. Press, broadcasting and ICT penetration

Indicator 5.2

Marginalized groups have access to forms of communication they can use

The private sector essentially drove the internet movement in Nepal until 2000. In 2011, the ITU ranked Nepal 131st in the global ICT Price Basket. The ICT Price Basket is a unique metric that tracks and compares the cost and affordability of ICT services in more than 160 countries globally. In terms of the ICT Development Index (IDI), Nepal ranked 134th in 2010, a slight improvement from 134th in 2010¹⁵⁸.

In November 2013, the internet penetration rate in Nepal was at 27 per cent.¹⁵⁹ This included services obtained through dial-up, wireless, cable, optical fibre, General Package Radio Service (GPRS), Asymmetric Digital Subscriber Line (ADSL) and Code Division Multiple Access (CDMA) technologies. The mobile penetration rate was at 71.46 per cent, with two of the largest companies serving over 7.5 million subscribers each. In August 2013, the NTA had licensed forty-two ISPs, and five rural ISPs. Rural ISPs provide internet services to rural areas.

Collectively, Nepal's broadcasters reach almost all of the country. State television satellite signals reach nationwide, but access remains constricted by access to electricity. With a little over 40 per cent of citizens connected to the central grid (people in remote areas are said to be using other alternative sources of power, but data on this is unavailable), almost

¹⁵⁸ <http://www.ktm2day.com/2011/09/23/nepal-ranks-134th-in-ict-development-index/>

¹⁵⁹ Nepal Telecommunications Authority. 2011. Management Information System August 2013.

60 per cent of the populations has no means of accessing television programmes.¹⁶⁰ Most newspapers still rely on selling printed copies and, while they have an internet presence, none of them have an online subscription model. Distribution therefore remains an issue, particularly for small newspapers and magazines that tend to be concentrated around urban centres. The postal service, for some places, has not been a reliable distribution channel, largely because of the difficult topography of the country.

Independent radio is filling the information demand left unserved by television, newspapers and the internet. This is the case for rural areas that do not have electricity, as well as for poor families who cannot afford television sets or internet connections, and cannot read and write.¹⁶¹ Nepal's independent and state-run radio stations cover almost all parts of the country. The availability of cheap radio sets has made it possible for people everywhere in Nepal to access information through radio. State radio and some private and community radio stations have programming in local languages, which has helped increase access to information, even though it still falls short of the needs of Nepal's diverse communities.

Mobile phones are emerging as a powerful and inclusive communication and networking tool. Nepal also has companies that offer mobile-enabled services to send information and messages and carry out surveys. The use of mobile phones for advocacy and political organization began during the protests organized by opposition parties in 2005 and 2006 and was fairly effective. With increased coverage, mobile phones offer a new reliable platform for advocacy and social organization.

The use of social tools on the internet is limited to people who have good access and are literate. Various groups have used social networking tools to organize themselves effectively.

Disaggregated data on access and the use of ICT by marginalized groups does not exist, but it can safely be assumed to be higher for more privileged groups. There also are issues of language in new media that can exclude some users. That said, the penetration of ICT, especially mobile phones, shows that the spread of technology, backed by proper policies, can assist in decentralizing access to information.

¹⁶⁰ In many districts, villages have microhydro electric systems or use to batteries to power internet services but information on this is not readily available. Mahabir Pun, a rural innovator, was awarded the Ramon Magsaysay award in 2007 in recognition of his use of 'wireless computer technology... and bringing progress to remote mountain areas by connecting his village to the global village. See UNDP, CSFC, UNDEF. 2009. Pages 45-46

¹⁶¹ According to the Nepal Living Standards Survey III (2010-2011), the adult literacy in Nepal was of 56.6 per cent – 71.6 per cent among men and 44.5 per cent among women.

