

**NATIONAL INTEGRITY
SYSTEM ASSESSMENT**
NEPAL 2014

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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I. INTRODUCTORY INFORMATION

Transparency International Nepal (TIN) is pleased to release the report National Integrity System Assessment Nepal 2014. It describes the latest status of 11 pillars of NIS in terms of their capacity, governance and role besides pointing out the gap between laws and practices.

The National Integrity System of Nepal shows vulnerability of key institutions in a situation marked by political uncertainty, absence of a legislature and a worrying gap between law and practice.

This publication sheds light on ways to contribute to the cause of good governance by improving the performance of specific pillars of the NIS: Executive, Judiciary, Public Sector, Law Enforcement Agencies, Electoral Management Body, Supreme Audit Institution, Anti-corruption Agencies, Political Parties, Media, Civil Society, and Business.

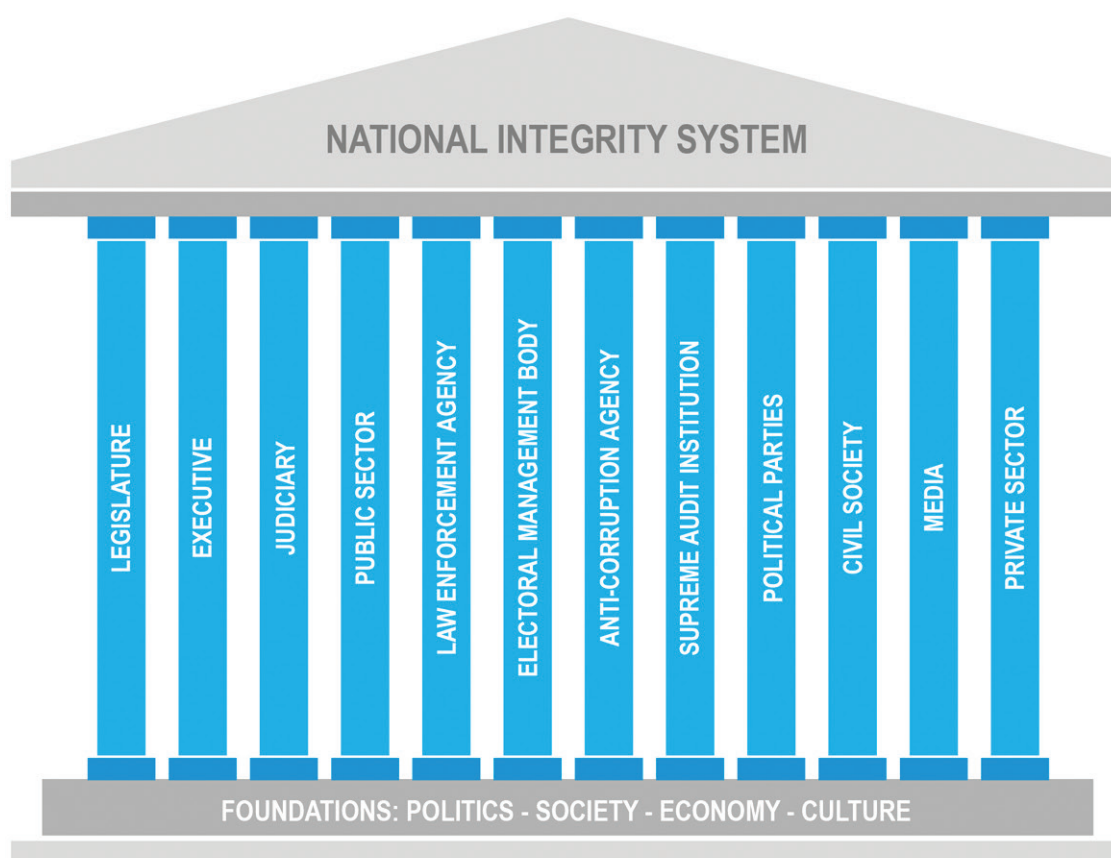
TIN takes NIS as a holistic approach to combat corruption. It believes that an assessment like this makes all concerned informed about the strength and weaknesses of the pillars and encourages them to make improvements. The assessment, TIN is confident, could be instrumental in sensitizing the actors and motivating the interplay among the pillars of NIS.

TIN would like to thank the research team: Lead Researcher Rama Krishna Regmee and Researcher Prakash C. Bhattarai for the special care they took in all the processes of research. TIN appreciates the cooperation and help provided by various officials of ministries, private sector organizations and stakeholders in different phases of the NIS Assessment.

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II. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

The National Integrity System Assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media, and civil society (the 'pillars' as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.



A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country's institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

Definitions

The definition of ‘corruption’ which is used by Transparency International is as follows:

‘The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.’¹

‘Grand corruption’ is defined as ‘Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.’² ‘Petty corruption’ is defined as ‘Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.’³ ‘Political corruption’ is defined as ‘Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.’⁴

Objectives

The key objectives of the National Integrity System assessment are to generate:

- an improved understanding of the strengths and weaknesses of Nepal’s National Integrity System within the anti-corruption community and beyond
- momentum among key anti-corruption stakeholders in Nepal for addressing priority areas in the National Integrity System

The primary aim of the assessment is therefore to evaluate the effectiveness of Nepal’s institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Nepal to advocate for sustainable and effective reform.

Methodology

In Transparency International’s methodology, the National Integrity System is formed by 13 pillars representing all key public and private institutions in the country.

