

THE STATE OF DIGITAL RIGHTS IN NEPAL 2023

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EXECUTIVE SUMMARY

Overview of Digital Rights Landscape in Nepal

In 2023, the digital rights landscape of Nepal was under close scrutiny following several controversial incidents, and government decisions and attempts to regulate the online space.

Many indicators for quality internet access deteriorated, with only a few minor improvements. Nepal maintained its rank of 94th out of 121 countries in the Digital Quality of Life (DQL) index conducted by the VPN service provider SurfShark. Another report prepared by Nord VPN placed Nepal at 105th position worldwide.

The reach of fiber-based internet in Nepal was found to be unsatisfactory, as the broadband penetration rate was just 24.77%. Although mobile broadband expansion surpassed targets, the data speed was not satisfactory, with a decline in Nepal's global ranking on average mobile data download speed from 106th in May 2022 to 136th in May 2023. The work on the NTA Information Highway did not make anticipated progress.

The Cyber Bureau of Nepal received a total of 5904 complaints in the fiscal year 2022/23 (2079/80). Incidents in Nepalgunj and Dharan stired by online social media posts led authorities to urge all citizens to use social media in a positive and dignified manner.

On a positive note, governments at all levels appeared willing to deliver e-services as they introduced several programs aimed especially at promoting e-governance in Nepal. The NHRC was active in addressing various online activities inconsistent with human rights despite the Commission not monitoring digital rights as a separate category. The NHRC was particularly concerned with the hateful and intolerant remarks made online by social media users.

Currently, the Cyber Security Bill, the E-commerce Bill, the Information Technology Bill, the National Mass Communication Bill, the Nepal Media Council Bill, the Regulation of Social Media Usage: (Operation and Management) Bill, and the Telecommunication Bill are in various stages of development.

The Government of Nepal also drafted a Guideline to regulate ride-sharing apps for two-wheelers, the Telecommunication Infrastructure Regulations, the National Broadcasting (Twelfth Amendment) Regulations, and the Property Management (First Amendment) Regulations. NTA drafted a new regulatory framework for over-the-top (OTT) services such as WhatsApp, Viber, and Messenger.

The Government introduced and implemented the National Cyber Security Policy 2023, the Directives for Managing the Use of Social Networks 2023, the First Amendment to the Advertising Regulations, the Social Media Regulation Guidelines 2023, and the Directive on The Use of Social Media in Government offices, 2080.

NTA introduced a new Bylaw on Telecom Service Quality 2022 (2079), which requires telecom service providers to compensate their customers for poor internet and telecom services. NTA also sought inputs on a draft procedure on the operation of Digital Value-Added Services (DVAS), and amending the Cyber Security Bylaws 2077 BS. The MoCS sought input from stakeholders on the draft of the National Startup Enterprise Policy.

Key Findings and Trends

The most crucial trend in the past year was the government's desire to control social media, potentially compromising individuals' right to freedom of expression and the right to privacy. A number of proposed and approved laws and regulations have raised questions about the government's intention to undertake surveillance of the citizens. The stakeholders repeatedly underscored the need for sufficient discussion and consultation in the law-making process. They had reservations about provisions that may potentially restrict freedom of expression and the right to privacy and control the ICT industry.

An increased digital exposure also brought with it many challenges, including those of hate speech, misinformation, disinformation, online fraud, identity theft, and cyber security. These remained the problem of quality of service, service disruptions, and the effective monitoring of illegal and banned platforms. Despite a myriad of programs introduced by the government, their effectiveness will largely depend on proper implementation and coordination among the various government agencies.

NTA was highly controversial. There was a long-standing dispute between NTA and ISPs regarding ISPs' delay in royalty payments and fulfilling their obligations to the RTDF. In response, NTA and MoCIT refused to grant foreign exchange facilities to ISPs. NTA also revoked licenses of a number of service providers that failed to comply with NTA directives and laws.

NTA was the subject of further controversies, with multiple delays in the implementation of MDMS. The CIAA and MoCIT are separately conducting investigations into alleged corruption in the MDMS project. Likewise, NTA's proposed implementation of TERAMCOCS stirred another controversy due to the ability of the system to undertake phone surveillance. The implementation of the project was ultimately halted by the government. This led to a CIAA investigation into alleged irregularities concerning the TERAMCOCS project's design, cost estimates, and implementation procedures. Consequently, the chairperson of NTA, Purushottam Khanal, resigned.

A national debate arose from the news that Spectralite UK Ltd. had acquired Axiata Group's 80% stake in Ncell for a fixed sum of \$50 million. A member of the House of Representatives, Amresh Kumar Singh, filed a writ petition before the Supreme Court of Nepal alleging that the sale of shares did not happen transparently, potentially harming the state by bypassing Nepal's legal procedures. Currently, a high-level committee is undertaking a study to determine the implications of the sale and purchase of Ncell, particularly in relation to revenue and the impact the sale will have on foreign investment in Nepal.

The Government of Nepal banned the use of TikTok on 10 November 2023. The decision closely followed the introduction of 'Directives on the Operation of Social Media 2023'. Many commentators saw the Directives and the subsequent TikTok ban as an attack on freedom of expression, while some supported the ban. Public Interest Litigation (PIL) was filed against the decision.

Kathmandu District Court's verdict on the Apoorwa Khatiwada Singh case and Parbat District Court's decision to issue an arrest warrant against journalist R K Aditya Giri raised concerns about the freedom of expression. Next, Patan High Court's decision to grant cricketer Sandeep Lamichhane bail on condition that the police monitor his phone until the final verdict of the case raised concerns about the violation of the right to privacy of the accused. Finally, Patan High Court order directing all parties, especially the Nepal Electricity Authority, to refrain from taking any actions (including cutting internet cables or blocking internet access) that might disrupt internet services was seen as a positive.

Privacy concerns were equally paramount. There were legitimate concerns about the potential misuse of citizens' data due to a lack of purpose delimitation in Nepal's ID system. The IMF urged that the list of blacklisted borrowers should not be publicly accessible to safeguard borrower privacy in Nepal's Credit Information System.

Instances of cyber security breaches, including the hacking of the official Twitter handle of the Office of the Prime Minister on 17 March 2023, underscored the need for a stronger cybersecurity set up in Nepal. GIDC, the sole government data center, was subject to constant cyberattacks. In April 2023, around 60 government agencies, including the Public Service Commission (PSC), lost their data due to an issue with the server at the National Information Technology Center. Approximately 1500 government websites operating under the domain.gov.np were directly impacted by a power outage at the GIDC.

CHAPTER ONE

INTRODUCTION

1.1. BACKGROUND AND CONTEXT

Digital Rights Nepal (DRN) is a not-for-profit initiative dedicated to the protection and promotion of digital rights in Nepal. DRN's mission is "to ensure that everyone in Nepal gets access to the free, open, secure, reliable and affordable Internet and are equipped, empowered and enabled to uphold their digital rights".

DRN's work centers around four major themes – Freedom of Expression, Internet Governance, Safer and Secure Internet, and Privacy and Data Protection. To expand, it focuses on digital rights issues such as the right to online freedom of expression and association, online privacy, access to information, internet governance, cyber laws/policies, and cyber security.

In line with the mission and the associated themes, DRN undertakes an annual review of the various activities concerning digital rights in Nepal. This report posits such relevant activities for the year 2023 and is, hence, titled "The State of Digital Rights in Nepal 2023".

DRN regularly publishes newsletters to communicate the situation of online freedom and enjoyment of digital rights as well as to communicate about its organizational activities with a wide range of stakeholders. The newsletter is published on weekly basis and shared through email to its subscribers and stakeholders. DRN has issued 79 weekly newsletters so far. In year 2023, 47 issues were published.

Ensuring access to quality internet service is crucial to fulfilling digital rights of everyone. However, as noted in the Office of the Auditor General's audit report, the reach of fiber-based internet in Nepal is not satisfactory. On a positive note, mobile broadband expansion has surpassed targets. The target for mobile broadband in 2078/79 (2021/22) was 72%, but Nepal exceeded this, achieving 98.55% by the end of that fiscal year. The optical fiber network, on the other hand, has achieved a length of only 12,224 km, way below the targeted 12,170 km, primarily due to the difficulty in laying fiber cables in challenging terrain.

Relatedly, 4G/LTE services have reached 98.58% of subscribers in Nepal, exceeding the target of 50% for 2078/79 (2021/22), and telephone basic density has reached 142.87%. The report further mentions that the Nepal digital framework lacks the appropriate coordination for its implementation, with related bodies lacking accountability and ownership. The report recommends that all related bodies must coordinate and work together to achieve the desired results in all sectors. The report shows that there remain several challenges in meeting the intended goals.

Ensuring access to the internet, however, is not enough. With digital exposure comes other related challenges, including those of hate speech, misinformation, disinformation, online fraud, identity theft, cyber security, etc. This requires the government and the relevant stakeholders to encourage people from all walks of life to partake in digital literacy. Building robust systems with appropriate backups is a minimum requirement. The formative digital legislation of Nepal will help address many of the concerns. It is, however, inevitable that there are many gaps in the law that require smart solutions and timely updates, while respecting the rights of every individual. Striking a perfect balance between freedom of expression and content regulation is perhaps the biggest challenge in this area.

1.2. PURPOSE OF THE REPORT

This "State of Digital Rights in Nepal 2023" report aims to scrutinize Nepal's digital freedom landscape from 01 January 2023 to 31 December 2023.

1.3. METHODOLOGY

The report employs a mixed methodology and explores the laws, policies, and practices supported by primary and secondary data sources.

CHAPTER TWO

ACCESS

2.1. STATE OF INTERNET ACCESSIBILITY

2.1.1. NTA MIS REPORT

According to the Nepal Telecommunications Authority (NTA) data from Bhadra 2080 (18 August – 17 September 2023), 2.79 million people used fiber internet, while the broadband penetration rate in Nepal was just 34.77%. Worldlink remains the largest Internet Service Provider (ISP) with over 811,000 fiber users, followed by Dish Home with 311,000 such users. Earlier, on its 18th anniversary (3 February 2023), Nepal Telecom (NT) announced that the total number of its subscribers (and not just fiber users) had surpassed 21.3 million, more than 1.5 million of which use NT's 4G LTE services.

The report also showed that there are 2,840,627 fixed-line internet connections in the country, including 2,790,204 lines of FTTH, 36,685 lines of cable, and 1,738 lines of wireless connections. According to the same NTA report, 20,220,171 subscribers used 4G in Nepal, out of which 13,378,833 are NT users, while the remaining 6,841,338 are Ncell users. In the past year, Nepal broke its bandwidth consumption record twice. First, a new record peak of 60.880 gigabits per second was set during the World Cup League 2 cricket match between Nepal and UAE at the Tribhuvan University Cricket Ground on 17 March 2023. This number was soon eclipsed, however, by a bandwidth consumption of 81.45 Gbps during the World Cup Qualifier Match between Nepal and USA. Typically, internet consumption is around 16 to 20 gigabits.

Nepal's Internet Bandwidth Purchase in the first 8 months of FY 2022/23 (2079,880) was 1340 GB, according to the NTA. Worldlink Communications Pvt. Ltd. bought the largest amount of bandwidth, i.e., 400 GB, for which they paid NPR 134 billion. This significant purchase of internet bandwidth by various companies highlights the increasing demand for internet services in Nepal and the growth of the telecommunications industry in the country. A Nepal Network Operators Group (NPNOC) report showed that these platforms (YouTube, Facebook, and TikTok) accounted for nearly 60 percent of internet traffic in Nepal.

2.1.2. CENSUS REPORT

According to the final report of the National Population and Housing Census 2021, 73.2% of Nepal population owns mobile phones. The report indicates that mobile phone users make up 72.8% in the Koshi province, 74.8% in the Madhesh province, 68.2% in the Bagmati province, 71.1% in the Gandaki province, 74.6% in the Lumbini province, 82.2% in the Karnali province and 79.7% in the Sudurpashchim province.

The report also highlights that 73% of people living in Nepal use smartphones. Province wise, the percentage stands up as 74.2% in the Koshi province, 66.5% in the Madhesh province, 80% in the Bagmati province, 77.8% in the Gandaki province, 75.5% in the Lumbini province, 58.4% in the Karnali province, and 82.67% in the Sudurpashchim province have access to smartphones.

Additionally, 34.2% of Nepalis listen to the radio, while only 49.4% have access to television facilities at home as per the report. The report also states that 15% of Nepalis have access to computers and laptops, while only 37.8% of Nepalis use the internet.

2.1.3. OTHER RELEVANT INTERNATIONAL REPORTS

Nepal maintained its overall rank (94th out of 121 countries) from the previous year in the Digital Quality of Life (DQL) Index conducted by the VPN service provider company SurfShark. In South Asia, Nepal is placed last. The report assesses digital wellbeing based on five key pillars – internet affordability, internet quality, e-security, e-infrastructure, and e-government.

Nepal improved in terms of internet affordability (ranked 58th globally, compared to 77th the previous year) and e-government (ranked 104th globally, compared to 108th the previous year). Nepal slipped down the table in terms of internet quality (85th from 65th), e-security (98th from 89th), and e-infrastructure (95th from 91st). On the positive end, Nepal stands out for its excellent broadband affordability, ranking 39th globally, and fixed internet stability, securing the 33rd position, both surpassing global averages.

