

National Mass Communications Policy 2016: A Review*

-Taranath Dahal and Santosh sigdel

1. Background

A new Mass Communication Policy came into force as on 22 July 2016 (7 Shrawan 2073), as the Council of Ministers approved the Report relating to National Mass Communication Policy submitted on 20 July 2016 (5 Shrawan 2073) by 'High Level Committee on Mass Communication' formed on 3 February 2016 (20 Magh 2072) by the Government of Nepal.

Although the Policy repealed the National Communication Policy 1992 (2049), the status of the Long term Policy of Information and Communication Sector 2003 (2059) has not been clarified. Likewise, the Policy is silent regarding the report produced by 'High Level Media Recommendation Commission' formed after political change resulting from Second People's Movement 2006.

The Mass Communication Policy 2016 also includes sectoral policies therein along with preamble, objectives and fundamental policies. The thematic chapterization therein makes the Policy comprehensible and simple.

2. Preamble

The preamble of the National Mass Communication Policy envisages values and norms enshrined in the Constitution of Nepal 2015 (2072). It is mentioned that the Policy has been formulated in order to develop fair, dignified, responsible and accountable mass communication sector thereby stressing on a vision of the accountable and responsible mass communication media towards an independent and fair society in order to create an equitable society based on proportional inclusion and participation; importance of protection of freedom of communication media; equitable development of all kinds of mass communication media with big, medium and small investment; and importance of access to information.

Due to use of polysemous and vague words such as "creation of equitable society ", "equitable development of all kinds of mass communication media with big, medium and small investment", the Policy has a flavour of being political report at one hand and on the other, the question has been raised whether in the name of "fair, dignified, responsible and accountable mass communication", the Policy has expected the State controlled communication media. It would be better to include subject matters relating to promotion of independent, fair and professional media explicitly in the preamble thereof.

3. Objectives of the National Mass Communications Policy

Objectives of the Policy have been organized into 9 sub-sections. Objectives have stressed on institutionalizing political changes (1.9), creation of democratic society (1.2), promotion of governance (1.6), and creation of equitable society based on principles of proportionality, inclusion, and participation (1.8) rather than development of mass communication media. Although these subject matters are mentioned linking to development of media, this shows that formulation of objectives of the Policy has been dominated by political philosophies.

Few objectives of the Policy are related with standardization, regulation and financial aspect of mass communication media. It has included objectives such as increasing reliability towards journalism thereby enhancing quality of mass media (1.3), making communication sector self-reliant (1.6), encouraging self-regulation and self-assessment (1.7), and developing communication system with information and communication technology (1.8).

Additionally, it has included objectives such as enhancing access of all class, region, caste, language, gender and community to mass communication media as per the national policy of inclusion (1.4) and encouraging to be active thereby increasing representation of women, dalit, indigenous nationalities, people with disability, Madhesi, marginalized community and backward region, class and community in mass communication sector (1.5). However, considering word selection, enhancing access to mass communication has been explicitly included in the Policy but in case of representation, the objective reads "encouraging to be active thereby increasing representation" instead of "making active there by increasing representation." The fundamental policy therein provides that structure and body relating to State run communication and mass communication shall be made proportional inclusive as envisaged by the fundamental right of the Constitution but in the objectives, it is limited to mere acts of encouraging.

In the objectives of the Policy, policy framers have used attributes with open heart such as making mass communication media independent, fair, impartial, responsible, answerable, accountable, professional, dignified, and accountable towards general public but it has not spelled out anything what the role of media has for promotion of human rights, rule of law and responsible and accountable government that are considered to be a duty of media in a democratic State and how the media will be strengthened in this regard.

4. Fundamental Policy

In the National Mass Communication Policy, fundamental policy is provided in the section 2 right before the section relating to sectoral policies. Fundamental policies comprising 25 sub-sections include provisions mainly related to topics such as what criteria for classification of mass communication media be used, what types of technology and subject matters be

encouraged, classification of mass media, necessary law formulation, foreign investment, media monopoly and media concentration, inclusion in media, advertisement market, digital system, working journalists, proportionality and inclusion as well as journalist funds.

It is a salient feature of the Policy that provides for ensuring full press freedom thereby creating necessary infrastructure and emphasizing on "unrestricted exercise of freedom of press and expression in line with established international value, norm and standards of freedom of opinion, expression, press and information flow as well as the principles enshrined in the Constitution of Nepal"(2.1). However, it would have been better if it spells out provisions of convention and covenants on human rights ratified by Nepal (Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights 1966 etc) instead of saying established international value, norm.