1. *The Anti-Corruption Plain Language Guide*, Transparency International, 2009, p.14.
http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide [accessed 21 December 2012].

2. Ibid., p.23.

3. Ibid., p.33.

4. Ibid. p.35.

CORE GOVERNANCE INSTITUTIONS	PUBLIC SECTOR AGENCIES	NON-GOVERNMENTAL ACTORS
Legislature	Public sector	Political parties
Executive	Law enforcement agencies	Media
Judiciary	Electoral management body	Civil society
	Ombudsman	Business
	Supreme audit institution	
	Anti-corruption agency	

Each of the 11 pillars are assessed along three dimensions that are essential to its ability to prevent corruption. Since Nepal does not have ombudsman it has not been assessed. Nepal did not have legislature during the study period, so a special note has been prepared on it: The three dimensions under each pillar assess:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfill their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance system	Pillar-specific indicators

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the ‘foundations’ – in which the 13 pillars operate.

POLITICS	SOCIETY	ECONOMY	CULTURE
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The National Integrity System assessment is a qualitative research tool. It is guided by a set of ‘indicator score sheets’, developed by Transparency International. These consist of a ‘scoring question’ for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

PILLAR	Judiciary
INDICATOR NUMBER	3.1.2
INDICATOR NAME	Resources (practice)
SCORING QUESTION	To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?
GUIDING QUESTIONS	Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary's budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge's knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?
MINIMUM SCORE (1)	The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.
MID-POINT SCORE (3)	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
MAXIMUM SCORE (5)	The judiciary has an adequate resource base to effectively carry out its duties.

The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. These indicator score sheets provide guidance for the Curaçao assessment, but when appropriate the lead researcher has added questions or left some questions unanswered, as not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets are available on the Transparency International website.⁵

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, and written questionnaires. Secondary sources included reliable reporting by national civil society organisations, international organisations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject matter but external to it. In addition, more key informants, that is people ‘in the field’, were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view.

The scoring system

While this is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system’s overall robustness.

VERY STRONG	81-100
STRONG	61-80
MODERATE	41-60
WEAK	21-40
VERY WEAK	0-20

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

Consultative approach and Validation of findings

The assessment process in Nepal had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

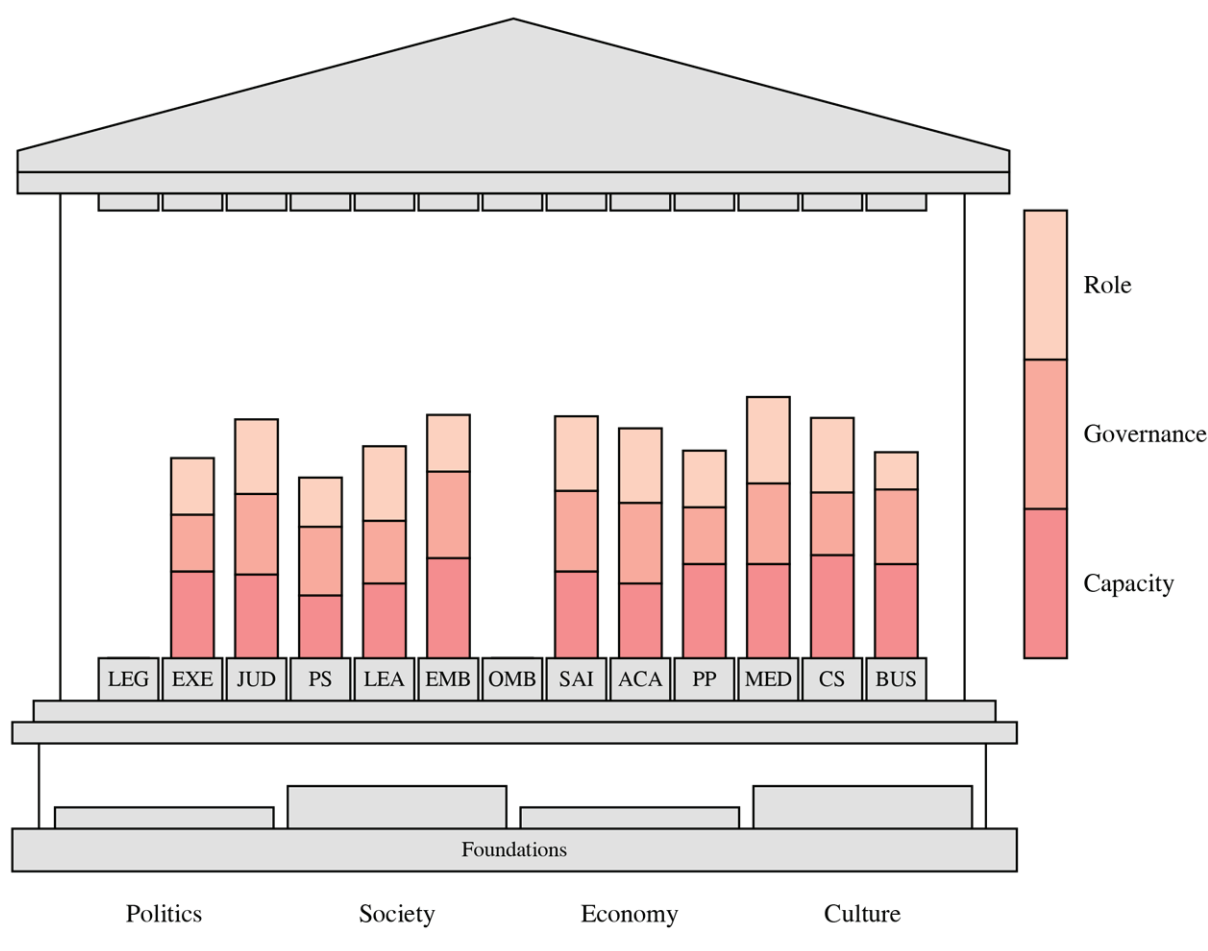
5. www.transparency.org/policy_research/nis/methodology.