Nepal similarly did not fare well in another report prepared by Nord VPN, which placed Nepal at 119th position worldwide in the realm of cyber security and internet privacy awareness. In South Asia, all but Bhutan and the Maldives outperformed Nepal, with neighboring India ranking among the top 15 nations. The report also highlighted that a limited number of Nepalis possess the skills required to create robust passwords and safeguard sensitive data on social media platforms and web browsers.

Nepal performed well in Ookla's global broadband internet speed report for July 2023. Nepal was ranked 102nd in the world and 1st in the SAARC region with a download speed of 55.57 Mbps for fiber internet. The upload speed stood at 50.03 Mbps, with a low latency of 5 ms, making it a satisfying experience for users. Speedtest by Ookla is used to test the speed and performance of an internet connection.

2.1.4. ISSUES OF ACCESS FOR PEOPLE WHO FAILED TO REGISTER ON MDMS ON TIME

A properly functional MDMS [detailed in section 10 below] promises to help enhance the enjoyment of digital rights of individuals. First, a potential customer will be protected against any misrepresentation through stolen, refurbished or illicitly obtained goods. Second, under the system, a user has better chance of retrieving a phone in case of a theft. Likewise, MDMS helps the nation by eliminate illicitly traded phones and increasing the tax revenues.

In the current uncertain environment, MDMS raises two issues for customers in relation to access to their digital rights. First, selective deactivation of sim cards in expensive unregistered phones appears discriminatory. Second, the apparent failure to function fully despite numerous rescheduling of start date may cause concern over the reliability of the system.

2.2. GOVERNMENT INITIATIVES AND PROGRAMS

2.2.1. OVERVIEW

The overview of the many initiatives and programs undertaken by the Government of Nepal, local bodies, government agencies, and other relevant stakeholders in the past year may be better organized under the following related headings sorted according to the concerned actor:

a. The Federal Government:

The Government of Nepal placed a high priority on the use of ICT in 2023. This included the ambition to be self-reliant in data services and the goal to ensure cyber security. Further, as communicated by Prime Minister Puspa Kamal Dahal, the Government intended to provide broadband internet services for free in public places and implement the 5G technology. Moreover, under its common minimum plans and programs (announced on 9 January 2023), the Government announced that it would focus on digital transformation in Nepal, including through the enactment and implementation of an e-Governance Act as a comprehensive law.

Accordingly, the Government of Nepal undertook the following:

- First, the Department of Information Technology developed two systems - an integrated website management system and a web monitoring system - with the aim of enhancing security and maintaining uniformity across all government agency websites. These systems are expected to facilitate the efficient and safe operation of government websites, improve access to service providers, and identify and address hacking issues and website downtime in a timely manner.
- Second, the government also decided to make all Land Revenue Offices (Majpat Karyala) electronic to facilitate technology-driven public services.
- Third, the Rules of the House of Representatives were amended to make virtual parliament meetings possible. The new provisions allow for online sessions of the House of Representatives.
- Fourth, the Ministry of Education, Science and Technology (MoEST) launched the 'Educational Information' mobile application, aimed at providing easy access to educational statistics and information. The app was developed with the objective of making educational data accessible to everyone. Additionally, MoEST has also implemented a monitoring software system, which enables the online collection of progress reports on the annual budget and programs related to education.

- Fifth, the office of the Prime Minister issued a circular to all government agencies to be active on social media. This requires the agencies to maintain active social media profiles and align with the state's policy of effectively addressing citizens' grievances.
- Sixth, the government decided to grant jurisdiction to all the district courts to initiate and resolve cases falling within the purview of Chapter 9 of the Electronic Transactions Act 2062. A cabinet meeting held on 20 June solidified the decision to maintain district courts' jurisdiction over cybercrimes.
- Seventh, the Ministry of Industry, Commerce and Supplies (MoICS) took active steps to help facilitate foreign direct investment (FDI), particularly in the ICT sector. The MoICS introduced a new web-based automatic route for foreign investment approval. The implementation was subject to the Council of Ministers' decision. MoICS further increased the maximum limit of FDI that can be invested through the automatic route in ICT industries. As per the notification in Nepal Gazette, foreign investors looking to invest in IT-related industries could invest up to a maximum of NPR 500 million through the automatic route. The decision came in the wake of a significant increase in ICT sector FDI. In the fiscal year 2021/22, FDI in Nepal's information and communication sector reached NPR 12.73 billion, a substantial increase from the NPR 10.85 billion recorded in FY 2020/21.
- Eighth, the Office of Company Registrar (OCR) began an initiative to start an online system for registration and cancellation of companies, in line with the budget for the fiscal year 2023/24 (2080/81).
- Ninth, the Government of Nepal relaunched the "Hello Sarkar" initiative, adopting a 24-hour service model, beginning on 3 September 2023. The future goal is to extend it to all local levels. Previously, "Hello Sarkar" operated from 7 am to 7 pm. Soon, Hello Sarkar, issued a directive to all government offices emphasizing the importance of maintaining government email systems. The directive urged prompt resolution of any technical difficulties hindering routine checks to ensure that official emails are functional and operational.
- Tenth, MoCIT introduced a "Virtual Dialogue with the Minister" program, which aims to facilitate the process of collecting suggestions and complaints from citizens more efficiently. The Ministry's website now features the "Virtual Dialogue with The Minister" option, providing citizens with the opportunity to engage with the Minister through online conversations.
- Eleventh, an eleven-point collective declaration by the federal government decided to transition all transport offices across the country to online technology starting from August 2023 (Shadra 2080). One of the keys focuses of this transition is to make driver's license services more technology-friendly and alleviate crowds at transport offices.
- Twelfth, Minister Reitha Sharma, during a discussion in the House of Representatives, unveiled the government's plans to enhance telecom services in Nepal for the upcoming fiscal year, including the commercial expansion of 5G services. According to the Minister, the installation and operation of satellites will align with the Satellite Policy- 2077 BS, and a new frequency policy will be developed to improve service and revenues. As per the plan, the government data center will also be upgraded to serve as a disaster recovery center, while private sector data centers will be regulated and categorized. The integrated website management system will be expanded to ensure uniformity across all government agency websites, improve information accessibility, and reduce website-related expenses. Additionally, a web monitoring system will be introduced to address cybersecurity risks on these websites.

¹ https://digitalsignin.nepal.org/?page_id=273

² https://digitalsignin.nepal.org/?page_id=273

³ https://digitalsignin.nepal.org/?page_id=81

⁴ <https://www.nepaltelecom.com.np/2023/04/details-from-5g-report-2023-2024-5g-green-telecom.html>

⁵ Nepal Telecommunications Authority Telecommunication Indicators, Shadra 2080 (31 August - September 31, 2023), available at <https://data.gov.np/uploads/content/TelecommunicationIndicators@shadra-2080.pdf>, also, <https://www.nepaltelecom.com.np/index.html>

⁶ <https://thechristianityhub.com/2023/02/09/2080/>

- Thirteenth, and in response to the recent earthquake, the government swiftly activated the Emergency Telecommunication Cluster (ETC) under MoICT. The ETC's primary role is to manage information and communication systems in affected areas, ensuring a well-coordinated and efficient response to the crisis.
- Fourteenth, the Ministry of Culture, Tourism, and Civil Aviation designated the mobile number 9781768335 to submit complaints via Viber and WhatsApp. Additionally, complaints and suggestions can be emailed to 'Complaint at Tourism.gov.np.'
- Fifteenth, The Film Development Board (FDB) of Nepal established a Cinema Cyber Security desk with a hotline number to improve its security and integrate technology into its operations. This initiative comes after numerous Nepali films were subjected to piracy, and the cyber security desk was launched to promptly respond to such incidents.
- Sixteenth, The Government of Nepal announced the National ICT Awards to be presented in five categories to honor outstanding contributions to the field of Information and Communication Technology (ICT). Through the awards, the government aims to recognize individuals and organizations that have made remarkable contributions to the ICT industry in Nepal.
- Seventeenth, to enable seamless tax deposition in US dollars, the Department of Internal Revenue opened a separate account. In NRB for foreign digital media companies, such as Facebook, Google, and TikTok, offering digital services to Nepali consumers. Non-resident companies providing electronic services to Nepali customers will be subjected to a 13 percent Value Added Tax (VAT) and 3 percent Electronic Service Tax (DST) on their transactions. Earlier, Google LLC, LinkedIn and Isisco Inc., had registered with Nepal's tax system to comply with the electronic services tax implemented by the government. It was further reported that nine prominent digital service providers, such as Google, LinkedIn, Facebook, and TikTok, made their maiden tax payments in Nepal in the last year.

Despite a myriad of programs introduced by the Government of Nepal, their effectiveness will largely depend on proper implementation on part of the government machinery. In the past, promising programs did not deliver due to inadequate execution. For example, the Department of Industry has yet to release any funds from the NPR 125 billion allocated for start-up support. This is despite having already approved 313 business proposals. Likewise, the budget earmarked for digital health has not been utilized consistently for past four years, in the absence of Digital Health Guidelines, leading to frequent freezes in funding. Despite the initiation to formulate digital health guidelines in 2075, bureaucratic delays and lack of prioritization has hindered its adoption.

Therefore, the promising programs declared by the government must be backed up by proper and timely implementation.

7. Nepal Telecommunications Authority Telecommunication Indicators, Kathmandu 2080 (18 August - September 17, 2021), available at <https://nta.gov.np/uploads/contents/TelecommunicationIndicatorsKathmandu-2080.pdf>, also, <https://www.nepaltelecom.com/nta-ur-2019-20-nepal>.

8 <https://www.techpana.com/2021/02/28/>.

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10 <https://tech.nepalradio.com/2021/04/01/02810/>.

11 The report was published before 18 Feb 2021.

12 <https://www.techpana.com/2021/02/28/youtube-facebook-and-tiktok-dominat-nepal-internet-traffic>.

13 <https://tech.nepalradio.com/2021/04/01/02810/>.

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16 <https://tech.nepalradio.com/2021/04/01/02810/>.

17 https://www.nepaltelecom.com/nepal-lead-terrestrial-mobile-terrestrial-voice-qualified-global-intel@google_vignette.

18 <https://www.speedtest.net/about>.

19 <https://www.techpana.com/2021/02/28/quality-of-mobile-ser-vice-in-nepal-deteriorated-due-to-insufficient-frequency-and-the-state-taking-at-least-7-billion-rp-in-a-year>.

b. The Local level

There were a number of exemplary efforts at the various local levels to strengthen e-governance and encourage participation and transparency.

Lumbini Provincial Assembly, for example, implemented a process to conduct opinion surveys through a mobile application named 'e-Poll Lumbini Assembly'. Likewise, the Kathmandu Metropolitan City (KMC) launched e-Solaris Service for online recommendations. Next, the Madhesh Province took steps to simplify the process of online media registration, making registration possible in the province itself without having to visit Kathmandu as was the case before.

KMC also introduced a Communications and Information Bill 2080, to ensure efficient communication management, data collection, open data, freedom of thought and expression, and the right to information. KMC further launched a mobile application to make its services more accessible to public. Additionally, KMC issued an order requiring film halls and casinos in Kathmandu to implement digital ticketing system. Close to KMC, the Lalitpur Metropolitan City successfully implemented new metric address system for over 80,988 houses within its territories. In the far-east, Biratnagar Metropolitan City announced its plans to implement a digital literacy and technology-based curriculum in 25 community schools starting from the upcoming fiscal year 2023-24 (2080-81). In far-west, Dhangadhi Sub-Metropolitan City unveiled online platforms for registering public complaints. Under it, the residents would have the convenience of submitting their grievances through a mobile app, QR code, or the city's official website. The Namaste Mayor mobile app and the Namaste Mayor e-form are the dedicated channels through which the public can participate in this process.

Furthermore, Lalitpur Municipality in Surkhet is all set to introduce an Information and Data Management Act. This act aims to establish a system for gathering and handling information and data. The Disability Empowerment Center Surkhet also introduced a new tool kit app that aims to assist children with disabilities in their studies. The app is designed to provide easier access to educational resources for children with disabilities studying in schools across Nepal.

In 2023, Gandaki Province unveiled its vision for digital transformation as 'Digital Gandaki Province'. The policy and program document emphasized the province's commitment to the electronic governance master plan. In addition, the establishment of ICT innovation labs is emphasized as a crucial component of the province's journey towards digital transformation.

There were, however, a couple of questionable decisions at local level. First, Bagmati Province unveiled plans to enact a Cyber Crime Control Act. Since legislation on cybercrime is primarily under the domain of the federal government, Bagmati's decisions could be come under scrutiny. Second, Bhaktapur Municipality instructed ISPs within its jurisdiction to pay taxes based on a classification system. This approach of taxing ISPs by the local government contradicts constitutional provision assigning telecommunications and related matters to federal government.

20 <https://www.nepaltribune.com/2023/01/mobile-data-traffic-in-nepal-to-increase-3-3-times-by-2028.html>.

21 <https://www.techpains.com/2023/102688>.

22 <https://www.techpains.com/2023/102683>.

23 <https://www.techpains.com/2023/102682>.

24 <https://technologythabes.com/2023/01/08/21170/>.

25 <https://nepaltribune.com/nepaltribune.com/technology/2023-01-07/211630.html>.

26 <https://technologythabes.com/2023/01/08/21170/>.

27 <https://techmanad.com/online-parliament-meeting-in-nepal-opens-door/>.

28 <https://www.techpains.com/2023/102785>.