Under fundamental policy, fundamental rights relating to freedom of expression, press of the Constitution have not been articulated. It would have been better to elaborate whether constitutional provisions relating to freedom of expression, press are in line with international obligations under international convention/covenants ratified by Nepal and how constitutional provisions can be made in line with those obligations in case non-compliance.

In the Policy, it is mentioned "[...] information system such as print, radio, television, online, internet shall be promoted [...]" (2.3). Some technological clarity is required among policy framers in this regard. While considering the provision, online and internet are appeared to be different.

The Policy has tried to address the issue of media convergence that is being practiced in the world. "[...] Technical convergence of integrated service and facilities of print, radio, television, online and communication technology shall be promoted" (2.3). However, the Policy is silent how such convergence will be encouraged.

Classification of mass communication media

Most interesting aspect of the Policy is classification of mass communication media. The Policy has dealt the issue of classification of mass communication media on different criteria under different provisions. There has been no effort to harmonize such classifications. The Policy has prescribed the classification on the clause 2.4 as follows:

- a) On the basis of population residing in concerned geographical territory being targeted
 1. National
 2. Provincial
 3. Local

b) On the basis of objectives

1. Service oriented
2. Operated with commercial objective

c) On the basis of investment

1. Self-employment
2. Small
3. Medium
4. Big

Additionally, the Policy has classified sectoral broadcasting media as follows:

1. Public Service broadcaster (3.2)
2. Private and commercial broadcaster (3.3) and
3. Community broadcaster (3.4)

Likewise, the clause 2.23 provides that based on implementation of laws relating to working journalists, provision to classify communication media and to distribute public service and other governmental advertisement as well as facility and concession shall be made.

Likewise, in the clauses 3.6.2 (b) and (c), cooperative communication media has been mentioned. However, the above classification above does not include what cooperative communication media is and who operates such media.

In fundamental policy, editorial independency and self-regulation have been spelled out. It has been mentioned that the editorial policy is encouraged to be made public thereby carrying out public self-assessment and self-evaluation in writing (2.6). However, it is not mentioned in the Policy what kinds of subject matters may be self-regulated. The Policy, that has included almost all subject matters to be regulated thereby formulating laws, has not been able to include self-regulation in a practical manner.

The Policy put emphasis on local content promotion. It is spelled out that "production based on the country's all geographical contents and production based on maximum local contents in local news agencies shall be promoted" (2.8). In the current context, where majority of communication media outside Kathmandu valley have been using materials produced in the centre to maximum extent, it is good to have the Policy but the Policy is silent how such thing will be encouraged.

The Government has taken a policy to encourage national investment in mass communication

media (2.9). However, there is a possibility of misinterpretation of words used therein. As mentioned in the clause, the Policy has taken an approach to "discourage unhealthy practice of investing in communication media without business plan and with vested interest." The National Policy is not clear whether business plan can be a fundamental criterion for making investment in communication media, and what "vested interest" means, and how it should be define

The Policy has tried to address foreign investment issue linked with media investment. The Policy has noted four facets in relation with foreign investment. As per the clause 2.11 of the National Policy, "in case foreign investment needs to be open in development of infrastructure and technology", license for foreign investment shall be given based on criteria as follows:

- a) Not undermining Nepalese people's freedom of opinion and expression and national interest,
- b) Special terms be prescribed for ensuring editorial independence,
- c) Journalists, staffs and employees be Nepalese citizens only,
- d) Foreign investment giving decisive role to foreign investors not be encouraged.

While looking at international practices, communication media with foreign investment practices a provision that chief editor shall be a citizen of that country. Due to the provision that mandates to have Nepalese citizens only as all journalists, staffs and employees, foreign investment may not be attracted even "in case foreign investment needs to be open in development of infrastructure and technology".

As a member of the World Trade Organization, Nepal has opened 100% foreign investment in all media except motion picture sector. The National Policy is inconsistent with the policy relating to foreign investment. If foreign investment is not suitable in media, the Policy should recommend the Government of Nepal to reconsider its previous policy. Similarly, there is a provision that allows 15% foreigners in senior management level and specialist level while attracting foreign investment. The Policy contradicts with this provision as well.

Foreign content is also another issue required to be regulated along with foreign investment. At present, various media have been publishing Nepalese edition or local print of foreign newspaper and televisions have been broadcasting foreign programs. Such practice has not been regulated due to lack of relevant laws. Addressing this issue, the Policy provides, "Nepalese edition or print of foreign newspaper and broadcast, rebroadcast, relay broadcast of foreign radio and television and foreign materials to be broadcasted in Nepal and by Nepalese media shall be managed by laws [...]" (2.13). Addressing such legal vacuum is a positive aspect of the Policy.