Indicator 5.3

The country has a coherent ICT policy which aims to meet the needs of marginalized communities

Nepal formulated an ICT policy and strategy in 2000. The policy vision was to place Nepal on the global IT map in five years. The main objective was to make IT accessible to the general public, increase employment, build a knowledge-based society and establish knowledge-based industries.¹⁶² The strategy was to have the government as facilitator with a high level of involvement from the private sector. The High-Level Commission for Information Technology (HLCIT) headed by the prime minister was dissolved in December 2011. This committee was responsible for overseeing strategic development in the use of ICT in overcoming Nepal's development challenges. The commission was formed to address the overlapping roles of two ministries – Science and Technology and Information and Communications. The HLCIT had plans to use the existing optical fibre backbone for Web 2.0 services in assisting development processes. After its dissolution, the government announced its intention to form a separate IT department under the Ministry of Science and Technology.

A 2010 review of IT policy suggests that not much has taken place in terms of implementation. The policy had a five-year time frame and was to have been reviewed and revised every second year, but this was not done for ten years. The achievements identified included the fact that the internet had reached all districts, but much remained to be done to facilitate access and use. The policy had also planned to set up a fully-functional IT Park. The basic infrastructure has been put in place but remains under-resourced and under-used. The policy had also envisaged supporting educational institutions in expanding IT education, to provide computer education to all by 2010 and set up a venture capital fund – all of which remains to be done.¹⁶³

The Nepal Telecom Company (NTC) is the major bulk purchaser of bandwidth, mainly from India and China using fibre-optic cables. Some ISPs have also begun procuring bandwidth from these countries. However, there are issues related to the sharing of the fibre-optic backbone – now controlled by the government-owned NTC – that places

¹⁶² <http://www.can-usa.org/downloads/itpolicy2057.pdf>

¹⁶³ Ranjan Baral and Dipu Murti Bhurtyel. Forum for Information Technology (FIT) Nepal. Presentation on ICT policy in developing countries, University of Manchester, 25 March 2010. (Downloaded from <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CEcQFjAA&url=http%3A%2F%2Fwww.cdi.manchester.ac.uk%2Fnewsandevents%2Fdocuments%2FBaralBhurtyalICTPolicyWorkshop10.ppt&ei=qt4LUMWzMIq8rAfP1dDICA&usq=AFQjCjNHZIKOeOLpUSZk7C2PuYmyWlbyjg>)

private operators at a disadvantage and gives NTV more control. The sharing of this infrastructure could determine how effectively access can be improved and how costs can be reduced. However, bandwidth remains an important hurdle for initiating major IT-enabled services, in addition to the basic development issues: low literacy, poor infrastructure, poverty and uneven access to new technologies. The government has a Rural Telecom Development Fund (built from contributions by users of telephone services) that had over 1 billion rupees designed to be used for expanding rural communications by developing infrastructure and facilitating access. However, the fund remains largely unused.¹⁶⁴

Public access to ICT is similar to that of traditional media – albeit worse, owing to the lack of basic infrastructure, mainly the lack of electricity and connectivity or coverage needed for using these technologies. The ability of marginalized groups to access information using ICT varies in terms of location and social group. Marginalized groups tend to live in remote regions where there is no basic infrastructure. Further, access to information is also constrained by language (particularly for indigenous groups, who have different mother tongues), as information is still not readily available in all languages. Literacy in the Nepali language among non-Nepali speakers is generally low and this constrains the effective communication of information.¹⁶⁵

Nepal has prepared a roadmap for switching over to digital broadcasting by 2017. The plan is to continue simulcasting until 90 per cent of viewers receiving analogue signals have the set-top box required for the digital switchover. The analogue switch-off is planned for December 2017.¹⁶⁶ The ITU report also recommended revising the National Broadcasting Act needs in light of digital and mobile television.

¹⁶⁴ UNDP, CFDC, UNDEF. 2009. Pages 47-48

¹⁶⁵ UNDP, CSFC, UNDEF. 2009. Pages 66-67.