29 <https://www.techpains.com/2023/102780/prime-minister-of>

30 <https://www.techpains.com/2023/102780/prime-minister-of>

31 <https://www.techpains.com/news/2023/08/24/6873427895278282.html>.

32 <https://techpains.com/2023/102826>.

33 These include technology parks, techparks, software development, data processing, digital mapping, business process outsourcing (BPO), knowledge process outsourcing (KPO), and data centers.

34 <https://nepaltribune.gov.np/website/look/Post-26528>.

35 <https://technologythabes.com/2023/01/01/182682/>.

36 <https://technologythabes.com/2023/01/01/182682/>.

c. NTA:

As the regulatory body for the Telecom Companies and ISPs, NTA took a series of steps to facilitate a better digital landscape in Nepal. These include:

- NTA introduced a new Bylaw on Telecom Service Quality 2079, which requires telecom service providers to compensate their customers for poor internet and telecom services. Under this regulation, customers have the right to demand compensation if the service provider fails to provide quality service for a specified duration.

- Under the new bylaw, telecom companies and Internet Service Providers (ISPs) are required to address the complaints filed by customers through online platforms within two days. Service providers must address 90 percent or more within 34 hours and 99 percent or more within 48 hours, and the authority may award a fine of up to Fifty Thousand Rupees if the service provider does not comply with or fails to comply with the provision. The provision will come into force on 14 April 2023.

- The new bylaw guarantees the customers of 2G, 3G, and 4G services in Nepal a minimum standard download speed. For both 3G and 4G, the threshold of data drop should be less than 2 percent. The bylaw also allows data and voice pack subscribers to demand compensation if they are unable to use the service due to a network outage. Furthermore, the NTA has stated that it will withdraw the licenses of mobile and telecom service providers who fail to meet the specified quality of service standards.

- On 08 March 2023, NTA distributed smart devices such as TVs, CCTV cameras, and laptops to schools in 100 different rural areas celebrating the International Women's Day. Additionally, NTA provided WiFi devices to 32 community schools in Bodikedar Rural Municipality, Doti, to support smart learning in remote areas. These devices can utilize 4G SIM cards to provide high-speed internet. NTA is also providing free broadband services in educational institutions in many rural parts of Nepal through its Rural Telecommunication Development Fund (RTDF) broadband project.

- As per the latest NTA report, RTDF has successfully completed the establishment of internet connectivity in approximately 6,000 ward offices across the country. Utilizing the allocated funds, a total of 5,633 ward offices have been equipped with broadband internet access.

- NTA introduced a new interim directive concerning "In-flight Communication (IFC) Services" allowing the use of mobile and internet services in Nepali airspace. Upon successful implementation, passengers will have access to mobile broadband at an altitude of 10,000ft or higher.

- NTA made public a draft procedure on the operation of Digital Value Added Services (DVAS), seeking suggestions and recommendations from the public. According to the draft procedure, service providers must obtain permission from the authority to operate DVAS.

²² https://techcrunch.com/2023/01/26/nta-issues-availability-in-local-level-how-to-verify/?google_vignette=

²³ <https://techcrunch.com/2023/01/26/nta2023/>

²⁴ <https://www.bbc.com/news/technology-67202301>

²⁵ <https://techcrunch.com/2023/01/26/nta2023/>

²⁶ <https://techcrunch.com/2023/01/26/nta2023/>

²⁷ <https://www.government.np/nta-issues-emergency-telecommunication-study/>

²⁸ <https://www.anti-racket.com/2023/01/26/nta2023/>

²⁹ <https://techcrunch.com/2023/01/26/nta2023/>

³⁰ <https://www.bbc.com/news/technology-67202301>

³¹ <https://techcrunch.com/2023/01/26/nta2023/>

³² <https://www.bbc.com/news/technology-67202301>

³³ <https://www.anti-racket.com/2023/01/26/nta2023/>

³⁴ <https://www.anti-racket.com/2023/01/26/nta2023/>

³⁵ <https://www.bbc.com/news/technology-67202301>

³⁶ <https://www.anti-racket.com/2023/01/26/nta2023/>

³⁷ <https://techcrunch.com/2023/01/26/nta2023/>

³⁸ <https://techcrunch.com/2023/01/26/nta2023/>

d. ISPAN:

The Internet Service Providers Association Nepal (ISPAN) pledged to improve the quality of internet services in the country to meet global standards. Through a subsequent press release, ISPAN stated that ISPs will collaborate to make internet services more systematic, reliable, and dignified.

e. Nepal Telecom and Ncell:

NT began 5G trials in selected places in Kathmandu on 5 February 2023, the day of its 15th anniversary. The testing was later extended to Pokhara and Birgunj as part of the second phase. On the other hand, Ncell expressed disappointment for not having received the relevant permission to conduct 5G tests of their own. Additionally, Ncell partnered with Truphone for eSIM implementation in Nepal.

f. Nepal Rastra Bank (NRB):

On 5 January 2023, NRB issued the "Payment Service Organization Permission Policy 2079" to allow foreign investment in digital payment companies. NRB also issued the Unified Directive on Payment System 2080. The directive enables wallet users to easily transfer money across various platforms.

2.2.2. STATE OF NTA INFORMATION SUPERHIGHWAY PROJECTS

The work on NTA Information Highway did not make anticipated progress. Two sections that were expected to finish the year before had only reached 39%. NT is responsible for Package 1 and Package 3, but the installation of optical fiber and other necessary equipment was significantly behind schedule. Package 3 had only achieved 16.56% of the planned optical fiber installation. 23 out of 28 DWDM systems and 46 out of 56 core router devices were installed.

Under package 1, 2,179 km of optical fiber was to be installed, but only 1,341 km, or 61.54% of the work, was completed. Furthermore, out of 28 DWDM systems that needed to be installed under this package, only 27 were installed. 47 of the 48 core router equipment were yet to be installed. Package 3, which was assigned to United Telecom Limited in April 2018, has made no progress, and the contract has expired without any extension.

12 <https://technology.nhantriviet.com/2023/01/02/12121/>

13 <https://technology.nhantriviet.com/2023/01/08/12177/>

14 https://technology.nhantriviet.com/2023/01/08/12177/#google_vignette

15 <https://technology.nhantriviet.com/2023/01/08/12121/>

16 <https://www.techpains.com/2023/12/28/28>

17 https://technology.nhantriviet.com/2023/01/08/12121/#google_vignette

18 <https://www.nayapatitradastudy.com/news-details/18002/2023-01-01>

19 <https://technology.nhantriviet.com/2023/01/14/121621/>

20 <https://technology.nhantriviet.com/2023/01/08/121614/>

21 <https://technology.nhantriviet.com/2023/01/08/121614/>

22 <https://www.techpains.com/2023/12/28/28/#antique-municipality-to-collect-up-to-10000-supern-in-tax-from-199>

23 <https://technology.nhantriviet.com/2023/01/21/121607/>

24 <https://www.techpains.com/2023/12/28/28>

25 <https://technology.nhantriviet.com/2023/01/16/121616/>

26 <https://www.nepalpatent.com/2023/01/16/121616/#providing-wireless-devices-to-schools-in-100-rural-areas.html>

27 <https://www.techpains.com/2023/12/28/28>

28 <https://technology.nhantriviet.com/2023/01/08/121614/>

29 <https://www.techpains.com/2023/12/28/28>

30 <https://technology.nhantriviet.com/2023/01/21/121607/>

31 <https://www.antique.com/feature/2023/01/08/121616/#antique-municipality-to-collect-up-to-10000-supern-in-tax-from-199>

32 <https://technology.nhantriviet.com/2023/01/07/121592/>

2.3. CHALLENGES AND DISPARITIES

There are three major challenges in relation to access to quality digital technology in Nepal.

a. Quality of Service:

A mobile service quality report by NTA found that mobile call quality in Kathmandu, the capital of the country, is below the desired standard. Conducted through a "drive test" that evaluated the voice services of Nepal's three main operators – Nepal Telecom (NTC), Ncell, and Smart Cell – the report found that all three operators failed to meet the authority's set parameters for call quality. According to the report, Nepal Telecom's call setup success rate was just 88.78%, while Ncell's was 93.89% and Smart Cell's was a mere 26.39%. Similarly, in terms of call block rate, Ncell had the lowest rate of 6.3%, while NTC was at 11.2%, and Smart Cell's performance was worst, with a call block rate of 73.6%.

b. Service disruptions:

There were multiple examples of service disruptions in various parts of Nepal throughout the year. One such disruption occurred in NT services in Province 1 (Koshi) due to the cutting of optical fiber during road expansion. Likewise, on 17 January 2023, around 21.6 million telecom users in Nepal were affected when NT GSM and PSTN services network were completely disrupted for over one and a half hours. Upon investigation, it was found that the disruption was caused by the negligence of the NT employees and vendors. The disruption caused NT to lose millions of rupees.

To combat the frequency of disturbances, NT released a statement urging the public to report any activities or behaviors that may have damaged or may damage its infrastructure, which is essential to ensure the consistent and reliable delivery of services to its customers.

c. Effective monitoring of illegal and banned platforms:

Another challenge lies in the effective regulation and monitoring of illegal and banned websites. For example, many porn sites were still easily accessible without VPNs or TOR despite a ban imposed by the Government in 2018. Likewise, other illegal websites remained operational. Accordingly, NTA issued a notice ordering ISPs to block illegal websites being used for online betting and virtual currencies, cryptocurrencies, bitcoin, hyper networking, and online gambling.

2.4. DISPUTES BETWEEN SERVICE PROVIDERS AND REGULATORS

In the last year, the following disputes/disagreements occurred between ISPs/Telecom Companies (Telcos) and regulators (NTA or otherwise):

A. Between NTA and Telcos.

NTA investigated the repeated network issues of NT. The decision came after numerous complaints from NT's postpaid mobile users who experienced random balance deductions on 15 and 16 February 2023. Over 60,000 postpaid customers reported losing their balance or experiencing problems with their phone service. The NTA has instructed NT to provide clarification within 24 hours regarding the balance deductions of postpaid customers.

Additionally, NTA formed a 5-member task force to investigate the recurring network issues. NTA also raised issues about the mobile network quality of NT and Ncell in Ratnanagar, Chitwan. NTA asked both NT and Ncell to optimize network quality within a two-month period and to inform the stakeholders accordingly. NTA's evaluation of the network quality, based on its criteria outlined in the Telecommunication Quality Bylaw 2073, revealed that both NTC and Ncell failed to meet the preferred standards.

⁷⁶ <https://www.nta.gov.np/en/2023/02/28/>

⁷⁷ <https://www.nta.gov.np/en/2023/02/28/>

⁷⁸ <https://www.nta.gov.np/en/2023/02/28/>

⁷⁹ <https://technologyaffairs.com/2023/01/04/121788/>

⁸⁰ <https://technologyaffairs.com/2023/02/21/121812/>

⁸¹ <https://www.regulatory.com/en/2023/02/16/nta-issues-statement-on-nta-telecom-equipment-damage.html>

⁸² <https://technologyaffairs.com/2023/01/04/121788/>

B. Between NTA and ISPs.

In 2023, NTA amended its "Bylaw regarding Telecommunications Service Quality 2023" to require all ISPs to offer a minimum of 25% of the subscribed package speed during peak hours. The objective of this requirement is to improve the user experience during the busiest times of the day when internet traffic is at its peak.

Reacting to a hike in internet charges by some ISPs, the NTA issued a directive instructing ISPs to adhere to the prescribed fees. In response, some of the ISPs referred to some purported notice of NTA as the basis for their price hike. The NTA clarified that no official decision or notice has been issued to authorize any fee increments. The NTA reiterated that any unilateral increase in internet tariffs would violate the Telecommunication Act, 2063, and the Competition Promotion and Market Protection Act, 2063.

Notably, NTA took a drastic step of revoking the license of Kamal Network Services Pvt Ltd, a company providing internet services, including email, based in Chandan Nath Municipality, Jumla. The revocation was the result of the company's failure to renew its license within the specified timeframe under the Telecommunications Act. For the same reasons, NTA also revoked the license of three more ISPs – United Telecom Limited (UTL), Max Net Solutions Pvt Ltd, and Chitwan Network Pvt Ltd.

Further, NTA issued a notice to several ISPs regarding the delay in their royalty payments and their obligations to the Rural Telecommunication Development Fund (RTDF). In response to ISPs' refusal, NTA and MoCIT have refused to authorize foreign exchange facilities. Consequently, ISPs across Nepal are facing a severe risk of disruption as payments to foreign companies for bandwidth have been halted for the past eight months. The Federation of Computer Association Nepal (CAN Federation) has urged the government to resolve the matter.

C. NTA and Smart Telecom

There was a legal dispute between NTA and Smart Telecom after NTA canceled Smart Telecom's license. Smart had failed to clear its dues, including the renewal charges and fines, amounting to NPR 28 billion. NTA had given Smart Cell 15 days to prepare for handing over its assets, after which NTA would start asset management. In response, the telecom company filed an application before the Patan High Court.

However, a joint bench of the High Court Justices Dheeba Chandra Nanda and Dipendra Bahadur Bam ruled in favor of the NTA on 21 April. With this court decision, NTA subsequently initiated the process of managing the assets of Smart Telecom.

⁶⁴ <https://myreporter.com.np/entertainment/328386/nta-asks-isps-to-block-all-the-access-to-digital-platforms-used-for-transactions-of-online-betting-and-virtual-currencies>.