Media monopoly and media concentration is another important issue addressed by the Policy. As

per the clause 2.14 of the National Policy, "Necessary laws, to discourage adverse consequences of media monopoly and media concentration for the development of decent and dignified journalism, with special terms and conditions that limit same person, family or group having ownership of or operating national level publication or broadcast media of similar nature such as print and electronic media to have a decisive share of ownership in other publication or broadcast media, shall be made." However, the Policy has not even indicated what kinds of adverse effects may be caused by media monopoly and media concentration. While analyzing the words used therein, a phrase "national level publication or broadcast media of similar nature such as print and electronic [...]" has been used but the meaning of "similar nature" is not well elaborated. Similarly, while analyzing language of the Policy, only monopoly and concentration in national level media appear to bring negative effect but having investment in local level media by same person, family or group is allowed. Additionally, while analyzing language of the Policy, it is allowed to have investment in more than one media "without having a decisive share of ownership". Media monopoly may increase in the future based on legal loopholes while formulating laws in pursuant to such provisions of the Policy. About monopoly and concentration, it is necessary to analyze the fact how much shares out of total market shares of media are held by such person, family or group and how such concentration affects the market rather than the fact whether such person, family or group has share or investment in one or more media. Media ownership transparency is important in order to see how much shares same person, family and group holds in the media market.

Public availability of true, detailed and updated information about who the owner is of any media or who owns how much shares therein is a crucial aspect of democratic media system. Without identification of the owners, it is impossible to undertake measures to address issues such as excessive media concentration and conflict of interest. If the identity of media owner were public, it would be possible to assess abuse of power in media, to make such issue public, to have open discussion and prevention thereof. Media regulator and public both should have access to information about who has the ownership in media. However, the Policy is silent about media ownership transparency, financial transparency and required laws thereof.

The Policy includes issues relating to advertisement and provides that "integrated laws on advertisement shall be made and effective provisions for regulation by regulatory body shall be made"(2.16). Likewise, the Policy provides that "establishment of Distribution Monitoring Committee shall be encouraged comprising advertisement related businessperson, advertisement agency and news media operators". Considering international experiences, such Audit Bureaus of Circulation are run as professional organization and are not regulated by the Government. For instance, in India, such monitoring is being carried out in leadership of Chamber of Commerce.

The Policy has envisioned some of new structure/bodies. The Policy provides that "national Public Service Broadcaster shall be established as an autonomous body that [...] will have nationwide access for strengthening national unity, maintaining harmonious and cordial dialogue

between cultural, caste based, geographical and linguistic diversities and continuing information flow even at the time of crisis" (2.17).

The clause 2.18 of the National Policy provides that necessary legal provisions shall be made to establish bodies such as Press Registrar Office and National Mass Communication Corporation.

"Necessary legal provisions shall be made to establish bodies such as Press Registrar Office that will undertake necessary functions including record keeping of mass communication media, licensing, proportional distribution of governmental advertisement, mediation of labour disputes of working journalist, staff and employee, regulation and institutional development, television signal and production, license for distribution, renew, regulation and technical monitoring and National Mass Communication Corporation that will also undertake functions of Minimum Remuneration Fixation Committee as per need."

The language used in this provision is ambiguous and is contradictory with other section of the report.

Press Registrar Office has been given responsibility of "undertaking necessary functions including record keeping of mass communication media, licensing, proportional distribution of governmental advertisement, mediation of labour disputes of working journalist, staff and employee, regulation and institutional development, television signal and production, license for distribution, renew, regulation and technical monitoring" and National Mass Communication Corporation is also given responsibilities including responsibility of undertaking functions of Minimum Remuneration Fixation Committee. However, the chapter 5 Regulatory Bodies of the report submitted by High Level Committee on Communication did not include anything about Press Registrar Office. The section (a) deals with National Mass Communication Corporation and the clause 8 thereof prescribes functions, duties and powers of the Corporation as follows:

8.1 To maintain records of newspaper, online communication media, radio, FM, community radio, television, cable television, cable distributor,

8.2 To provide permission for operation to national level radio, television and cable distributor and regulate them,

8.3 To recommend for just frequency distribution in the centre, province and local level thereby mapping radio frequency,

8.4 To settle disputes relating to radio frequency

8.5 To monitor and regulate cable distributors,

8.6 To negotiate and mediate in disputes relating to service term, facilities of working journalists,

8.7 To performs other functions assigned by law.

In this way, the provision of the clause 2.18 and functions, duties and powers of the Corporation as mentioned above differ with each other. The Corporation is entrusted with functions including record keeping, licensing, frequency management, dispute settlement power but nothing is provided about Press Registrar Office's functions (2.18).