The NIS assessment process followed a consultative approach and involved in myriad ways various integrity stakeholders, anti-corruption actors, government officials, civil society, media and other relevant sectors. Their input has been given appropriate space in the assessment. The idea behind the wide range of consultation was to look for valid evidence and to engage a number of stakeholders for building solidarity for reform-efforts in NIS. The process actually contributed to developing a sort of demand for such reforms and commitment to the same. All activities under the process have been documented either in the form of monthly progress report or in other forms.

III. EXECUTIVE SUMMARY

The National Integrity System of Nepal shows the vulnerability of key institutions in a situation marked by political uncertainty, absence of a legislature and a worrying gap between law and practice.

National Integrity System



LEG. Legislature
 EXE. Executive
 JUD. Judiciary
 PS. Public Sector
 LEA. Law Enforcement Agencies
 EMB. Electoral Management Body
 OMB. Ombudsman

SAI. Supreme Audit Institution
 ACA. Anti Corruption Agencies
 PP. Political Parties
 MED. Media
 CS. Civil Society
 BUS. Business

Summary of Pillar Scores: NIS 2014

Pillar	Capacity	Governance	Role	Overall Score	Status	Rank
Executive	58	38	38	45	Moderate	7th
Judiciary	56	54	50	53	Moderate	3rd
Public Sector	42	46	33	40	Moderate	8th
Law Enforcement Agencies	50	42	50	47	Moderate	5th
Electoral Management Body	67	58	38	54	Moderate	2nd
Supreme Audit Institution	58	54	50	54	Moderate	2nd
Anticorruption Agencies	50	54	50	51	Moderate	4th
Political Parties	63	38	38	46	Moderate	6th
Media	63	54	58	58	Moderate	1st
Civil Society	69	42	50	54	Moderate	2nd
Business Sector	63	50	25	46	Moderate	6th

The final scores presented in the graph reflect the overall performance of the institutions and are based on average scores for three dimensions: capacity (resources, independence), governance (transparency, accountability, integrity) and role (pillar-specific).

All 11 pillars of NIS are moderate in rank. Six of them are placed in upper level of the graph (moderate) while five are located in the lower. None scored the minimum required for the category of strong. The low scores of public sector (40) and executive (45) indicate poor delivery of services to the public and weak governance. Similarly the scores of law enforcement agencies (47) and political parties (46) suggest problems in implementation of the rule of law besides suggesting the weak performance of leadership in the whole NIS.

The scores for business (46), and anti-corruption agencies (51), could be indicators of poor public service, impunity and indifference in generating pressure on the government. The supreme audit institution (54), the electoral management body (54), the judiciary (53), the civil society (54) and the media (58) appear comparatively better performing in the NIS particularly in routine-auditing, preparedness for administering elections, access to court, civic awareness and expression of public voice respectively.

The assessment shows all pillars in the moderate category. None has been found to be strong. This is an indication of how weak the NIS is. The gap between law and practice for all pillars is wide and it points to weaknesses in implementation.

The media, electoral management body, civil society and supreme audit institution appear relatively strong among the institutions of Nepal's National Integrity System. Furthermore, most pillars appear stronger in capacity as compared to governance and role. Governance of three pillars in particular – the executive, political parties and civil society is poor. The executive and political parties are weak in terms of role as well. However, five pillars - business, media, supreme audit institution, anti-corruption agencies and the judiciary – demonstrate somewhat stronger internal governance mechanisms.

The absence of a legislature and the inability of the judiciary to exercise strong oversight over the executive clearly demonstrate worrying deficiencies in the mechanism of checks and balances. The status of non-state pillars, the much talked of watchdogs - the media and civil society- appear weak particularly in their oversight-functions. In such circumstances there is a high probability of abuse of authority by officials of key institutions (pillars).

Similarly the prolonged vacuum of elected bodies at the local level is one of the weaknesses of Nepal's NIS. Intervention by political parties directly or indirectly in all pillars by various means is another major flaw. Both weaknesses trigger a chain of circular effects resulting in disability of the NIS. Moreover, they create conditions in which existing laws cannot be implemented. Partisan interests of political parties play a key role in implementing laws or sidelining them.

Country and Corruption Background

Nepal is currently officially pursuing a policy of zero tolerance towards corruption. Legal provisions criminalize corruption and its various forms including bribery, active or passive, money laundering and fraud.⁶

Leaders of government routinely speak out against corruption. Five different Heads of Government pledged publicly during commencement of their administration to be active in controlling corruption and abuse of authority. Nepal is a signatory to UN Convention against Corruption. Various notable legal provisions - the Good Governance Act 2008, the Right to Information Act 2007, the Audit Act 2048, the Anti-Money Laundering Act 2008, the Prevention of Corruption Act 2002 and other Acts with amendments and institutions which specifically focus on controlling corruption - are in place.