⁶⁵ <https://www.techpost.com/2023/03/04/>.

⁶⁶ <https://www.techpost.com/2023/03/04/>.

⁶⁷ <https://www.nepaltelecom.com.np/2023/04/new-terms-clarification-from-nta-wait-over-internet-service-quality.html>.

⁶⁸ <https://www.nepaltelecom.com/Internet-speed-at-peak-hours>.

⁶⁹ <https://www.nepaltelecom.com/2023/04/03/>.

⁷⁰ <https://www.nepaltelecom.com/2023/04/new-terms-clarification-from-nta-wait-over-internet-service-quality.html>.

⁷¹ <https://myreporter.com.np/2023/04/03/>.

⁷² <https://www.techpost.com/2023/04/03/>.

⁷³ <https://nta.gov.np/uploads/content/royalty%20TDF%20Notice%2020230216.pdf>.

D. Between Nepal Electricity Authority (NEA) and ISPs.

There was a long-running dispute between NEA and the ISPs this year which concerned the payment of rental of utility poles for fiber cables. While NEA demanded payments, the ISPs claimed to have already cleared their dues. The ISPs saw the increase in charges as unreasonable.

The Internet Service Provider Association of Nepal (ISPAN) sought the intervention of the Government, warning that an internet shutdown could happen at any time. An outage happened in Pokhara when NEA cut off the power supply to ISPs' data centers. Even the NTA wrote to the MoCIT, stating that any cutting of internet cables by NEA would be a violation of human rights.

Subsequently, ISPAN reached out to the Patan High Court on the matter. The Court issued a short-term interlocutory order on 15 February 2023, preventing NEA from cutting internet service wires, which could have disrupted internet access for customers across the country. The short-term interlocutory order was given continuity by High Court Judges Balendra Rupakheti and Sudarshan Raj Pandey, on 15 February 2023.

¹¹ <https://www.bhaskar.com/2023/02/03/internet-may-be-shut-down-across-the-country-tom-december-03>

¹² <https://techcrunch.com/2023/02/03/india-100-days-of-internet-shutdowns-2023-02-03-01-01-copy-01/>

¹³ <https://techcrunch.com/2023/02/03/india-100/>

¹⁴ <https://www.nepalnews.com/nta-requests-smart-cell-towers>

¹⁵ <https://www.bbc.com/business/2023/02/23-02-02-internet-shutdowns-2023-02-02>

¹⁶ <https://www.himalayapost.com/news/updates/18-2023-02-18-11744>

¹⁷ <https://techcrunch.com/2023/02/03/india-100/>

¹⁸ <https://www.bhaskar.com/2023/02/03/>

¹⁹ <https://techcrunch.com/2023/02/03/india-100/>

CHAPTER THREE

ONLINE FREEDOM OF EXPRESSION

3.1. TIKTOK BAN

On 13 November, the Government of Nepal banned the use of TikTok through a cabinet-level decision. The decision directed the MoCIT to make appropriate arrangements to implement the ban. The stated reason was the negative effect of TikTok on “social harmony and social environment.” In the past four years, 1,547 cybercrimes related to the TikTok platform had been reported.

The decision came in the wake of a press release by the Ministry of Home Affairs a week earlier, which had urged everyone to use social media responsibly. The notice had specifically singled out TikTok and the recent discussions between various government agencies and the international representatives of TikTok.

The decision also closely followed the introduction of Directives on the Operation of Social Media 2023. Many commentators saw the Directives and the subsequent TikTok ban as an attack on freedom of expression, while some supported the ban. Public Interest Litigation (PIL) was filed against the government’s decision.

3.2. APOORWA CASE DECIDED

In November 2023, the Kathmandu District Court delivered its verdict on the Apoorwa Khatiwada Singh case. Judge Kapil Mani Gautam’s bench imposed a fine of Rs 10,000 on the comedian. Singh was arrested on August 28, 2023, following a complaint against his portrayal of Newari culture in one of his videos posted on YouTube. He was placed in custody despite issuing an apology video in response to social media backlash. On October 31, 2023, the Kathmandu District Court instructed the police to release Singh on bail of Rs 250,000. Following the verdict, Singh commented that the decision might be a basis to compromise the freedom of expression of artists in the future.

3.3. PRESS COUNCIL NEPAL CASES BANNING YOUTUBE CHANNEL

The Press Council Nepal (PCN) actively monitored content transmitted through social media, particularly YouTube channels not affiliated with any media. The council also deemed many channels to be spreading exaggerated content that violated personal privacy, affected justice delivery, and distorted relationships between different castes, communities, and families. Based on those reasons, PCN recommended that the Nepal Police (Cyber Bureau) take action against such channels.

On 23 November 2023, PCN issued a 24-hour ultimatum to 17 media outlets, demanding an explanation for the alleged dissemination of content that incites terror and fear among the public. The Council, citing a violation of its code of conduct, had taken a decisive action against these media outlets accused of promoting violence and terror in a provocative manner.

Likewise, on December 2023, PCN urged Cyber Bureau to take action against 88 different YouTube channels. The PCN claimed that the channels had been causing confusion among the public by disseminating baseless and exaggerated headlines, promoting superstition, and violating codes of conduct through the airing of indecent and obscene content.

Further, PCN took action against 15 unregistered and unlisted news portals that allegedly published stolen news content without proper authorization from the news agency Nepal. For the foregoing reasons, the Council sent a letter to NTA urging it to impose a ban until further notice. However, it appears that neither PCN had the legal basis to make such a recommendation, nor NTA had the authority to suspend the portals in question. Therefore, PCN could be taken as acting beyond its jurisdiction.

3.4. JOURNALIST ADIPTA GIRI CASE

Parbat District Court issued an arrest warrant against journalist R K Adipta Giri, who had criticized fellow journalists on Facebook. The warrant has been issued for an investigation into a cyber-crime complaint. Giri had taken to social media to express concerns about potential financial irregularities involving journalists from Parbat. This led to six journalists based in Koshi, Parbat, filing a formal cyber-crime complaint under Section 47 of the Electronic Transaction Act 2063 (ETA). The court's order has attracted criticism. Debates have ensued about whether Giri's action should even be investigated under the ETA and if such practice would compromise freedom of expression and the ability to voice opinions on matters of public concern. Giri had not mentioned any names in any of his online posts. Following the news, the writer community organized demonstrations condemning the issuance of the warrant and in favor of freedom of expression.

3.5. API CENSORSHIP ON DURGA PRASAI INTERVIEW (RT TO PROTEST)

API TV, a channel owned by Annapurna Media Network, refused to air an interview conducted with Durga Prasad Prasad, a medical entrepreneur, had made the news for his 'Nation, Nationality, Religion-Culture, and Citizen Rescue Campaign'. The claimed goal of the campaign is to abolish the current federal system and declare Nepal a Vedic-Hindu State. The interviewer, Bhusan Dahal, a popular name in Nepali media, expressed his dissatisfaction with the channel's decision. The interview was later broadcast on YouTube.

⁶⁰ Decision of the Council of Ministers, 03 November 2023 (27 Karthik 2080), available at https://sapa.gov.np/storage/2023/11/03/20231103_03.pdf.

⁶¹ Decision of the Council of Ministers, 03 November 2023 (27 Karthik 2080), available at https://sapa.gov.np/storage/2023/11/03/20231103_03.pdf.

⁶² Nepal decides to ban 187 sites, Kathmandu Post, 03 November 2023, available at <https://kathmandupost.com/national/2023/11/03/nepal-decides-to-ban-187-sites>.

⁶³ Ministry of Home Affairs, Press Release on Social Media Issues, 03 November 2023 (08 Karthik 2080), available at <https://mha.gov.np/en/press/va-ja-nepal-to-no-ma-to-same-ja-to-the-no-payo-ja-to-to-no-same-tara-tha>.

⁶⁴ Home Ministry warns action against the wrong use of social media, *Setopati*, 03 November 2023 (20 Karthik 2080), available at <https://www.setopati.com/soan/208003>.

⁶⁵ <https://www.techpains.com/2023/11/07/stand-up-comedian-opposed-187-site-block>.

⁶⁶ <https://english.tribuneonline.com/spotnews-187-site-block-gully-rumor>.

⁶⁷ <https://techstrategynews.com/2023/03/20/112228/>.

⁶⁸ <https://www.jreincourtsnepal.gov.np/np/2023/11/20/8648/>.

⁶⁹ <https://www.techpains.com/2023/11/07/press-councils-tell-to-prosecute-if-youtube-channels-for-spreading-rumors>.

⁷⁰ <https://www.setopati.com/soan/208003>.

⁷¹ <https://english.tribuneonline.com/setting-tribe-identity-revive-it-support-if-it-admits>.

⁷² <https://english.parastika.com/np/10-refuse-to-air-durga-prasad-interview-tribune-desh-darbaram>.

CHAPTER FOUR

ONLINE PRIVACY

4.1. PRIVACY CONCERNS IN THE DIGITAL SPACE

4.1.1. BIOMETRIC DATA

There are legitimate concerns about the potential misuse of citizens' data due to a lack of purpose delimitation in Nepal's ID system according to a report. The report emphasized the need for strong regulations to protect citizens' data rights and address exclusions of those without citizenship cards.

EngageMedia had published a report called 'State of digital identification System in South and Southeast Asia'. The report focused on biometrics and digital identity (BDI) in the South and Southeast Asia (SSE Asia) region as part of a larger global research effort. It examined the status, threats, and impact of BDI across various regions, including SSE Asia. The study built on seven country-level case studies (Bangladesh, Cambodia, Indonesia, Maldives, Nepal, Philippines, and Sri Lanka).

The Nepal section highlighted Nepal's digital ID landscape, pointing out issues like privacy negligence, data access controls, retention practices, and risks of unauthorized access. The report also discussed provisions in Nepal's National ID Act allowing data disclosure under specific conditions, and criticized the lack of control, accountability, and legal avenues for addressing concerns. The report called for enhanced safeguards and a notification mechanism to improve the national ID system in Nepal.

The report reflected the huge concern about the use and storage of biometric data of individuals in relation to the National ID in Nepal. This is due to the storage of personal information on a centralized database, which posed a risk of data breaches and identity theft. Any violation would compromise a citizen's right to privacy.

The contract to verify the biometric details of citizens was awarded, without competitive bidding under the Public Procurement Act, to a foreign company. A Commission for the Investigation of Abuse of Authority (CIAA) investigation ensued.

4.2. SURVEILLANCE PRACTICES

In the past year, a number of proposed and approved laws and regulations have raised questions about government's intention to undertake surveillance of the citizens. For example, the government is working on a draft bill, under which the government could record and keep private phone calls of individuals without informing the court (proposed sections 77, 79, and 80). This would violate the right to privacy and freedom of expression of citizens. Earlier, the Council of Ministers had approved the concept paper for the bill on 30 March 2023.

Likewise, the controversial TERAMDCS had the technology to undertake phone call surveillance. Furthermore, the inclusion of a provision on a National Internet Gateway, associated with autocratic states, in the National Cyber Security Policy indicates a desire of the Government to formulate laws that enable it to undertake surveillance.

4.3. CASE STUDIES ON PRIVACY VIOLATIONS

4.3.1. CREDITORS INFORMATION PUBLICATION: WORLD BANK/IMF ISSUE

The International Monetary Fund (IMF) recommended measures to safeguard borrower privacy in Nepal's Credit Information System. IMF urged that the list of blacklisted borrowers should not be publicly accessible. This recommendation is set out in the IMF's 'Financial Sector Stability Review' Report on Nepal, which is based on data from June of the same year.

The report underscored that while the Nepal Rastra Bank Act allows for blacklisting, such information should not be readily available to the public. The IMF report argues that disclosing this data can intrude on customer privacy unnecessarily and lead to potential misuse of the information. The IMF also expresses concern that some individuals have remained on the blacklist for an extended period.

CHAPTER SIX

CYBER SECURITY

6.1. NATIONAL CYBER SECURITY LANDSCAPE

International studies show that the cyber security situation of Nepal is poor in comparison to many other countries in the world. Particularly, Nepal lacks robust digital infrastructure and adequate digital awareness among the users. Indeed, many government requests urge citizens to comply with the most basic good practices to avoid ill fate online. For example, NT requested its users to use SIM cards registered in their own name for reasons of digital safety and protection of personal data. The Cyber Bureau of Nepal received a total of 5904 complaints in the fiscal year 2022/23 (2079/80).

Often, the authorities compromise the freedom of expression and privacy of individuals in the name of protecting them from digital vulnerabilities. Likewise, a lack of sophisticated infrastructure means the authorities resort to imposing blanket bans on platforms to counter any online threat, as opposed to finding innovative and sophisticated ways to moderate content.

Last year, MoCIT made obvious its desire to regulate OTT services such as Viber and WhatsApp. One of the reasons touted was to counter the current difficulties in investigating criminal activities committed by using these platforms. Eventually, NTA drafted a new regulatory framework for over-the-top (OTT) services such as WhatsApp, Viber, and Messenger.

Further, MoCIT launched the National Information Technology Emergency Response Team (NITERT) and the Central CERT website (nitert.gov.np) on 2 May 2023. The newly launched website provides access to news, articles, and information on cyber hygiene and global cybersecurity. It also allows users to report cyber incidents, phishing attacks, and related attempts.