Likewise, this provision has affected a constitutional provision relating to the jurisdiction of province and local government. The point 14 of the annex 7 of the Constitution includes matters related to means of communication as concurrent power of federation and province whereas the point 2 of the annex 9 includes newspaper as concurrent power of federation, province and local level. Conferring power of record keeping of all kinds of newspaper, online communication media, radio, FM, community radio, television, cable television, cable distributors to the Corporation give rise to the centralized regulation.

The Policy provides that Press Council shall be developed as "an independent, autonomous and competent body" thereby reforming current provisions relating to Press Council (2.19). It is a positive aspect of the Policy that it has a provision of appointing chairperson and members as per the principle of proportional inclusion including representation of consumer of mass communication media. Despite of positive provision in an ideal sense, it is difficult for Press Council to be independent, autonomous and competent considering the structure proposed for Press Council. The section (c) of the Chapter 5 Regulatory Bodies of the report deals with Press Council that provides 13 members Press Council. The clause 3 thereof provides the Recommendation Committee comprising 5 members for formation of Press Council. However, 9 members out of 13 shall be appointed by the Government of Nepal; 2 members shall be appointed by the Speaker of the Parliament and the chairperson of the National Assembly; whereas the Chairperson of Federation of Nepali Journalists shall be an ex officio member. In this circumstance, the Recommendation Committee can recommend mainly chairperson therein. It is difficult for the body, in which 9 members out of 13 members are appointed by the Government itself, being independent, autonomous. In this provision, there is ambiguity regarding recommendation and appointment. If majority of members are appointed by the Government of Nepal, Press Council shall not be in position to perform a role as an ombudsperson agency. On the other hand, the chairperson of Federation of Nepali Journalists is a member of the Recommendation Committee that recommends the chairperson of the Press Council in which the chairperson of Federation of Nepali Journalists himself/herself is also an ex officio member. This may invite conflict of interest. The Policy has not paid enough attention in this regard.

Likewise, the Policy provides that "National Mass Communication Training Academy shall be established in order to enhance and update skill and competence of media persons through study, research and training relating to mass communication and to encourage higher level of professional practice" (2.20) and " Nepal Communication Museum and Study Academy shall be established" (2.21).

Analyzing the Policy's provisions, it appears to be like program rather than the Policy. It appears that provisions of the clause 2.25 "Senior Journalist Felicitation Fund" shall be established in order to provide monthly allowance to senior journalist who have long contributed in journalism sector" and "necessary provision to establish and operate a separate journalist fund shall be made to provide treatment if any journalist is injured as a result of work related accident or has suffered from long term illness" are included as populist programs rather than as the policy. Establishment of such Fund instead of making provision for insurance and medical treatment institutionally in communication media itself will encourage the current trend of giving away money thereto based on political affiliation.

The Policy has not assessed the financial burden on the State due to the program of creating the Fund to provide monthly allowance to senior journalists. Moreover, there is equally probability of misuse of such Fund.

5. Sectoral Policy

The Section 3 of the National Mass Communication Policy deals with the sectoral policies that are divided into 10 sub sections. The policies have been formulated in regards to the subject matters addressed by the fundamental policy generally and other additional thematic subject matters thereby making provisions in details thereof.

a) Broadcasting Service

This sub section includes policies relating to frequency management. The title of this sub-section does not connote any meaning so this sub-section should be named as "frequency management" that makes this sub section more clear. Main points covered in this sub section are as follows:

- National frequency distribution and dissemination plan be made thereby considering frequency as a national resource,
- After formulation of such plan, provision for issuing license for use of frequency in a transparent and competitive manner be made,
- Frequency of F.M. radio and T.V. be distributed for public service broadcast, community broadcast and commercial broadcast,
- Frequencies be distributed in a transparent and open competitive manner,
- Legal provision be made that time period for frequency distributed to F.M. radio shall be

18 years,

- In case of previously distributed frequencies, the period be counted from the date on which the Government of Nepal publishes a public notice and informs thereof,
- Frequency availability be made easy in the place where frequency spectrum is low,
- Necessary provision be made in order to encourage licensed organisations of broadcasting and communication sector for infrastructure and satellite partnership in mutual consent,
- Provision for special emergency frequency be made for notice and information flow relating to rescue at the time of natural calamities, epidemics and humanitarian crisis.