Yet corruption is increasing, and impunity is widespread. The public perception is that no official work can be undertaken without paying a bribe.⁷ According to TI-Global Corruption Barometer (GCB) -2013, 57 % respondents said corruption had increased a lot in Nepal over the past two years. 69 % indicated corruption as a very serious issue in the public sector of Nepal.⁸ TI'S Corruption Perceptions Index 2012-report of CPI gave Nepal a score of 31 out of 100 (a scale in which 0 stands for highly corrupt and 100 for very clean) and placed the country in 116th position in the rank list of 176 countries.

NIS Pillars

Nepal does not have a **legislature** at the moment. A new Constituent Assembly (Legislature –Parliament) was elected on November 19, 2013. The Constituent Assembly elected in 2008 was dissolved on May 27, 2012. Three attempts to elect a fresh Assembly failed. The absence of a legislature has created a vacuum in the country's governance - structure and in the separation of powers. It has also resulted in a weakening of various oversight mechanisms, weakening checks and balances in key institutions essential for the functioning of the NIS.

The **executive** has been directly affected by the non-existence of a legislature, it has created a void in the political process. An ad hoc government under the chairmanship of the Chief Justice (CJ) of the Supreme Court was formed by activating a constitutional provision – Article 158 related to avoiding hurdles facing the implementation of the Constitution. Some 25 provisions of the Constitution were subsequently amended through a Presidential Ordinance upon the recommendation of the government led by the CJ

6. Prevention of Corruption Act 2002 ((2058 B.S.)

7. Response to a question mentioned in the survey undertaken in Nepal in connection with The Global Corruption Barometer 2013, July 9, 2013

8. Press Release, Transparency International Nepal, citing Transparency International's The Global Corruption Barometer 2013 (a survey of 114,000 people in 107 countries), published on July 9, 2013

who literally served as both the head of government, and the judiciary as well as taking an active role in the legislature's work of developing laws and taking some 212 crucial decisions on various schemes during March-July, 2013.

Some politicians, the public, and the Nepal Bar Association were strongly opposed to the measures undertaken to constitute the CJ-led government arguing that it undermined the principle of separation of powers. In contrast, other politicians supported the process terming the whole move as an ad hoc arrangement made under compulsion created by political circumstances, and believing it would prepare a legitimate base for representing the people and forming a government. The CJ accepted the role of Head of Executive explaining the decision as a national necessity and defending its constitutionality. The Supreme Court did not object to the measures on the condition that the CJ was not to identify himself as CJ as long as he functioned as Head of Executive and that independence of the court would not be adversely affected by the CJ –led government.

The **judiciary** is comparatively stronger in capacity and governance than in role. There is a wide gap between law and practice in judiciary. It also suffers from a number of problems: bribery at various levels, delays in justice delivery, and undue influence from the executive during investigations of criminal cases in which political leadership's interests are at stake.

The weakest among 11 NIS pillars is the **public sector**. It does not have the capacity to cope with the demand for public services. It is also weak in terms of internal governance and role. Attempts to improve public administration have not been successful because of political interference, trade union activism, and government leaders' failure to allow civil service to function professionally. Factors such as uneven implementation of laws, disregard for the rule of Public Service Commission for appointments and promotions, and frequent transfers and overhaul of staff in the civil service has not allowed the culture of professionalism to evolve and grow.

Law enforcement agencies are also not effective. They are poor in governance because they operate under the dictates of the political leadership. They are weak in capacity and role because professionalism is not respected and less attention is given to the resources they need. That is why the public perception is that there is no respect for rule of law in Nepal where impunity is increasing.

Anti-corruption agencies are also not able to check corruption despite the availability of adequate legal provisions. Political interference does not allow them to investigate and prosecute independently. It is this interference that compelled the country's anti-corruption body to function with its top post vacant for over six years.

The supreme audit institution performs its formal role in a routine manner. Although it has a strong legal framework, it has not been able to develop and strengthen internal audit mechanisms within other pillars. It has also not been able to develop its capacity to undertake all types audits efficiently. It is unable to draw the attention of key governance-actors to its annual report particularly to suggestions on financial administration.

The electoral management body – the Election Commission – is equipped with sufficient resources, and it is moderate in capacity, governance and role. But it is not in a position to make all electoral processes fair. It has not been able to make its code of conduct observed. It has not effectively monitored campaign finance.

The **political parties** are weak in playing their role effectively. Under Nepal's multi-party system, political parties particularly the four leading parties and their leaders are given great importance. Although their capacity to influence state policy is very high, the parties appear weak in governance and role. They are not financially transparent. Furthermore, political parties lack a sense of accountability. For example, none took responsibility for the failure of the Constituent Assembly to produce a Constitution between 2008 and 2012. Taking credit for success and blaming opposition parties for failure appears to be the formula they are following. Political parties organize general conferences to elect their leadership but they are basically leader-centric and power-centred. This has resulted in political power being concentrated in individual leaders and some members of their team. When such political leaders lead the government, they make the government work for partisan interests rather than the public interest. The parties in power enjoy unhindered access to public resources. This is one of the reasons why political parties wanted to have a non-political government to preside over the poll scheduled for November 19, 2013. There is no healthy political competition among parties.

The media is performing its role as a watch dog relatively freely. However, because of a lack of financial independence it has not been able to scrutinize the government and inform the public in a balanced manner. It is moderate in capacity, governance and role.

Another watchdog - **civil society** – has the capacity to advocate, hold the government accountable and contribute to policy formulation. But it is weak in governance because of its connection to one or other political party. It has also failed to contribute to a broad social base through appropriate tools of civic engagement.