Finally, the Government also commissioned a study on establishing a National Cyber Security Center. The proposed Center would function as an empowered body for research and development on cyber security, promotion of cyber security, and digital forensic research. Improvement in cyber security is a must for Nepal.

Past instances of cyber security breaches, including the hacking of the official Twitter handle of the Office of the Prime Minister on 17 March 2023, underscore the need for a stronger cybersecurity setup in Nepal. The need is also highlighted by the 'Payment System Oversight Report 2021/22' released by the NRB, which found potential risks in 18 payment providers in Nepal. This is especially alarming given the surge in QR payments, mobile banking transactions, and users. The need is made even more pressing considering NRB's plans to introduce digital currency by 2026. Relatedly, NRB introduced the Cyber Resilience Guideline (CRG) 2023, which is aimed at bolstering cyber risk management in response to the growing prevalence of electronic transactions. It applies not only to banks and financial institutions but also extends its reach to payment system operators and payment service providers.

6.2. REVIEW/ANALYSIS OF NATIONAL CYBER SECURITY POLICY

[See section 6.1 above]

¹⁴ <https://techtrends.gov.np/national/2023/03/16/official-twitter-account-of-prime-minister-s-office-hacked>

¹⁵ <https://techtrends.gov.np/national/2023/03/14/13089>

¹⁶ <https://techtrends.gov.np/national/2023/07/14/13222>

¹⁷ <https://techtrends.gov.np/national/2023/08/10/13276>

¹⁸ <https://www.techtrends.com/2023/11/22/816/nepal-will-be-tourist-friendly-to-launch-digital-currency-in-3-years>

¹⁹ <https://www.nrb.org.np/content/nrb/uploads/2023/08/Cyber-Resilience-Guideline-2023.pdf>

CHAPTER SEVEN

HATE SPEECH

7.1. PRESENCE AND IMPACT OF HATE SPEECH ONLINE

7.1.1. NEPALGUNJ CASE

A social media post led to communal conflict between Hindus and Muslims in Nepalgunj in October 2023. The original post was made by a Hindu boy against the Muslim community. This resulted in demonstrations from both sides. To prevent any potential violence, the authorities imposed a curfew on 3 October 2023, which was ultimately lifted on 10 October 2023. It was also reported that authorities had considered social media and internet restriction as a precaution. The District Administration Office, Bhanu, urged everyone to refrain from engaging in activities that offend religious beliefs or promote religious animosity.

7.1.2. HARK SAMPANG DHARAN CASE

Dharan Sub-Metropolitan City was the center of a dispute between the indigenous community and the Hindu population in August 2023. The dispute centered on a social media campaign that 'cows should be slaughtered in Dharan.' The dispute began when a live stream of locals eating bull's meat went viral online.

This stirred debate on social media about the consumption of bull meat. Killing of cows and bulls is a criminal offence in Nepal. Hateful comments and posts soon followed, which aggravated the issue. False posts, with an aim of misinformation, were also found to have been circulated.

Subsequently, Hindu organizations decided to organize a protest. The authorities responded, however, by imposing a prohibitory order.

Mayor Harka Sampang Rai was also accused of promoting conflict among people through his social media based on his silence and lack of action. Rai clarified that he did not have any involvement in inciting the conflict. Meanwhile, three former mayors and a deputy mayor of Dharan issued a joint appeal expressing their concern that religious and cultural disputes in the sub-metropolis may disrupt social harmony.

7.2. REGULATORY MEASURES TO COMBAT HATE SPEECH

The Government of Nepal, through a special resolution of Council of Ministers passed on 3 October 2023, urged all citizens to use social media in a positive and dignified manner. The resolution emphasized the need to harness the increasing use of social media while upholding fundamental rights guaranteed by the Constitution, including freedom of thought and expression. Additionally, the Government appealed the users to avoid actions that spread hatred based on ethnic, religious, regional, or communal grounds and maintain harmonious relationships between different castes, communities, and regions.

On 4 October 2023, the Nepal Police Headquarters' Cyber Bureau released a similar message, urging for responsible social media and online platform usage. The advisory highlights the importance of exercising caution when sharing content on various online channels. It underscores the potential harm of spreading unfounded content, which could disrupt ethnic, religious, and communal harmony, thereby endangering national security and unity.

Further, the Press Council Nepal (PCN) urged social media platforms to proactively eliminate content that includes rumors, escalates conflicts, contains obscene material, constitutes hate speech, or violates other aspects of the code of conduct. A stern caution has been issued to media professionals, journalists, and social media users against sharing content that encourages violence, fear, conflict, favoritism, hate speech, or breaches of personal privacy.

7.2.1. HATE SPEECH UNDER SOCIAL MEDIA DIRECTIVES

The "Directives for Managing the Use of Social Networks 2023" defines hate speech in section 4(a). It clarifies the meaning of 'hate speech' as voice, words, pictures, or videos, which can cause ill consequences, including disturbing social harmony or inciting violence among persons, groups, or communities when such subject matter is posted, shared, or commented on. The section further lists hate speech as one of the acts that a social media user may not engage in either by themselves or through others.

7.3. DSN-UNDP RESEARCH ON HATE SPEECH

On 15 May 2023, DSN organized a roundtable discussion on 'Exploring the Status and Regulation of Hate Speech in Nepal' in collaboration with UNDP. The discussion focused on examining the extent and consequences of hate speech, exploring effective approaches to combat it, and discussing the involvement of parliamentarians in addressing this issue. The 29 attendees actively contributed to generating actionable solutions and suggestions to tackle this pressing problem. The importance of establishing a legal framework to address hate speech was highlighted, while safeguarding individuals' freedom of expression. Furthermore, the participants deliberated on the responsibilities of various stakeholders, particularly parliament members, in safeguarding and promoting freedom of speech while simultaneously addressing hate speech.

Likewise, on June 4, 2023, Digital Rights Nepal organized a collaborative workshop titled 'Regulation and Reporting of Hate Speech.'¹⁴¹ The primary objective of the workshop was to delve into the trends and regulations surrounding hate speech in Nepal, with a particular emphasis on the crucial role journalists play in addressing this issue. Notably, journalists, particularly those covering parliamentary affairs across various media outlets, participated in the workshop.

The workshop commenced with a comprehensive presentation that introduced the concept of hate speech, explored its impact on individuals, and examined the relevant laws in Nepal. This was followed by moderated group discussions, providing a platform for participants to identify different trends and regulatory approaches in tackling hate speech within the country. The discussions also offered an opportunity to explore the specific roles that journalists can undertake in combating hate speech. By leveraging their influence, journalists can promote constructive dialogue and responsible reporting, contributing to a more inclusive and respectful society.

Further, on 20 October 2023, DSN facilitated a discussion with the recipients of 'Youth in Strengthening Democracy Fellowship' at Accountability Lab Nepal. The session was aimed at promoting inclusive youth participation on combatting misinformation, disinformation, and hate speech. During the session topics including the understanding of mis/disinformation and hate speech, the balance between Freedom of Expression and mis/disinformation and hate speech, the significance of fact-checking in countering misinformation and hate speech, and the role of inclusive youth digital literacy in addressing these challenges were covered.

¹⁴¹ <https://www.dsnnepal.com/updates/2023/05/15/discussions-on-free-to-express-opinions-but-not-to-harm-others-in-republican-parliament-for-all-party-members>.

¹⁴² <https://hathornewsupdate.com/national/2023/05/15/courtesy-empower-in-republican-over-fears-of-communal-violence>.

¹⁴³ <https://kathmandu.com/news/2023/05/15/journalists-are-going-to-deliver-courtesy-in-republican-parliament-over-fears-of-hat-speech>.

¹⁴⁴ <https://english.ambnepal.com/courtesy-republican-parliament-over-fears>.

¹⁴⁵ <https://hathornewsupdate.com/national-no-2023/05/20/parliamentary-order-to-shut-over-fears-of-communal-violence>.

¹⁴⁶ <https://english.ambnepal.com/what-is-happening-in-sharan.html>.

¹⁴⁷ Mulali Penal Code, section 288.

¹⁴⁸ <https://nepalnews24.org/2023/05/20/judicial-goes-viral-with-misleading-claim-it-shoot-only-in-sharan/>.

¹⁴⁹ <https://english.ambnepal.com/what-is-happening-in-sharan.html>.

¹⁵⁰ <https://hathornewsupdate.com/national-no-2023/05/20/parliamentary-order-to-shut-over-fears-of-communal-violence>.

¹⁵¹ <https://kathmandu.com/news/2023/05/21/0178/>.

¹⁵² <https://www.facebook.com/photo/?fbid=822227898716166&set=pa.884263346789303>.

¹⁵³ <https://www.premaccountingnepal.gov.np/hq/2023/05/21/0168/>.

¹⁵⁴ Directives for Managing the Use of Social Networks 2023, sections 4(a).

CHAPTER EIGHT

ARTIFICIAL INTELLIGENCE

8.1. AI DISCOURSE IN NEPAL

8.1.1. PARLIAMENTARIANS/POLICY MAKERS

The Securities Board of Nepal (SEBON) announced its plan to set up its own data center to efficiently manage data and information related to the share and exchange markets. SEBON aims to harmonize regulation and supervision with advanced information technology systems, exploring the possibility of employing an integrated real-time supervision system based on artificial intelligence (AI).

Butwal Sub-Metropolitan City introduces AI Chatbot for enhanced service delivery. The AI chatbot was officially launched on 9 July 2023. The chatbot would be available through the messenger feature on the sub-metropolitan city's official Facebook page. The launch of the AI Chatbot also intends to cater to the right of information of individuals.

8.1.2. GOVERNMENT INITIATIVES (GOVERNMENT DEVELOPING CONCEPT NOTE ON AI)

The Ministry of Communications and Information Technology (MoCIT) is set to frame a concept paper on Artificial Intelligence (AI). Netra Prasad Subedi, the ministry spokesperson, and Joint Secretary, revealed that the ministry is in the process of formulating the AI concept. Subedi stated, "Recognizing the necessity for a comprehensive AI concept, the ministry has been actively working on developing the concept paper since last week."

8.2. DRN/UNESCO INITIATIVES ON AI

On 27 November 2023, DRN, in collaboration with the MoCIT, UNESCO Kathmandu, and Kathmandu University, organized a "Multistakeholder Dialogue on AI Governance in Nepal." The event aimed to engage government officials, civil society, academia, media, and the tech industry in discussing AI governance. Tanika Aryal, Chair of Digital Rights Nepal (DRN), stressed the critical importance of addressing AI regulation through inclusive dialogue. This collaborative effort is essential for shaping a dynamic AI governance framework. Santosh Sigdel, Executive Director of DRN, provided insights into the current status of AI regulation in Nepal.

The dialogue sought to raise awareness among stakeholders and policymakers about AI's implications on digital rights, privacy, and society. Preliminary recommendations for AI governance in Nepal were discussed, exploring ways to harness AI opportunities while mitigating potential risks. Participants viewed this dialogue as a significant step in comprehensive discussions on AI governance in Nepal, emphasizing the need for a balanced approach between innovation, ethical standards, and safeguarding citizens' rights and freedoms.

107 <https://www.sebon.gov.np/en/about-us/data-center>.

108 <https://www.bhaskar.com/2023/07/09/ai-chatbot-service-by-butwal-sub-metropolitan-city-upgrades>.

109 <https://thehill.com/policy/technology/381202-ai-concept-note/>.

CHAPTER NINE

LEGAL AND POLICY DEVELOPMENT

9.1. NATIONAL CYBER SECURITY POLICY 2023

The Council of Ministers approved the National Cyber Security Policy 2023 through its decision dated 8 August 2023. The Policy is a significant step toward advancing the forthcoming Cyber Security Bill and other related legislation. It outlines, among other things, the goals, objectives, strategies, and action plans related to cyber security.

The Policy's long-term thinking is centered around the creation of a resilient cyberspace. Accordingly, the policy's primary goal is to enhance Nepal's global cyber security index score from the current 44.99 (out of 100 points) to 60% within the next five years, 70% within the next ten years, and 80% within the next fifteen years. It aims to create legal and institutional frameworks to ensure a secure cyberspace, mitigate cyber-attack risks, and safeguard critical national infrastructure. Additionally, the policy seeks to facilitate the exchange of experiences and cooperation at bilateral, regional, and international levels to reduce cyber security risks. The Policy sets out 9 specific strategies and the various related action plans.

The Ministry of Communications and Information Technology had previously shared the draft policy with stakeholders for input. Stakeholders urged the government to incorporate provisions for key responsible agencies and resources to execute the policy. They also emphasized the importance of open and safe internet, individual privacy, credibility, neutrality, accountability, interoperability, partnership, and a multi-stakeholder approach. While the policy has addressed some stakeholder concerns, many others remain unaddressed.

One contentious aspect of the policy is its intention to monitor and control social media to prevent potential infringement on individuals' rights in cyberspace. The proposal for a National Internet Gateway, disregard of civil and fundamental rights in the policy, lack of implementation plan, superficial problem analysis, and absence of coordination mechanism, have been highlighted as other points of concern.

9.2. DIRECTIVES FOR MANAGING THE USE OF SOCIAL NETWORKS, 2023

The Council of Ministers approved the "Directives for Managing the Use of Social Networks 2023" through its decision dated 09 November 2023. The text of the directives, however, was made publicly available only on 27 November 2023 through the Nepal Gazette.