In this provision, the time period for FM, Radio's frequency is prescribed but nothing is provided for television. As more television channels are being opened, it has already been urgent to regulate television frequency but the National Policy is silent in this regard.

b) Public service broadcaster

The sub section 2 of the sectoral policy deals with public service broadcaster. This includes policies such as transformation Radio Nepal and Nepal Television as national public service broadcaster, priority to be given to public service broadcaster in frequency distribution, adoption of proportional inclusion policy in all level during selection of human resources, insurance of broadcast focused on local issues in provincial and local level.

The provision is to some extent unclear that Radio Nepal and Nepal Television will be transformed as public service broadcaster and they will broadcast program focused on local issues in provincial and local level. Even if national public service broadcasters are to broadcast national, provincial and local level separately, nothing is mentioned in the Policy in this regard.

c) Private and commercial broadcaster

This section provides regarding creation of environment enabling private and commercial radio and television to operate as an independent, impartial, fearless and professional organization, classification of broadcast media and just distribution of frequency, and provision relating to limit on rebroadcast of any materials previously broadcasted from the station in order to promote local content.

The clause 3.3.4 of the Policy provides that "provision to appoint a qualified editor as per law who will bear responsibility and accountability of news shall be made in order to ensure editorial independence in broadcasting organization broadcasting news or information based program." The provision to appoint a qualified editor as per law alone may ensure responsibility and accountability of news but does not ensure editorial independence.

d) Community broadcaster

The clause 3.4 of the Policy deals with community broadcaster. The clause 3.4.1 provides that facilities and concessions can be provided as per the standards thereby defining community service broadcaster and classifying such community service broadcaster based on objective, perpetuity and content. The definition of community service broadcasters has tried to cover all bodies that may operate FM radio and television.

" [...] consumer group, local body, government agency relating to public transportation, climate change, air, water and weather, public health and agriculture, non governmental organization or cooperative, local club, trust, community or public educational institute [...]" (3.4.1)

This definition is very wide and has tried to cover all possible bodies that may operate FM radio and televisions. Moreover, according to this definition, "local body" also can operate community FM or television. However, the definition of "local body" is not included therein. As separate provisions have been made in relation to operation of media by local or provincial government, it is not clear what local body denotes. It would be better to simplify the definition in the Policy and define as "[...] F.M. radio and televisions owned by organization having non profit motive, except public service broadcaster, commercial and private broadcaster and the Federal, Provincial and local government owned [...]"

Additionally, the Policy provides that "trend of periodic evaluation of community broadcaster according to prescribed standards shall be encouraged." However, it is not clear who will prescribed standards for periodic evaluation and how the result of periodic evaluation be used.

In this section, emphasizing on local contents, provision is made that "rebroadcast in any community radio and community television of more than 20% of any previously broadcasted news and news based materials shall be discouraged."

The clause 3.4.4 of this Policy provides that "special law relating to broadcasting service shall be adopted in order to operate broadcast service in an organized, professional and dignified manner." It should be noted that a separate section named "Broadcasting Service" has been included in the section 3(1) of the Policy.

e) News Agency

About News Agency, the Policy provides that "National News Agency shall be developed as a public service provider thereby making a provision to include representation of service users." Having representation of service users in the National News Agency is positive. However, the meaning of "[...] shall be developed as a public service provider" is not clear because at present as well, the National News Agency is a public service provider.

The existing provision - the Section 4 of the National News Agency Act provides, "the Government of Nepal shall subscribe at least Fifty One percent shares of the Agency, and out of the total capital of the Agency, and a maximum of Twenty Five percent shares shall be sold to the employees of the Agency, as prescribed and the remaining shares shall be sold to the general people." However, this provision has not been implemented.

In the clause 3.4.1 of the National Policy, it is mentioned, "National News Agency shall be established as information bank." However, the Policy is silent regarding what information bank is and what rationale, objectives, duty, functions and powers of such information bank are.

The clause 3.5.2 of the Policy provides, "a provision to grant a permission to establish news agency in private and non governmental level shall be made." Nothing is mentioned how such provision will be made. Likewise, it would have been better if the Policy has analyzed whether it is relevant to operate news agency by the Government at today's context where print and broadcasting means are being professional, national and international information and news are being promptly accessible due to internet and at the present context of information flow. Considering international practice in this regard, news agencies are operated as public trust mutually owned by medias. For instance, Press Trust of India -PTI is a non profit sharing cooperative run by more than 500 newspapers. Likewise, Associate Press is also a non profit sharing cooperative that is owned by newspapers, radio and televisions.

f) Print media

The Policy has divided print media into three sub sections: a) Policies relating to Gorkhapatra b) Policies relating private and commercial print media and c) Policies relating to provincial, local or community based print media.