The **business sector** appears comparatively stronger in capacity. Its role is, however, weaker. Its governance is also not effective. Although there are adequate legal provisions governing the private sector, they are not implemented effectively or in the best interests of the sector because of discretionary power of officials. This has led to a crisis of confidence between the government and business; the government views business sector as profit –centric and negligent in providing services while the business views the government as revenue oriented and negligent of improving the economy. Businesses also have limited confidence in judicial remedy in cases of disputes.

Overall, one common feature of all pillars is the gap between law and practice. All 11 pillars scored higher in law than in practice. The fact that only two pillars – judiciary and media – scored higher than 55 for role is an indicator of a weak NIS. The scenario depicting five pillars not able even to score 40 for the dimension is also a sign of a feeble NIS.

NIS Foundations

A number of weaknesses identified in this report are linked with the frail state of socio-political and socio-economic foundations, changing trends of society, and erosion of various integrity values of Nepali culture in Nepal's National Integrity System.

One example in this regard is the key position that the big four political parties hold in the country. Despite their relative strength, the link between them and ordinary people is very weak and the parties are more interested in gaining power for partisan interests. This has adversely reflected on their ability to represent the people and their capacity to govern in accordance with law.

Meanwhile, the low level of citizen activism and participation has resulted in civil society's inability to make the government and political parties accountable. Society has a rich legacy of norms of service and accountability but modern consumerism has not allowed them to flourish. Similarly the cultural heritage of integrity is facing tough challenges from modern money-based materialistic values.

The weak economy and deteriorating state of industry, business and agriculture also has adverse implications on a number of pillars. For example, it has resulted in poor state of advertising market which has in turn affected the financial independence of media rendering the Fourth Estate weak in the role of watchdog of government and political parties.

Policy Recommendations

The first priority is to create democratic representation where governance is institutionalized. The measure is a prerequisite to make the three pillars – Executive, Legislature and Judiciary- functional in accordance with the principles of separation of powers which would be instrumental in ensuring integrity throughout the governance system. Special steps should be taken legally and democratically for not allowing vacancy in key-governance pillars. Similarly special measures should be spelt out legally and democratically for not disrupting periodic elections under any excuse. This would also energize the check and balance mechanism in the system besides enabling political parties to address the diverse societal grievances and aspirations as they emerge with the passage of time, and changes in technology.

Five specific policy recommendations are as follows:

1. Prepare legislation to prevent vacancies in key-governance pillars– the Executive, Legislature, Judiciary, Constitutional bodies and Anti-Corruption Bodies
2. Launch a campaign under the anti-corruption bodies and advocacy groups to sensitize political parties that a strong NIS and elections are ultimately in the interest of political parties

3. Make asset disclosure and conflict of interest laws effective through fresh initiatives of National Vigilance Centre such as periodic monitoring, review of effectiveness of laws, and timely dissemination of information on the asset disclosure and conflict of interest.
4. Reform internal audit mechanisms of public offices to increase efficiency in auditing in accordance with the guidelines of the Office of Auditor General
5. Establish a mechanism to monitor codes of conduct in business sector under the auspices of the Federation of Nepali Chambers of Commerce and Industries (FNCCI)

IV. COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

Since the National Integrity System is deeply embedded in the country's overall social, political, economic and cultural context, a brief analysis of this context is presented here for a better understanding of how these context factors impact integrity on the whole. There are four different 'foundations' of the system: political- institutional foundations, socio-political foundations, socio-economic foundations, and socio-cultural foundations.

Political-institutional foundations

Score: 25

TO WHAT EXTENT ARE THE POLITICAL INSTITUTIONS IN THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

The political institutions in the country are in theory supportive of an effective national integrity system. But in practice leaders of political parties are not interested in strengthening the system. The political leaders fear that such a system would produce more checks and balances which would not allow them to use political power as per their wish.⁹

Although Nepal is a multi-party-democracyelectoral democracy has not yet been thoroughly established in the country.¹⁰ The country today did not have an elected body at the centre (from May 27, 2012 A.D. to November 19, 2013). There is no elected body at the local level, either (since 2002 A.D.). Political parties – ruling and opposition – spent several months (May –end, 2012 to February-end, 2013) talking unsuccessfully about consensus for Interim Election Government.¹¹ Although all of them are ready in theory to go to the polls, they do not show promptness in devising a way to do so for such a long period; they pass time in mutual blaming.¹² Even after the formation of a Chief-Justice-led government on March 13, 2013 for presiding over the election, the political parties have could not create certainty about the Constituent Assembly poll scheduled for November 19, 2013.¹³

Political parties are out of power at the moment. The Executive is officially non-party but it operates under the recommendation of a four-party-High Level Political Mechanism. It operates in the capacity of a caretaker government. Since there is no parliament, there is no defined body to which it should be accountable. The body established for scrutinizing the functions of government – the Public Accounts Committee of parliamentis non-existent.¹⁴ The Commission for the Investigation of Abuse of Authority,¹⁵ the Constitutional Council¹⁶ – has just become functional after a long period of vacancy at the topmost level. The democratic system of check and balance is completely missing. The separation of powers, although provided for in the Interim Constitution, is not practiced.¹⁷ The Court, however, has been doing well in maintaining the spirit of the separation of power. The Supreme Court has, through its rulings over writ petitions, over time stayed a number of decisions taken by the government.