The directives require social media platforms, such as Facebook, X (formerly Twitter), TikTok, and YouTube, to list with the MoCIT and maintain a point of contact in Nepal. This requirement seeks to allay concerns related to content moderation and platform engagement. The provision, additionally, aims to alleviate challenges faced by Nepali users when trying to have their concerns addressed and/or have objectionable content removed. The challenge was primarily due to the absence of company representatives within the country. A dedicated 'Social Network Management Unit' will handle complaints and advocate for legal frameworks, promote best practices, and facilitate studies in the social media domain. The implementation of these directives, subject to further decisions by the cabinet, encompasses a broad spectrum of responsibilities and regulations. It centers on defining the roles and obligations of Social Networking Platform Operators, outlining the Ministry's responsibilities, and classifying and addressing grievances related to social media platforms.

Additionally, the directives outline a set of actions prohibited for users on these platforms. This comprehensive set of directives includes a 19-point list that specifies what users must refrain from doing on social media platforms. These restrictions include prohibiting the creation or use of fake identities for content posting, prohibition of content that promotes hatred against any group based on gender, community, caste, religion, or profession, and prevention of content that endorses or promotes unlawful activities, such as child labor, human trafficking, child marriage, or polygamy.

The directives emphasize the prohibition of hate speech, disrespectful behavior, or defamation through any media format, including text, audio, video, or images. Activities such as distorting private images without consent, sharing vulgar or explicit content, promoting sexual exploitation, prostitution, narcotics, cyberbullying, and content related to terrorism are strictly prohibited.

Digital rights activists have warned that some of the vague provisions in the directives may lead to unintended consequences and could potentially stifle criticism or social movements.

9.3. UPDATES AND REVISIONS IN DIGITAL RIGHTS LEGISLATION

Currently, there is no single legislation that comprehensively covers digital rights in Nepal. Instead, a number of scattered legislations address various facets of digital rights. Electronic Transaction Act 2008 is the primary law in the digital landscape of Nepal. The Act, however, lacks adequate provisions to address concerns brought about by the unprecedented developments in digital technology in the years since its promulgation.

Individual Privacy Act 2018 provides for the protection of the right to privacy of individuals generally, including an online platform. Likewise, Muluki Penal Code 2018, Nepal Telecommunications Act 1997, and National Broadcasting Act 1993 are other relevant laws. National Broadband Policy 2014, Information and Communication Technology Policy 2015, Online Media Operation Directives 2017, and the Digital Nepal Framework 2019 are examples of relevant delegated legislations.

The MoCIT is actively seeking to supplant or amend most of these laws. In the past year, there were a reported nine bills, four amendments bills, and one regulation in various stages of the drafting process.

The Information Technology Bill, which was previously returned from the parliament, is being discussed again after incorporating suggestions from the Department of Information Technology. The Nepal Media Council Bill is also under discussion following a recommendation report from the Mass Communication Sector Reform Committee. Further, the National Broadcasting (Twelfth Amendment) Regulations and the Advertisement (Regulation) (First Amendment) Rules have progressed to the Ministry of Communications after receiving consent from relevant authorities. Similarly, the Property Management (First Amendment) Regulations, pertaining to de-licensed telecom service providers, is awaiting approval from the Ministry of Finance after receiving consent from the Law Ministry.

Additionally, the Telecommunication Bill, draft Telecommunication Infrastructure Regulations, Cyber Security Bill, drafted by NITA, are undergoing discussions at MoCIT. The major provisions of the Telecommunication Bill include the rules on license renewal and license fees. Section 35 of the draft bill closely mirrors the existing telecom bill's Section 33, which stipulates that asset such as land, buildings, equipment, and structures related to telecommunication services, developed with over fifty percent foreign investment, will become government-owned after the license period expires. However, the proposed bill introduces a significant shift through Section 33(2), allowing for the renewal of licenses while maintaining a majority foreign investment. Under it, after the initial 25-year license period, a service provider can continue operations with 49 percent ownership by Nepali citizens or organizations. If the bill is approved in its current form, it would enable Ncell, a private-sector telecom company in Nepal with 80 percent foreign ownership, to extend its operating license while preserving its majority ownership structure.

Furthermore, the draft bill proposes substantial reductions in license fees and renewal fees for mobile service providers. It proposed to reduce the license fee for basic telecommunication service from NPR 357.5 million to just NPR 10 million. Renewal fees would also be adjusted to NPR 10 million annually from the license issue date or eight percent of total income for the first five years. This is a significant departure from the existing provision, which demands renewal fees of NPR 20.13 billion (initially for ten years, then every five years). In addition, the bill stipulates that after five years to ten years of obtaining the license, an annual fee of NPR 350 million or eight percent of total income will be required. Beyond ten years, the bill calls for an annual fee of NPR 2 billion or eight percent of total income.

¹⁶¹ CoM Decision, 8 August 2023 (21 Election 2080), available at https://epic.gov.np/storage/22/pasta/8887688_28.pdf.

¹⁶² National Cyber Security Policy 2023 (2080), p. 5, strategy 101.

¹⁶³ National Cyber Security Policy 2023 (2080), p. 4.

¹⁶⁴ Nepal was ranked 16th in International Telecommunication Union's 2020 Global Cybersecurity Index Report, p. 26, available at https://www.itu.int/ITU_T/cyber/2020/2020-GCI-2020-2021-2022-2023-2024.pdf.

¹⁶⁵ National Cyber Security Policy 2023 (2080), p. 5.

¹⁶⁶ National Cyber Security Policy 2023 (2080), p. 5.

¹⁶⁷ <https://www.republika.com.np/story/45428/>.

¹⁶⁸ CoM Decision, 28 November 2023 (21 Election 2080), available at https://epic.gov.np/storage/22/pasta/8876028_83.pdf.

¹⁶⁹ <https://nepalradio.gov.np/welcome/look?ref=25644>.

¹⁷⁰ Directives for Managing the Use of Social Networks 2023, sections 3, 6 & 7.

While these proposed changes may alleviate some of the financial burdens associated with license renewal for mobile service providers, they could result in substantial revenue loss for the state.

The government is all set to introduce a Social Media Bill to enhance the scope of recently implemented social media guidelines. On 29 November, the cabinet had granted policy approval for drafting the 'National Mass Communication Bill,' 'Nepal Media Council Bill,' and 'Regulation of Social Media Usages (Operation and Management) Bill.' Accordingly, the MoCIT prepared a draft bill aimed at regulating and managing social media platforms. Spokesperson Netra Prasad Subedi had announced that the Social Media Bill was set to be unveiled to the public on 24 December 2023. This initiative comes as the government responds to mounting concerns regarding the use and misuse of social media in tandem with the rapid advancements in information and technology. It's noteworthy that the Government of Nepal has previously issued a Social Media Regulation Directive, indicating an ongoing effort to address the evolving landscape of digital communication.

Of the proposed drafts, the First Amendment to the Advertising Regulations was published on 17 August 2023. The amendment gives the Advertising Board the power to supervise electronic and digital advertisements, including on social media. The amendment grants the Advertising Board the power to verify the legitimacy of ads through official channels, ensure adherence to relevant laws, and confirm the registration of media and advertising agencies with the board. The amendment also empowers the board to create guidelines for overseeing ads on social media and regulates foreign companies like Facebook, Google, and Amazon in Nepal. These companies must now register with the Advertising Board due to their integration into Nepal's tax framework. Violations of advertising codes and laws can lead to penalties, including temporary suspension of ads and broadcasting activities by non-compliant entities. Additionally, Nepali TV networks airing significant international content through foreign partnerships must obtain the Board's approval and pay a fee.

Further, the MoCIT implemented the Social Media Regulation Guidelines 2023, requiring all social networks operating within Nepal to be listed within three months. Effective from 1 December, the directive mandates that individuals, companies, or organizations intending to operate social media platforms to register them within three months of the guidelines' publication. Additionally, social media platforms already in operation before the guidelines' commencement must be listed with the Ministry within three months of the directive coming into effect. The Ministry has issued a stern warning, stating that social media platforms failing to register within the specified timeframe may face a ban on their operations.

The Government also granted approval for guidelines governing the use of social media by government offices. During a Council of Ministers meeting on 21 December, the decision was made to endorse the 'Directive on the Use of Social Media in Government Offices, 2080,' which had been presented by the Council of Ministers Social Committee. These approved guidelines aim to regulate the utilization of social media within government offices.

The government of Nepal has drafted a guideline to regulate ride sharing apps for two wheelers. The draft guidelines if issued would bring existing and future ride-sharing services under government regulation. Currently, ride-sharing services such as Pathao and Indriver, have not been subjected to government oversight, leading to increasing distortions in the service and hardships faced by individuals and companies involved in this profession. Under the proposed regulations, vehicles used for ride-sharing services would need to be registered according to specific criteria established by the government. The aim is to ensure proper oversight and standardization within the industry, promoting safety and quality services for both riders and service providers.

26 <https://techcrunch.com/2023/11/29/india-passes-laws-to-regulate-social-media/>

27 Directives for Managing the Use of Social Networks 2023, section 12.

28 <https://technologytoday.com/2023/11/29/india/>.

29 Directives for Managing the Use of Social Networks 2023, section 4.

30 <https://www.tribuneonline.com/2023/11/29/india/>.

31 <https://www.bhijournal.com/2023/11/29/>.

32 <https://www.bhijournal.com/2023/11/29/1440217/ncetv-restore-broadband-renewal-maintaining-regularity-foreign-investment/>.

33 <https://www.bhijournal.com/2023/11/29/1440217/new-telecommunication-bill/>.

34 https://drive.google.com/file/d/1AC1U-1M4C0UWgJd0UeCR027J0e_u/view.

35 <https://technologytoday.com/2023/12/23/india/>.

36 <http://nepalradio.gov.np/welcome/social-post-2080/>.

37 <https://technologytoday.com/2023/12/23/india/>.

38 <https://www.bhijournal.com/2023/12/20/guidelines-on-the-use-of-social-media-by-government-offices-have-been-passed/>.

NTA introduced a new Bylaw on Telecom Service Quality 2022 (2079), which requires telecom service providers to compensate their customers for poor internet and telecom services. NTA also made public a draft procedure on operation of Digital Value Added Services (DVAS), seeking suggestion and recommendations from public. According to the draft procedure, service providers must obtain permission from the authority to operate DVAS. The procedure has defined DVAS, as type of services other than the main telecommunications services (Voice, SMS, Data Pack, MMS) provided using telecommunication services (e.g. PSTN, mobile, internet). In the name of approval from the authority, this procedure has tried to introduce a licensing system.

NTA also sought input from stakeholders to amend the Cyber Security Bylaws 2077 BS. In a notice released on 2 August 2023, the NTA called for opinions, advice, and suggestions from the concerned parties regarding the proposed amendments to the bylaws. Stakeholder and specifically, telecom service providers, were specifically asked to provide their feedback within 30 days from the date of publication of the notice, addressing any issues and matters that require amendment in the existing by-laws.

The MoCS is seeking input from stakeholders on the draft of the National Startup Enterprise Policy. In a notice issued on 30 July, the Industrial and Investment Promotion Division, under the ministry, has invited suggestions from concerned bodies. Startup enterprises or businesses can take advantage of a 100% income tax exemption for the first three years of profit, according to the draft policy. The policy classifies startups as those with characteristics such as no more than 10 full-time employees, fixed capital (including land value) of less than Rs 20 million, paid-up capital not exceeding Rs 5 million, and an annual total income not exceeding Rs 5 million. Additionally, the policy specifies that 14 different sectors, including science, technology, communication, and information technology, will be eligible for the tax exemption.

During the National Symposium on Regulatory Frameworks for Cyberspace in Nepal organized by The Digital Freedom Coalition and Nepal Bar Association on National Information Technology Day & International Press Freedom Day, stakeholders discussed that the upcoming parliamentary session may table bills that include provisions about restricting freedom of expression and controlling ICT industry. Political party leaders, lawmakers, media personnel, and representatives from the communication, law, and technology sectors stressed the need for sufficient discussion and consultation in the law-making process.

5.4. 11TH AMENDMENT TO THE NATIONAL BROADCASTING REGULATION

The Government of Nepal published the 11th Amendment to the National Broadcasting Regulations in the Nepal Gazette on 3 March 2023. The amendment was highly controversial. Due to NTA's proposed OTT regulation draft as well as a lack of implementation, the National Broadcasting Regulations made news in 2023 as well.

At the time of its introduction, stakeholders had voiced dissatisfaction with various aspects of the amendment. These include the ambiguous and over-broad provisions; undermining the right to freedom of expression, right to broadcast, and the principle of open internet; exceeding the scope of the parent act; breaching the principle of comprehensibility of law; and ignoring consultation before amendment. The amendment was further described by an attempt on part of the government to violate human rights affecting all internet users.

⁶¹ <https://www.onthetwitter.com/2023/08/222023-08>.

⁶² <https://nta.gov.np/content/notice-notice-issued-by-nepal-tele-communication-authority-nta-for-all-the-concerned-stakeholders-to-provide-their-opinion-and-suggestions-for-the-amendment-in-cyber-security-bylaws-2022>.

⁶³ <https://www.thetopnews.com/2023/12/22/2023/government-seeks-stakeholder-input-on-new-startup-policy>.

⁶⁴ <https://theholynepal.com/2023/03/28/230328/>.

⁶⁵ <https://theholynepal.com/2023/08/03/230803/>.

⁶⁶ <https://nepalradio.gov.np/news/area/boom/Post/32882>.