Provisions relating to "developing Gorkhapatra Corporation as an autonomous, competent and resourceful organisation with editorial independency" and "making necessary provision in order to publish its publications in provincial level" have been included therein.

Additionally, the Policy has mentioned a provision to ease access of public in Gorkhapatra Corporation's ownership. It is not clear what access of public in Gorkhapatra Corporation's ownership means. If it means making Gorkhapatra Corporation as a public limited company, the Policy has failed to clarify in this regard.

Provision enshrined by the National Mass Communication Policy is different from the provision of Long term Policy of Information and Communication Sector 2003 (2059) relating to Gorkhapatra. The Long term Policy has following provisions regarding Gorkhapatra:

- To involve the private sector in the operation of the Gorkhapatra Corporation with a view to conducting print media by the private sector in a competitive manner.
- To arrange for the operation of the Gorkhapatra Corporation competitively with participation of the private sector, and flow shares of the Gorkhapatra Corporation at the first stage.

Likewise, the High Level Media Recommendation Commission (2006) has recommended the governmental media be detached from government control and in case of Gorkhapatra, Gorkhapatra be handed over to the private sector after distinguishing the publication's brand and property and ensuring that the brand remains intact. The current provision changes the policy and provides for more governmental protection and more investment from the Government in the State run Gorkhapatra.

Regarding the policy relating to private and commercial print media, it provides, "ensuring editorial independency, provision relating to guarantee of employment and career development for journalist, staff and employees of communication media shall be made." This provision is unclear. Two separate notions such as 'editorial independency' and 'employment and career development for journalists, staffs and employees of the media' are mixed in a single provision. The editorial independency will not be ensured if the publishers or media owners be liable for contents to be published or broadcasted through the media. Likewise, responsibility and accountability for news shall be limited to the editor only; publishers shall not be made liable (under any laws including Defamation Act). This is not incorporated by the Policy.

A provision that reads "representation of women, marginalized, deprived, person with disability, indigenous nationality, Madhesi, dalit, minorities, backward region in editorial human resource and content of newspaper be encouraged" is positive.

The Policy provides, "facility and concession to newspapers to be run in provincial level may be provided thereby classifying them on the basis of the objective, perpetuality and content and making standards accordingly." However, the provision has not mentioned what "perpetuality" means.

Likewise, the Policy provides, "facility and concession to newspapers to be run in local level and community and through cooperative may be thereby classifying them on the basis of the objective, perpetuality and content and making standards accordingly." This is the first time cooperative run media has been mentioned but such cooperative run media is not included in the classification. Likewise, one of criteria for classification is perpetuality to which the provision is not clear.

g) Online media

The Policy provides that facility for and regulation of online media should be like of other news media.

The clause 3.7.2 of the Policy reads, "Provision for regulation as per law shall be made in case of internet based broadcasting media targeted to Nepalese geographical territory." It is not clear what 'targeted to Nepalese geographical territory' means. As any content available on internet can be accessed by all over the world, this provision is meaningless and unnecessary.

The provision "Regulation of internet based other media that are not registered as news based online newspaper be as per prevailing laws" (3.7.3) is also ambiguous. Prevailing laws, for instance Electronic Transaction Act will be invoked to 'internet based other media that are not registered as news based online newspaper'. Different legal protection for media of similar nature is against equal protection of law.

Although the Policy has referred to freedom of opinion and thought, right to information, some of its provisions are unconstitutional and contradictory to such freedom and principle. Among most problematic provisions, the clause 3.7.5 is one example. This provision reads, "Necessary provision relating to adoption special measures for internet service providers shall be made in order to discourage inappropriate use of information and communication technology and unexpected information flow."

It is apparent that the provision has been made to control freedom of thought and information flow in internet. Phrases "inappropriate use" and "unexpected information flow" do not give any clear meaning. As laws do not prescribed what appropriate use of internet is and expected information flow, this provision may be abused during law making process. Likewise, this provision has tried to use internet service providers as gatekeeper and in the name of special measure; censorship via ISP may be adopted.

h) Cinema

As the National Cinema Policy 2014(2071) has been adopted by the Government of Nepal, it is not clear why cinema is included in the National Mass Communication Policy 2016 (2073).