9. Interview with an office bearer of a big political party on October 15, 2013

10. Nepal Interim Constitution Preamble paragraph 3; Article 141, 2007

11. Statement of leaders of political parties – ruling and opposition given to media on February 24, 2013

12. Senior leaders of civil society in public speech in Kathmandu on February 12, 2013

13. NIOSA interview with opposition party leaders after inconclusive talks about participation in poll between government and election-opposing parties on August 21, 2013

14. Nepal Interim Constitution Article 83, 2063

15. NIC Article 119, 2007

16. NIC Article 149, 2007

17. NIOSA interview with senior officials of Nepal Bar on June 2, 2013

There is respect for freedom of assembly and association.¹⁸ Civic and nongovernmental organizations are allowed to operate freely and workers have the right to organize in unions. Police, however, often use excessive force in demonstrations.¹⁹

The reputation of politicians is often questioned in their pursuit of power and abuse of political power for personal benefits. The public respect that the political parties enjoyed before the 2008 Constituent Assembly election has given way to indifference in 2013 because of their failure to draft a Constitution in accordance with the people's mandate and continuous political squabbling over accessing or retaining power. Political dialogue among political parties is more focused on party-interests and is getting more isolated from the public domain.²⁰

People rate standards in public life in moderately positive terms.²¹ But there is no satisfaction with the standards prevailing in public life, opportunity to voice and expect accountability, rule of law and government effectiveness.²²

Although constitutional provision provides for free and fair political competition among political parties and individuals, the real competition is among the big four: UCPN (Maoist), Nepali Congress, CPN UML and Madhes parties. Most of the 100 political parties registered in the Election Commission (as of July, 2013) do not carry much political weight. Even those parties in the dissolved Legislature Parliament, -over 35 in number and most of them small- are not considered influential. A political commentator opined "the four have political say and they are in the frontline of competition with the rest having limited value. Their duty is just to follow them."²³

All civil rights are guaranteed and protected by the Constitution.²⁴ In practice, however, the marginalized, and poor – are not able to seek redress for civil right violations.²⁵ Media at times give vent to their sufferings but they are not addressed by the government. That is why people at the grass-roots complain: although the Political Movement II changed the country from a Monarchy to a Republic and provided some political parties and leaders with power, resources and facilities, it could not make the politicians able to make people feel changes in their lives in the past three and a half years.²⁶ Those who contributed to Madhesh Protest Movement are also expressing the same view. The MPM was for the ordinary people of Madhesh, but it turned out to be profitable for those in high posts of the Madhesh parties.²⁷

The country has an effective set of rules. Most have been amended in response to the demands of changing times. The rule of law is the guiding doctrine for the government, people and the country. But laws cannot be enforced because of high –handedness of cadres belonging to the political party in power, influential groups – open or underground, legal or criminal – with connections to the government or other law enforcement agencies and a culture of impunity.²⁸ People in many parts of the country are disappointed by the way the rule of law is challenged that they say, "We at times do not feel the presence of the government in our areas."²⁹

According to one political observer, one reason why four Prime Ministers – all elected by the Parliament through a democratic process during 2008-12 – were not able to deliver was their inability to change the environment of manipulation of laws by powerful groups. All looked highly promising prior to their election, but, once in office, none could perform up to expectations. Lawlessness is so serious that it overwhelms them and does not allow them time to devote to things that matter for the people at the grass-roots.³⁰

Democratic institutions are generally accepted. In practice, however, there is no culture of tolerance. This has resulted in a failure to develop a culture of dialogue, checks and balance, independence, accountability, sense of compromise, mutual up-liftment and a win-win attitude among participants of democratic institutions.³¹

18. NIC Article 12-d, 2007

19. Reports of national dailies January –February, 2013

20. NICSA interview with a senior civil society leader on May 29, 2013

21. NICSA interview with civil society leaders on December 28, 2012

22. Editorial page write up in Nepal Weekly February 19, 2013

23. Expression made at an interaction programme held on May 20, 2013

24. Nepal Interim Constitution, Article 12 to 32, 2063

25. Interview with an office bearer of Nepal Federation of Indigenous Nationalities on October 2, 2013

26. Interview with an office bearer of National Dalit Commission on October 2, 2013

27. Interviews with people at the grass-roots in Kathmandu, Ilam, Bajhang, Mahendranagar, Rajbiraj, Janakpur, Hetauda and Bharatpur. between July and September, 2011; December 2012

28. Office bearers of Nepal Bar Association

29. Editorial page write up of Nepal Weekly, January 23, 2013

30. NICSA interview with a senior political commentator on January 15, 2013

31. NICSA focus group discussion in Kathmandu on June 29, 2013

Socio-political foundations

Score: 50

TO WHAT EXTENT ARE THE RELATIONSHIPS AMONG SOCIAL GROUPS AND BETWEEN SOCIAL GROUPS AND THE POLITICAL SYSTEM IN THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Nepali society is multi-ethnic (126 castes and ethnicities), multi-religious (ten religions in practice), multi-linguistic (123 languages) with class divisions.³² According to the constitution, all Nepali people, multiethnic, multilingual, multi-religious, with multicultural characteristics accompanied by common aspirations and united by a bond of allegiance to national independence, integrity, national interest, and prosperity of Nepal, collectively constitute the nation.³³

The topography of the country is characterized by three contrasting elevations, types of climate, the Himalayas, Hills and Madhesh. They along with travel-difficulties, created by the three river systems – Koshi, Gandaki, and Karnali and their tributaries have contributed in their own way to that division.