⁶⁷ The 11th amendment to the National Broadcasting Regulation includes over-the-top (OTT), video on demand (VOD) and internet television under "Other Means of Communications". Under the amended regulation, OTT and internet television services must register to operate in Nepal. NTA's draft seeks to regulate OTT communication services (messaging, telephony) only. <https://theholynepal.com/2023/08/03/230803-between-nta-vision-and-regulation/#:~:text=The%2011th%20amendment%20of%20the,register%20all%20registered%20in%20Nepal>.

CHAPTER TEN

MOBILE DEVICE MANAGEMENT SERVICE (MDMS)

10.1. DIGITAL RIGHTS AND MDMS

NTA introduced the MDMS under the MDMS Bylaws 2022 (2079), under its authority derived from section 62 of the Telecommunications Act 1997 (2050). An important aim behind the installation of MDMS is to eliminate illicit mobile phone trading and use. According to NTA, 3.1 million mobile phones were brought into Nepal via the grey market in roughly the last three months of 2022. This number is nearly double that of phones imported through legal channels. Of the 4.8 million devices introduced into the system, individuals returning home from foreign countries brought in only 42,000, with 3.1 million coming from the grey market and 1.5 million from authorized channels.

There remain problems associated with MDMS. First, there is a great reluctance among users to register with MDMS. This is despite multiple repeated pleas from the NTA, and the Department of Customs. Per NTA, till 29 March 2023, approximately 5.5 million mobile phones and 8,327,606 IMEI numbers have not been registered with MDMS. The government's goal to register approximately 5 million mobile phones in MDMS by the set deadline of 31 May 2023 did not materialize. Only 2,241 mobile phones were registered.

Second, even for those who register their IMEI numbers with MDMS, there have been issues with authenticating their IMEI number. Third, the full operation of MDMS has been met with multiple delays.

10.2. MDMS IRRREGULARITY SCANDAL

The CIAA and MoCIT are separately conducting investigations into alleged corruption in MDMS project initiated by the NTA. The MDMS project, designed to safeguard International Mobile Equipment Identity (IMEI) and other mobile data within Nepal while preventing the illegal import of mobile devices, is reportedly not yet fully operational.

10.3. MDMS IMPLEMENTATION STATUS

The NTA had planned to make the Mobile Device Management System (MDMS) fully operational from December 30, 2022, but had to postpone those plans following a directive from the Prime Minister.

After almost a year, the NTA announced that once the mobile security system is fully operational, unregistered mobile handsets will be blacklisted, rendering them non-functional in Nepal starting from 5 November (19 Kartik 2080). Accordingly, from November 8th, the NTA deactivated hundreds of unregistered iPhone 15 sets in the country, enforcing compliance with the newly implemented MDMS. This initial phase focused on SIM cards associated with the most expensive phones, resulting in the deactivation of 804 iPhones.

As per the provision of the previous year's budget, owners of unregistered phones could register their devices in the MDMS until the end of Ashar, 2080 B.S. (or mid-July 2023). The deadline has not been extended. There is confusion about the full operation of MDMS, as also corroborated by the CIAA investigations.

¹⁰¹ <https://www.bbc.com/news/technology-61911408>.

¹⁰² <https://www.bbc.com/news/technology-61911408>.

¹⁰³ <https://www.bbc.com/news/technology-61911408>.

¹⁰⁴ <https://www.bbc.com/news/technology-61911408>.

¹⁰⁵ <https://www.bbc.com/news/technology-61911408>.

¹⁰⁶ <https://www.bbc.com/news/technology-61911408>.

¹⁰⁷ <https://www.bbc.com/news/technology-61911408>.

¹⁰⁸ <https://www.bbc.com/news/technology-61911408>.

CHAPTER TWELVE

NCELL SALE

12.1. IMPLICATIONS OF NCELL SALE ON DIGITAL RIGHTS

The Ncell sale debate arose from the news that Spectrolite UK Ltd. had acquired Asiate Group's 80% Stake in Ncell for a fixed sum of \$50 Million. Asiate Group had previously announced its decision to sell and exit Nepal, citing an increasingly unfavorable business environment.

Ncell's sale could have wide-ranging effects on the digital rights of Nepali customers, depending on how the company performs under the new ownership. Access to quality digital infrastructure is contingent largely on market competition. Indeed, NTA is already looking to break the NT/Ncell duopoly. If the company does not perform well, and concede market share to NT, then it may not be the best news for customers.

12.2. REGULATORY OVERSIGHT AND PUBLIC CONCERNS

A member of the House of Representative, Amresh Kumar Singh, filed a writ petition before the Supreme Court of Nepal alleging that the sale of shares did not happen transparently, potentially harming the state by bypassing Nepal's legal procedures. In response, the Court has issued a show-cause order.

12.3. CURRENT STATUS

The Patan High Court issued an interlocutory interim order on 7 December 2023, directing authorities to halt the telecom company's sale. As for the writ petition filed by Amresh Kumar Singh in the Supreme Court, Justice Prakash Man Singh Raut issued a show-cause order.

On 19 December, the State Affairs and Good Governance Committee of the House of Representatives instructed the government to amend laws to avoid all loopholes and ensure the transfer of Ncell ownership to the government in 2029. Ncell licence expires in 2029.

Currently a high-level committee formed pursuant to the Council of Ministers decision dated 7 December 2023 (21 Mangsir 2080) is undertaking a study to determine the implication of the sale and purchase of Ncell, particularly in relation to revenue and the impact the sale will have on foreign investment in Nepal. Tankamani Sharma, the committee coordinator, stated that they are following the government's directive to complete the investigation within a specified timeframe and submit a report with recommendations. The committee plans to consult with regulatory agencies, government officials, and service providers, collecting relevant documents and information throughout the process. They also intend to seek input from experts, stakeholder organizations, and individuals. The committee was granted a two-week extension after they fail to meet their initial 30-day deadline.

CHAPTER THIRTEEN

TIKTOK BAN

13.1. RATIONALE BEHIND THE BAN

The Council of Ministers decision of 13 November, which imposed a ban on TikTok, only specified the negative effect of TikTok on “social harmony and social environment” as a probable reason. Communication Minister Reikha Sharma, speaking at the cabinet meeting, expressed concerns that TikTok was disrupting “our social harmony, family structure, and family relations.” Therefore, the reason behind the ban appears to be the desire to preserve social harmony. Unfortunately, this reason is neither detailed nor well explained.

13.2. PUBLIC RESPONSE AND IMPACT ON DIGITAL EXPRESSION

Given its abrupt nature, the decision has invited much debate. Those who support the decision argue along the same lines, i.e., the need to maintain social harmony. Critics argue that the ban infringes upon individual liberties and represents a significant encroachment on freedom of speech. They emphasize the importance of safeguarding personal freedoms while simultaneously addressing concerns about the dissemination of harmful or inappropriate content and maintaining social order.

The potential impact on the freedom of expression appears to be much greater, however. The decision appears even more worrisome when juxtaposed with some of the other laws with autocratic tendencies that the government has introduced or is seeking to introduce.

Access Now, a global organization dedicated to championing the digital rights of individuals and communities facing threats, expressed deep concern regarding the Government of Nepal’s decision to prohibit TikTok. In a press release dated 16 November, Access Now contended that this action, impacting over two million users, constitutes a breach of freedom of expression. The organization also criticized the government for its lack of transparency in failing to release directives governing social media operations.

Likewise, the Asia Internet Coalition (AIC) raised serious concerns about Nepal’s recent TikTok ban and the new Social Media Directive. In a letter to Communications Minister Reikha Sharma, AIC Managing Director Jeff Penn criticized the decisions, stating they go against global best practices and were made without consulting relevant stakeholders. While acknowledging the importance of responsible social media use, the AIC also expressed the concern that the current regulations could hinder its members from providing platforms and services to Nepal users and businesses.

13.3. LEGAL CHALLENGES AND FUTURE IMPLICATIONS

Challenging the decision, Public Interest Litigation (PIL) was filed before the Supreme Court. Following the issuance of a show cause order, the Office of the Prime Minister and the Office of MoCIT responded. For the Prime Minister, the decision was justified to protect the interest of the majority from what he termed as “social ailment”. The hatred and explicit content on TikTok made it impossible to regulate. MoCIT highlighted the inefficacy of regulatory tools and the potential health effects due to app use as reasons behind the ban.

Following the TikTok ban, it was reported that the Government is contemplating imposing similar bans on several social media apps such as Snapchat, Bigo Live, Tinder, and Telegram. Citing concerns about negative content and misinformation, the Prime Minister’s IT expert, Prakash Royamajhi, expressed the government’s apprehensions and emphasized a thorough examination of the technical aspects and societal impacts. According to him, A team of experts has been formed to assess the apps and provide recommendations, with their report expected in the coming weeks.

131 <https://www.nepaltribuneonline.org/2024/11/13/131>

132 <https://www.techpolicyglobal.com/2024/11/14/132/>

133 <https://www.techpolicyglobal.com/2024/11/14/133/>

134 <https://nepaltribuneonline.org/2024/11/13/134/>

135 <https://www.techpolicyglobal.com/2024/11/14/135/>

136 <https://www.techpolicyglobal.com/2024/11/14/136/>

137 <https://www.techpolicyglobal.com/2024/11/14/137/>

CHAPTER FOURTEEN

JUDICIAL INTERVENTIONS

14.1. NOTEWORTHY COURT CASES RELATED TO DIGITAL RIGHTS

In addition to the sub-judice case on TikTok ban and the Ncell sale, the following decided cases were noteworthy from a digital rights point of view.

First, Patan High Court granted cricketer Sandeep Lamichhane, arrested for the charges of rape, bail on condition that, among others, the police monitor his phone until the final verdict of the case. The decision has, however, attracted criticism on grounds that it violated the right to privacy of the accused. The Court specified neither the legal grounds behind its decision nor set out any limitation on the police's monitoring abilities.

Second, on 4 October 2023, the Patan High Court issued an order in response to a writ petition filed by the Internet Service Providers Association Nepal (ISPAN) against Nepal Electricity Authority (NEA). The verdict extends protection to internet services and providers. This order explicitly directs all parties involved, especially the Nepal Electricity Authority (NEA), to refrain from taking any actions that might disrupt internet services. This includes measures such as cutting internet cables or blocking internet access.

Earlier, the Patan High Court had issued a short-term interlocutory order on February 15 to prevent the Nepal Electricity Authority (NEA) from cutting internet service wires, which could have disrupted internet access for customers across the country. A joint bench of honorable judges Balendra Rupakheti and Subashan Raj Pandey gave continuity to the Court's interlocutory order.

14.2. JUDICIAL INTERPRETATIONS AND PRECEDENTS

Since none of the noted cases are decided by the Supreme Court of Nepal, they do not have precedential value per se. They are, however, important due to their potential influence on future judicial, executive, and legislative decisions.

14.3. IMPLICATIONS ON POLICY AND REGULATION

The ISPAN case is very positive in recognizing, directly or indirectly, access to the internet as a basic human right. Relatedly, NTA had previously warned that cutting internet service was a human rights violation. The Lamichhane decision, on the other hand, is more controversial. Since the court did not specify the legal grounds behind its bail decision, this instance could open doors for the formulation of guidelines on similar cases in the future. Alternatively, the decision could also be used as a basis to continue to grant similar bail in the future.

²² Decision of the Council of Ministers, 13 November 2023 [21 Katha 2082], available at https://nepi.gov.np/wp-content/uploads/2023/11/202308727_21.pdf.

²³ <https://www.ecmrcnrc.org/prensa-releases/nepal-18668-1649/>.

²⁴ <https://technologytoday.com/2023/11/08/18614/>.

²⁵ <https://technologytoday.com/2023/11/11/18620/>.

²⁶ <https://www.techganza.com/2023/10/27/88/nepal-government-is-trying-to-ban-telegram-under-telegram-ban-fee>.

²⁷ <https://www.techganza.com/2023/10/28/88/nepal-is-blocking-open-dns-and-dns-ign-for-effective-ban-on-telegram>.

²⁸ <https://rta.gov.np/content/> - 85.

²⁹ <https://www.techganza.com/2023/10/27/88/nta-warned-to-cancel-b>.

³⁰ <https://www.techganza.com/2023/10/27/88/nta-warned-to-cancel-b>.

³¹ <https://balkaninsight.com/en/news/2023/11/13/sandeep-lamichhane-released-on-bail>.

CHAPTER FIFTEEN

ROLE OF NHRC IN PROMOTING DIGITAL RIGHTS

15.1. NHRC INITIATIVES FOR DIGITAL RIGHTS PROTECTION

The National Human Rights Commission (NHRC) does not monitor digital rights as a separate category. It is, however, active in addressing various online activities inconsistent with human rights. In the past year, it monitored many such activities. The NHRC was particularly concerned with the hateful and intolerant remarks made online by social media users. While acknowledging the need to respect the right to freedom of expression, the Commission noted that actions that harm the integrity of other persons or compromise public peace and security are no longer unconditionally protected under the right to freedom of speech. Accordingly, it urged everyone to be considerate and use human rights-friendly language on social media. It also noted the need for concerned authorities to regulate hate speech online.