Provisions included in the sub-part of cinema are appeared to be like program rather than policies at one hand and on the other, problems faced by cinema sector and needs thereof are overlooked. There are three types of censorship in cinema sector. Film makers need to approve script at first, completed films needs to get approval from the Censor board and prior to screening, approval stating appropriate for screening from local authority is needed. This problem is not addressed by the Policy. Likewise, it is important to grade cinema. In the world,

all countries give grading to movies as appropriate for children, appropriate for children with parental guidance, appropriate for adults only. The Policy should include such grading system.

i) Advertisement

The Policy provides that necessary facility, concession shall be provided to advertisement business thereby listing advertisement business as service industry, and advertisement agencies shall be classified based on criteria such as investment, infrastructure, capacity and work nature.

The Policy provides that provision for proportional distribution of public service announcement supported by the State be made as well as necessary provision shall be made for making a regulatory body responsible in fixing maximum permissible ratio of news and other materials to advertisement for broadcasters and publishers.

The clause 3.9.9 of the Policy "provision of putting legal responsibility of information of product or service broadcasted on advertisement provider, publisher and broadcaster be made in order to prevent false information flow relating to such product or service" is problematic. For instance, a food product may produce an advertisement claiming certain percentage of vitamin is contained in such food product and communication media broadcasts such advertisement but according to this provision, legal responsibility of such broadcast lies with advertisement provider, publisher and broadcaster. In literal sense, it appears to provide immunity to producer and service provider thereof.

j) Provision relating to television signal and cable distributors

The Policy provides for conversion of cable distribution arrangement into digital system, priority to local or community television and clean feed policy in foreign television channel.

If the Policy includes a provision that mandates cable distributors to broadcast television channels of public service providers with priority and without any charges, public will be in position to enjoy information regularly broadcasted by public service providers and to get necessary information at the time of crisis caused by natural calamities and disasters.

Bodies to be created in order to implement the Policy:

- Distribution Monitoring Committee
- Public Service Broadcaster
- National Mass Communication Corporation
- National Mass Communication Training Academy

- National Communication Museum and Study Academy
- Senior Journalist Felicitation Fund

The Policy has not provided structure and legal form of aforementioned bodies in detail but the chapters 4,5 and 6 of the report (Report of High Level Committee on Information and Communication available on the website of Ministry of Information and Communication) included proposals. Such proposals are not analyzed here. Further thematic decision is required.

Some new laws to be formulated under the Policy

- Laws to ensure transparency of source of investment in communication media
- Laws relating to regulation of Nepalese edition or print of foreign newspaper and relay broadcast of foreign radio and television
- Laws to limit media concentration
- Laws relating to National Mass Communication Corporation
- Laws relating to Advertisement Council
- Laws relating to National Mass Communication Training Academy
- Laws relating to Nepal Communication Museum and Study Academy
- Laws relating to public service broadcaster
- Laws relating to community radio
- Laws relating to regulation of online media
- Laws relating to regulation of advertisement, television signal and cable distribution, laws relating to federal, provincial and local government in relation to implementation of rights of federation, province and local government on information and communication as per the Annex 5,6,7,8 and 9 of the Constitution

Laws to be amended as per the Chapter 7 of the report:

- Radio Act 1957
- Defamation Act 1959
- National News Agency Act 1962
- Gorkhapatra Corporation Act 1963
- Motion Picture (Production, Exhibition and Distribution) Act 1969
- Press and Publication Act 1991
- National Broadcasting Act 1993
- Working Journalists Act 1993
- Electronic Transaction Act 2008
- Right to Information Act 2007

The report is not clear whether it is enough to amend or reform all aforementioned laws or whether some of them should be repealed. For instance, it is recommended to repeal Radio Act 1957 long time ago, as it is obsolete. Likewise, the amendment of prevailing Right to Information Act is not relevant for the Policy's implementation. Act wise analysis is necessary regarding to amendment and reformation of prevailing laws.

The Policy and report have not mentioned anything regarding legal reform of other laws affecting freedom and professional exercise of mass communication sector including Defense Act, General Code, and Penal Code draft bill. Likewise, the Policy has not paid attention to the fact that policy and laws relating to regulation of freedom of opinion and expression and right to privacy have direct concerns with mass communication media.

Conclusion

"National Mass Communication Policy 2016" is included in the Chapter 3 of "Report on Information and Communication 2016" prepared by High Level Committee on Information and Communication. Although government officials stressed that the Government of Nepal has not approved the whole report but only the Policy included in the Chapter 3, the website of Ministry does not mention anything in this regard. On the website of Ministry (until 26 December 2016 (11 Poush 2073)), the whole report (proposed) has been uploaded as the National Mass Communication Policy. Government officials said that other sections except the Chapter 3 are only recommendations. It would be better to clarify in this regard.