The decade long democratic practice (1951-1961-period) could not change the environment and create equal opportunity and inclusiveness in the government. After 1961, with the imposition of Panchayat rule, its aversion to multi-party system and parliament, this divisive environment worsened. Various trends: consumerism, the trend of showing off by spending more in social functions, high-handedness of Royal Palace, and the ease for the rich to become richer and the poor to become poorer intensified the social gap. The polity did not develop as a force capable of integrating society and pursuing policies that are inclusive and accommodative for all people.³⁴

The Panchayat System collapsed due to pressure of the 1990-People's Movement I. A multi-party parliamentary system with constitutional monarchy was established as the polity of the country. Despite certain achievements, it failed to address the changes that Nepali society expected: equal opportunity and inclusive policy in state affairs.³⁵ Political parties launched People's Movement II, for what the multiparty parliamentary system with constitutional monarchy failed to achieve in the first decade and a half.³⁶

Some achievements have been made over the past four years: the country became a Federal Democratic Republic; a secular state;³⁷ the people elected a 601-member-Legislature Parliament (Constituent Assembly) to draft a new Constitution. But the representatives of the people could not produce a constitution in four years. As a result, the CA was dissolved on May 27, 2012 pushing the country into a political vacuum.³⁸

Various issues related to identity, participation, representation and opportunity for all classes, religions, ethnic communities, and linguistic groups have been aired and discussed freely over the years in an unprecedented manner.³⁹

A number of inclusive policies have been followed to meet their demand. For example, the provision for ensuring the right to equality states " Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, Dalits (the oppressed) indigenous peoples (Adibasi, and Janajati). Madhesi or farmers, workers, economically, socially or culturally backward classes or children, the aged and the disabled or those who are physically or mentally incapacitated."⁴⁰ The provision has been described as the best way to ensure inclusiveness in society and avoid inequality. In practice, however, people have not felt the difference.⁴¹ The framework essential for translating these provisions into practice is not ready; it is in process under "restructuring the state" which will now have to wait for the second Constituent Assembly election, which remained uncertain until it was held successfully on November 19, 2013.

32. National Population and Housing Census 2011 (National Report), Central Bureau of Statistics, November 2012 p 4

33. Nepal Interim Constitution 2063 B.S. Part 1, Article 3

34. Bongartz, Heinz /Dahal, Dev Raj, *Development Studies*, 1996

35. Interview with a former Speaker of Parliament on October 5, 2013

36. Pradhan, Shirish, Nepal Weekly, OPED write-up, April, 2006

37. Nepal Interim Constitution Fourth Amendment (Jestha 16 2065 B.S.)

38. Nepal Samacharpatra Editorial May 28, 2012

39. NICSA literature review of seminar reports of Nepal Federation of Indigenous Nationalities, Nepal Dalit Commission during February –June, 2013

40. Nepal Interim Constitution Article 13

41. Interviews with grass-root people on June 13-16, 2013

The issues of minorities, inclusiveness, equal opportunity for all, rule of law have been voiced by political parties for all specially those who are at the bottom of society. Their pursuit of power politics has, however, derailed them from their ideological values. That is why political parties, the champions of inclusiveness and equality could not make a difference in tackling divisions in society.⁴²

Thus, while in theory and laws minority rights are protected, in practice the minorities face difficulty in exercising their rights; most parties particularly the big four –UCPN-M, NC, CPN UML and Madhesh parties –in speeches articulate and aggregate societal interests in a standard inclusive manner; in practice it is the political interest of a political party, not societal interest, that is nurtured and followed.⁴³

Social institutions which serve as a bridge between the political system and society are all politicized. Such institutions are run under the decision of political parties.⁴⁴ Several social analysts support this view saying “this trend to politicize every institution and everything is not helpful for consolidating the National Integrity System.” Civil Society has been politicized: it is virtually under the banner of political parties, say intellectuals. It becomes vibrant as and when political parties need their support. At other time it remains dormant.⁴⁵

The political elite is conscious and aware of changing times. But they cannot translate their awareness into action. Their rhetoric, therefore, fails to draw the attention of the top politicians who are busy in political deals and remain silent in responding to the aspirations of the people. It is only during elections or mass meetings that political leaders break their exclusiveness and appear before the public as the champion of their cause. The way political leaders have isolated their political discourse from the people over the past years particularly after the 2008 CA poll is really worrying.⁴⁶

Nepali society has a legacy of patron-client relationship. Norms of various professions and various professional codes indicate the same.⁴⁷ Social scientists see in it some power to strengthen institutionalization in the society. The latest trend of politicalization of various institutions and political party-centric trade unionization has adversely affected this tie.⁴⁸

Socio-economic foundations

Score: 25

TO WHAT EXTENT IS THE SOCIO-ECONOMIC SITUATION OF THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

The overall economic performance today indicates that Nepal aims at improving the economy in an effective way. This will be instrumental in bringing about positive change in the country's current economic inability to effectively support the national integrity system.