¹⁶⁶ International Telecommunications Union. 2012. Roadmap for the transition from analogue to digital terrestrial television broadcasting in Nepal. Page v and vi

Recommendations

- a. Support community media in obtaining appropriate technical facilities to reach marginalized communities and in using new technologies to express themselves and access sources of information.
- b. Support the development of scripts and fonts in local languages to ensure deeper penetration of new media and ICT in all communities.
- c. Undertake a comprehensive study on access to ICT and generate disaggregated data for framing enabling policies and monitoring progress.
- d. Set up a dedicated institution to facilitate the development of T and to fill the gap created by the dissolution of the HLCIT. Such a body should allow space for private sector participation, particularly in policy making.
- e. Formulate a coherent ICT policy in consultation with stakeholders for meeting the needs of all stakeholders, particularly marginalized groups.

Conclusion

Free expression is a fundamental human right and underpins many democratic freedoms, including the right to peaceful assembly, to form political parties, to share ideas, to seek information and to hold public officials to account.

According to the MDIs, media outlets (all channels that carry news and public information, including internet-based channels) are crucial for exercising freedom of expression because they provide the public with a platform for exercising the right to voice their concerns, challenge decisions and seek information on matters affecting their lives. This takes place in various ways, with the media informing and educating the public to enrich their knowledge and support their communication efforts, disseminating stories, ideas and information, and helping correct the natural asymmetry of information. Further, freedom of expression is important in facilitating debate between diverse social groups and encouraging resolution of conflict through democratic means, serving as a vehicle of cultural expression and cohesion within and between nations, serving as a watchdog of government in all of its forms and promoting transparency in public life and public scrutiny of those with power by exposing corruption, maladministration and corporate wrongdoing, among others.¹⁶⁷

At times the media may also function in a manner opposite to the one described above. They may serve to reinforce the power of vested interests and may exacerbate social inequalities by excluding critical or marginalized voices. In extreme forms, they may even promote conflict and social divisiveness. The MDI assessment seeks to understand media as they are in different countries and recommend changes needed to meet broad international standards. The indicators also attempt to understand media in a changing context of digitalization of communication and the arrival of new channels that provide citizens with new opportunities to exercise their fundamental right to free expression. The indicators seek to measure media development in terms of independence and access, pluralism and diversity, professional capacity of media workers and infrastructural capacity.

With the completion of this assessment, Nepal has become the 11th country among UNESCO's 195 Member States to complete the MDI assessment. Other countries in which UNESCO has carried out assessments include Bhutan, Croatia, Ecuador, East Timor, Egypt, Gabon, Jordan, the Maldives, Mozambique and Tunisia.

¹⁶⁷ Islam 2001. In UNESCO 2008. Media Development Indicators. Page 3

The MDI instrument requires both qualitative and quantitative data to build an objective and reliable assessment. It requires the use of 'quantitative measurements wherever possible, choosing indicators where measurement data is sufficiently reliable in quality to permit confident decision making, disaggregating indicators by gender or other population characteristics, (and) ensuring that indicators are separated out to address one key issue at a time...'168 Meeting these requirements is difficult for data-poor countries, such as Nepal, where often the assessment has to rely on qualitative indicators. To make up for the unavailability of data, the assessment in Nepal placed strong emphasis on a series of stakeholder consultations (See: Annex 1 for the methodology used), while using the quantitative data that was available. Therefore even though the assessment may not be 'perfect', it does provide valuable information on the trends and the gaps in terms of developing a fully democratic and participatory media space in Nepal.

The assessment has looked into every indicator and has come up with recommendations, which are intended to be implemented to address to the shortcomings that have become evident in the assessment. This process should be carried out in a participatory manner bringing together all relevant stakeholders. Through this process, it will be possible also to refine some of the recommendations and/or add information that the MDI assessment may have failed to capture. The next recommended step is therefore to hold extensive consultations on the recommendations with key stakeholders, including government, in view of preparing an action plan for addressing the gaps, in an agreed order of priority.



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