Although the Policy provides separate section on fundamental Policy and sectors, many subject matters included in the fundamental policy section are repeated in the sectoral section. The repetition can be rectified by mentioning only basic subject matters in the fundamental policy section and subject matters related with concerned sectors in the sectoral section respectively. The Policy has failed to articulate constitutional provisions relating to freedom of expression and mass communication. It would have been better to mention whether such provisions are in line with international obligations under international convention/covenants ratified by Nepal and how constitutional provisions can be made in line with those obligations in case non-compliance.

As mentioned above, the National Mass Communication Policy 2016 is silent about Long term Policy of Information and Communication Sector 2003. It is not clear whether the Long term Policy of 2003 is still functional or not. The Government of Nepal should clarify in this regard because if such Policy is still functional (such Policy is still available in the website of Ministry of Information and Communication), many provisions of such Long term Policy and the National Mass Communication Policy are contradictory to one another. For instance, Long term Policy of Information and Communication Sector 2003 has envisioned a policy to gradually decrease governmental control in governmental communication media and encourage private sector but the current Policy has a provision to strengthen governmental control and increase additional

investment. Provisions relating to Gorkhapatra and National News Agency are its examples. The Long Term Policy 2003 had a provision to flow shares in order to increase participation of the private sector in Gorkhapatra and National News Agency. Therefore, it is a crucial policy shift but reasons behind such shift is not well explained.

The Policy is confusing in its theoretical aspects. For instance, the Policy mentions about self-regulation but in all aspects, it provides for State's regulation. The Policy does not have a provision or an indication what kinds of subject matters can be self-regulated by media. While analyzing various provisions of the Policy, it appears to promote centralized regulation rather than decreasing regulation or giving regulatory works to provincial, local government.

The Policy has not explicitly mentioned about free and professional media. It should be made clear whether we want professional journalism or dignified journalism. It is necessary to explain what dignified journalism is.

The Policy's provision "necessary provision relating to adoption special measures for internet service providers be made in order to discourage inappropriate use of information and communication technology and unexpected information flow" is not suitable and should be reformed immediately. This is an indication that the Policy may limit on expressing opinions freely or free flow of information and there may be censorship on internet service providers.

While talking about information technology, at present, use of internet based social media has been increasing. Social media is being used not only for inter-personal communication among people but also dialogue between the government and citizens. For instance, presence of Nepal Police in social media, use of social media (facebook, twitter) by the Office of Prime Minister under Hello Government Program. It would be useful to mention in this regard in the Policy.

The Policy mentions that there is a need of reform and change on various laws relating to information and communication (Chapter 7). Nevertheless, it is not mentioned why such reform and change are required and which provisions are to be reformed.

The Policy envisions many new mechanism and structure. However, it is not clear what kinds of relationship and coordination will happen between such structures and what their duties, functions and powers are. For instance, there appear to be no coordination among functions prescribed to National Mass Communication Corporation, Press Registrar Office and Press Council. Similarly, while considering the provision conferring functions including record keeping, licensing, frequency management, dispute settlement to single body (Mass Communication Corporation), it appears that State is having control oriented policy.

The Chapter 7 of the Policy has mentioned about implementation plan. If implementation plan proposed by the High Level Committee is merely a recommendation, the Government should make an implementation plan immediately.

Additionally, the Policy has failed to include various concerns raised by stakeholders. For instance, the Policy has not addressed a recommendation given by stakeholders to use certain portion of royalties being received by the Government of Nepal from communication media in development of communication sector. Similarly, the Policy has not address a problem relating to registration of press media (newspaper). As the provision of registering newspaper at the Office of District Administration under Ministry of Home Affairs for its operation is impractical, a recommendation has already been made to reform it but the Policy did not address in this regard as well. As at present, the Policy has classified media as national, provincial and local as per Federal system, it would be better to make a provision to register media nationally, provincially and locally.

In the end, the Policy has recommended to form High Level Committee on communication related laws and institutional restructure comprising of stakeholders organization and experts among other thereby making study including on reformation of existing laws, formulation of new laws, creation, assimilation and management, implementation and monitoring of structures as per federal system, federal structure relating to information and communication, restructure of existing Ministry of Information and Communication and subordinates bodies thereof and recommend the Government accordingly in order to implement the report. According to officials of Ministry of Information and Communication, the preparation is underway to form such committee. It would be helpful in reforming the National Mass Communication Policy and its implementation if consultation with key stakeholders could be conducted in prior to formation of such committee.