NHRC specifically highlighted the concerning situation of caste-based discrimination and untouchability in the country. It noted, on 4 June 2023, that a total of 37 related complaints were under review. It had already recommended compensation for 205 victims and made 7 policy recommendations to the Government of Nepal. It also highlighted the humiliation faced online (including on platforms such as Facebook and YouTube) by Dalits. The Commission also brought to attention a complaint under consideration against an online post of person from Brahmin background denigrating Dalit community.

Moreover, NHRC was alerted by the hate speech circulating online following the 23 November 2023 demonstrations by the National Youth Federation Nepal, and Durga Prasad's 'Rastri, Rastriyota, Dharma-Sanskriti, and Nagarik Bachau' Campaign. The Commission's media inquiry found that various posters and audiovisual materials, aimed at expressing hate were made public on social media. The Commission found such activities inconsistent with the constitution and laws of Nepal, as well as international human rights standards. Accordingly, it urged everyone to refrain from making hateful comments and misusing social media.

One controversial event related to the online activities of one of the members of NHRC, Mr. Mihir Thakur. Mr. Thakur took to Facebook to direct attacks toward the employees of the Commission. He labeled them as engaging in corruption, immoral activities, and being undisciplined. In response, the Commission distanced itself from the 'personal' opinion while stating that freedom of expression cannot be a justification for member Thakur to make such hateful posts. Accordingly, NHRC did not see those activities as human rights friendly.

Additionally, NHRC monitored the situations in Dharan and Nepalgunj. It urged everyone involved to maintain social harmony and settle any disagreements through dialog. It further requested the exercise of the right to freedom of expression with due regard to the rights of others and to use social media responsibly.

15.2. COLLABORATIONS WITH STAKEHOLDERS

In the last fiscal year (2022/23 or 2079/80), the NHRC undertook 2,310 programs (trainings, seminars, human rights education) aimed at the promotion of human rights either on its own or through collaboration. It also undertook many interaction discussion programs. Importantly, such programs were not limited to physical format – some of those were conducted online. NHRC collaborated with diverse actors, including other constitutional commissions, government agencies at all three levels, media, and CS organizations working in the field of human rights.

151 <https://www.tehnp.com/en/2022/10/26/84>

152 <https://tehnologykathmandu.com/2023/10/04/10120/>

153 <https://www.tehnp.com/en/2022/10/20/83>

154 <https://tehnologykathmandu.com/2023/02/28/101766/>

155 <https://www.tehnp.com/en/2022/10/20/83>

1)DRN and NHRC Explored Digital Rights and Safety Issues

On August 13, 2023, Digital Rights Nepal organized an Interaction Program on Digital Rights and Digital Safety in collaboration with National Human Rights Commission (NHRC). The program aimed to equip NHRC commissioners and officials with knowledge and skills to address digital rights and safety concerns, enhancing human rights promotion in Nepal.

DRN Co-Founders Santosh Sigdel and Tanika Raj Aryal presented on Understanding Digital Rights and Digital Safety, respectively, delving into the concepts' development, challenges, and NHRC's role. Interactive sessions revealed participants' recognition of citizen's digital hygiene levels, and the need for rights-based policy considerations. The event emphasized collaboration between DRN and NHRC and concluded with Hon. Manoj Duwadi advocating secure digital practices and the integration of digital rights promotion in NHRC's work.

15.3. RECOMMENDATIONS AND FUTURE DIRECTIONS

NHRC, in its annual report, recognized the following challenges that are related to digital rights and e-governance. They are:

- Development of an electronic system to unify and maintain statistics, information and complaints related to human rights violations.
- Creation of adept human resource, recognizing the reality of having to work in newest matters related to human rights.
- Development of Human Rights Database Management System.

The NHRC has also recognized the need to make new laws and amendments of the existing laws human rights-friendly.

Likewise, the Chairperson of NHRC, Tap Bahadur Magar, stated that the NHRC is moving forward with a central focus on, among others, new dimensions of human rights. Although neither the commission nor the chairperson used the term 'digital rights', it is invariable an integral component of their work. This can be seen from the high priority afforded to the usage of IT.

120 https://www.rtrcnepal.org/uploads/press_release/NHRC_Nepal_Press_Release-2021-12-0223.pdf.

121 https://www.rtrcnepal.org/uploads/press_release/NHRC_Press_Release-2020-9-29.pdf.

122 https://www.rtrcnepal.org/uploads/press_release/NHRC_Nepal_Press_Release-2020-1-0220.pdf.

123 https://www.rtrcnepal.org/uploads/press_release/NHRC_Nepal_Press_Release-2020-2-0221.pdf.

124 https://www.rtrcnepal.org/uploads/press_release/NHRC_Nepal_Press_Release-2021-12-0223.pdf.

125 https://www.rtrcnepal.org/uploads/press_release/NHRC_Nepal_Press_Release-2020-9-29.pdf.

126 https://www.rtrcnepal.org/uploads/press_release/PressRelease_2020-9-17.pdf.

127 https://www.rtrcnepal.org/uploads/press_release/NHRC_Nepal_Press_Release-2020-9-17.pdf.

128 https://www.rtrcnepal.org/uploads/press_release/NHRC_Nepal_Appel_Maintain_Social_Harmony-2020-9-16.pdf.

129 https://www.rtrcnepal.org/uploads/press_release/NHRC_Nepal_Appel_Maintain_Social_Harmony-2020-9-16.pdf.

130 NHRC Annual Report, FY 2023/23 (2076/76), p. 128, available at https://www.rtrcnepal.org/uploads/publication/Annual_Report_Manab_triser_2023.pdf.

131 NHRC Annual Report, FY 2023/23 (2076/76), p. 121, available at https://www.rtrcnepal.org/uploads/publication/Annual_Report_Manab_triser_2023.pdf.

CHAPTER SIXTEEN

CONCLUSION

16.1. SUMMARY OF KEY FINDINGS

Nepal maintained its rank of 94th out of 131 countries in the Digital Quality of Life (DQL) index report conducted by the VPN service provider SurfShark. Out of the five key indicators assessed in the report, Nepal improved on internet affordability (ranked 58th globally, compared to 77th the previous year) and e-government (ranked 104th globally, compared to 106th the previous year). Nepal regressed in terms of internet quality (85th from 86th), e-infrastructure (35th from 31st), and e-security (58th from 69th).

Governments at all levels introduced several programs to enhance e-governance further. Notably, the Government of Nepal relaunched the “Hello Sanitar” initiative, adopting a 24-hour service model. Next, MoCIT introduced a “Virtual Dialogue with the Minister” program, which aims to facilitate the process of collecting suggestions and complaints from citizens more efficiently. Likewise, the Ministry of Culture, Tourism, and Civil Aviation designated a mobile number to submit complaints via Viber and WhatsApp.

Services of a few key government offices were transferred online. The government decided to make all Land Revenue Offices (Majpat Karyala) electronic. The OCR began an initiative to start an online system for registration and cancellation of companies. Further, the federal government decided to transition all transport offices across the country to online technology starting in August 2023. Moreover, the Rules of the House of Representatives were amended to make virtual parliament meetings possible. The office of the Prime Minister also issued a circular to all government agencies to be active on social media. Despite the commendable initiatives, the effectiveness of these programs will largely depend on proper coordination and implementation by the government machinery.

To address the quality of services, NTA introduced a new Bylaw on Telecom Service Quality 2079, which requires telecom service providers to compensate their customers for poor internet and telecom services. NTA’s evaluation of the network quality revealed that both NTC and Ncell failed to meet the preferred standards.

To avoid cybersecurity breaches, the Government of Nepal instructed the National Information Technology Center to operate the government data center at maximum capacity under the supervision of networking and cyber security technicians, including the full operation of GIDC in Kathmandu and the Disaster Recovery Center in Helatuda, with round-the-clock monitoring. The MoCIT is also set to frame a concept paper on Artificial Intelligence (AI).

In the matter of sale and purchase of Ncell shares, the Patan High Court issued an interlocutory interim order on 7 December 2023, directing authorities to halt the telecom company’s sale. On the writ petition filed on the same issue by Amesh Kumar Singh in the Supreme Court, Justice Prabash Man Singh Rout issued a show-cause order.

The Government’s decision to ban the use of TikTok due to its negative effect on social harmony and social environment invited much debate. Those in disagreement with the decision, including organizations such as Access Now and AIC, argued that the ban infringes upon individual liberties and represents a significant encroachment on freedom of speech. The government plans to ban other social media apps such as Snapchat, Bigo Live, Tinder, and Telegram, and NTA’s instructions to block free VPN and DNS point towards more infringement of online freedom of expression in the future.

The NHRC acknowledged the need to focus on new dimensions of human rights. It placed a high priority on the usage of IT, including the development of a Human Rights Database Management System.

121 NHRC Annual Report, FY 2022/23 (2079/80), p. 142, available at https://www.nhrcnepal.org/uploads/publication/Annual_Report_Marshal_Theme_2023.pdf.

122 NHRC Annual Report, FY 2022/23 (2079/80), p. 142, available at https://www.nhrcnepal.org/uploads/publication/Annual_Report_Marshal_Theme_2023.pdf.

123 https://www.nhrcnepal.org/uploads/press_release/nhrc_nepal_press_note_2023-8-28.pdf.

124 NHRC Annual Report, FY 2022/23 (2079/80), p. 142, available at https://www.nhrcnepal.org/uploads/publication/Annual_Report_Marshal_Theme_2023.pdf.

16.2. AREAS FOR IMPROVEMENT

The following key areas may be identified for improvement:

1. The reach of telecommunication infrastructure and the quality of services have room to grow and improve.
2. The growing number of internet and social media users in Nepal lack basic digital literacy. This requires the government and the relevant stakeholders to encourage people from all walks of life to partake in digital literacy.
3. The government must engage with the relevant stakeholders to ensure transparency before implementing controversial programs such as the MDMS and TERAMOCs. The stakeholders' consultation is even more important in the drafting process of new laws and amendments.
4. Nepal's digital framework lacks the appropriate coordination for its implementation, with related bodies lacking accountability and ownership. In the past, many promising programs did not deliver due to inadequate execution.
5. There is also a lack of clarity in the jurisdiction of the various levels of government. Bhaktapur Municipality's taxation of ISPs, and Bagmati Province's plans to enact a Cyber Crime Control Act illustrate this point. Legislation on cybercrime is primarily under the domain of the federal government, while telecommunications and related matters are assigned to the federal government under the Constitution.
6. There is an increasing need to address challenges posed by hate speech, misinformation, disinformation, online fraud, identity theft, and cyber security.
7. There must be clearer (i.e., not vague) provisions to tackle hate speech online. The current definition of hate speech in the Directives for Managing the Use of Social Networks 2023 appears likely to be misused by the authorities.
8. There is a need to follow the examples of OCR, Land Revenue Offices, and Transport offices and transition the services of other government offices and agencies online.
9. The authorities must refrain from acting beyond their jurisdiction. For example, PCN took action against 15 unregistered and unlisted news portals that allegedly published stolen news content without proper authorization from the news agency. The Council sent a letter to NTA urging it to impose a ban until further notice. However, it appears that neither PCN had the legal basis to make such a recommendation, nor NTA had the authority to suspend the portals in question.
10. The authorities must pay due regard to the right to freedom of expression online and the right to privacy of individuals while formulating any laws, directives, or orders.
11. The national ID system in Nepal must be improved by equipping it with enhanced safeguards and a notification mechanism.
12. There is a need for a stronger cybersecurity setup in Nepal, especially given the emphatic surge in QR payments, mobile banking transactions, and users.
13. The NHRC must consider including digital rights as a separate category to monitor and inspect.

16.3. CALL FOR ACTION

A. Government of Nepal:

- a. Enhance transparency and accountability in digital governance by ensuring that laws, policies, regulations, and decisions related to digital rights are formulated through an open and consultative process.
- b. Pay due regard to the right to freedom of expression online and the right to privacy of individuals while formulating any laws, regulations, policies, directives, or orders.
- c. Ensure appropriate coordination among the related government bodies to properly implement the proposed programs. Also, engage in consultation to ensure clarity in the jurisdiction of the various levels of the government.
- d. Strengthen cybersecurity measures to protect user data, prevent data breaches, and ensure the security of digital platforms and services.
- e. Improve the telecommunication infrastructure and the quality of services, including by increasing the reach of fiber-based internet and improving the quality of mobile broadband data speeds.
- f. Provide training and capacity-building programs for law enforcement agencies, judiciary, and relevant stakeholders to effectively handle digital rights-related issues, cybercrimes, and data breaches.
- g. Formulate programs to enhance the digital literacy of internet and social media users in the country.

B. NHRC:

- a. Include digital rights as a separate category for monitoring and inspection.

C. Private Sector:

- a. Adopt ethical data collection and usage practices, obtain informed consent from users, and provide transparent information about how personal data is utilized.
- b. Engage with civil society organizations to develop and implement best practices for data protection, privacy, and cybersecurity.
- c. Design digital platforms and services that are accessible to all individuals, including those with disabilities, and bridge the digital divide by considering affordability and inclusivity.

D. Civil Society Organizations:

- a. Continue advocacy efforts to raise awareness about digital rights, privacy issues, and the importance of maintaining an open and free online environment.
- b. Collaborate with legal experts to advocate for the reform of existing laws and the creation of new legislation that promotes and protects digital rights.
- c. Conduct workshops, seminars, and training programs to enhance digital literacy, cybersecurity awareness, and the responsible use of digital platforms.
- d. Foster partnerships with government agencies, the private sector, and international organizations to collectively address digital rights challenges and drive positive change.