The macro-economic performance of Nepal has not been encouraging in recent years. Significant productive labour force has been compelled to leave the country to explore economic opportunities abroad. Nepal has struggled to maintain a sluggish economic growth in recent years. The country has not been able to transform the economy by expanding production base and competitiveness.⁴⁹

The performance of the economy in 2012-13 was not promising. The economic growth was limited to 3.6 % - a six year low. It reflected the adverse impact of operating the economy under the partial – one third budget – mechanism. Mostly visible indicators were in continuity of poverty level at 23.8 % (as against the year's target of reducing to 21 %), rising trade deficit (Rs. 438.67 billion), four year high inflation rate (9.98 %), and low government expenditure at Rs. 40 billion (as against the allocated amount of Rs.66 billion.). Agriculture sector had a growth of 1.3 %, the lowest in six years. The industrial sector's growth was further dismal at 1.5 %. The average growth of the industrial sector remained at 1.7 over the past five years. Its contribution to the economy came down to 6.2 % in 2012 from the 8.5 % in 2002. The per capita income

42. Views expressed at a Kathmandu seminar on inclusiveness in Nepali Society on January 4, 2013

43. The vernacular weekly Janmabhoomi OPED write-up on January 20, 2013

44. Dahal, Dev Raj, write –up on contemporary issues, November 20, 2012

45. Interview with civil society groups in December 2012

46. NICSA interview with political analysts of print media in Kathmandu on December 2012

47. Mishra, Chaitanya, *Badalindo Nepali Samaj* (Changing Nepali Society), 2067 B.S. p.7-27

48. NICSA focus group discussion with trade unionists in Kathmandu on January 10, 2013

49. Nepal Economic Outlook 2012-2013, Institute for Integrated Development Studies (IIDS), 2013

of Nepalis went down to \$ 658 from \$ 717 in mid-March-June-end period due to devaluation of Nepali currency against the US \$.⁵⁰

It is because of the poor performance of key sectors such as agriculture, industry, and foreign trade in 2012 that the country's economic components could not play a productive role. This led to a feeble state of economy which in turn lessened its capacity to nourish the cause of national integrity system.⁵¹

The country witnessed its first full annual budget in time, after two years, on July 15, 2013 raising hope for stability in economic situation. The way Foreign Direct Investment (FDI) commitment rose to Rs. 10.70 billion (USD 111.00 million) from Rs. 5.63 billion (USD 58.4 million) in 2012-13 review period is also a sign of optimism.⁵² Economists, however, doubt about it pointing at the continuing political instability and the prevailing low growth rate of 3.5 % in the fiscal 2012-13.⁵³

The overall anatomy of the country's economy could be viewed through the budget for the fiscal 2013-14. The country's annual budget is Rs.517.24 billion (USD 5.37 billion). It seeks to attain economic growth rate of 5.5 %. The amount it allocates for recurrent expenditure stands at Rs. 353.42 billion (USD 3.67 billion) while the figures for capital expenditure and financing purposes amount to Rs. 85.10 billion (USD 883 million) and Rs. 78.72 billion (USD 817 million) respectively. The government plans to tame inflation at 8 %. The country seeks to collect Rs. 354.5 billion (USD 3.68 billion) as revenue, Rs. 5.5 billion (USD 57 million) in principle refund and Rs. 69.54 billion (USD 721.44 million) from foreign grants. It plans to raise Rs. 43.7 billion (USD 453.37 million) foreign loan and Rs. 44 billion (USD 456 million) from internal loans.⁵⁴

The key policy pursued under the ongoing Three Year Plan emphasizes the role of three sectors - the government, private sector and cooperatives- in the economy. Its objectives are: sustainable, high and broad based economic growth, macro-economic stability, inclusive development, investment friendly environment and private sector development, peace and order, good governance, effective and easy public service delivery.⁵⁵

As for the poverty level and distribution of wealth, poverty has created a situation of restricted opportunities which, in turn, gives birth to a vicious circle characterized by unstable conditions, lack of capital, vulnerability in fulfilling basic needs, lack of capacities, inability to voice, aspiration deficiency, lack of representation and discrimination. This disables the poor to exit poverty.⁵⁶

Basic needs such as food, health, proper environment, education, employment, and property have been guaranteed in Nepal.⁵⁷ Emphasis has been laid on provisions for old age, illness and disability.⁵⁸ But appropriate legislations have not yet been made for making people able to enjoy the rights. There is a big gap between the constitutional provisions and ground reality.⁵⁹

Social inclusion gained prominence in public discourse and state policies after it was incorporated as one of the four pillars of Poverty Reduction Strategy Paper. (Nepal's Tenth Plan 2002-07). However, it was only after the People's Movement-II of 2006 that social inclusion became a focus of the national discourse. Various social movements have emerged, giving rise to representative groups of excluded and marginalized people (Madhesi, Dalits, Janajati or Indigenous Peoples, Women, Third Gender, etc.). The political response has been immediate and systematic attempts have been made to inject Gender Equality and Social Inclusion(GESI) principles into policy making.

Various issues such as social development through devolution, decentralization, gender equality and social inclusion have been addressed in Nepal. It guarantees social justice and affirmative action for the marginalized and socially excluded groups (women, Dalits, Janajatis, Muslims, the Madhesi community, the transgender group, the disabled and other excluded or disadvantaged groups). It has also recognized the right to food security and sovereignty as a basic human right, although this is yet to be endorsed with appropriate legislation.⁶⁰

50. *Economic Survey*, Finance Ministry, July 2013

51. NICA interview with economists of government and private sector, July 4, 2013

52. NICA interview with Senior official of Department of Industry FDI Division, July 2, 2013

53. NICA interview with senior economists in Kathmandu on July 16, 2013

54. *Public Statement on Income and Expenditure for the fiscal 2013-2014* given by Finance Minister Shankar Koirala, July 14, 2013

55. *Public Statement on Income and Expenditure for the fiscal 2013-14*, p.1

56. Interview with a former Vice-Chairman of National Planning Commission on October 5, 2013

57. Nepal Interim Constitution Articles 16-18, 2007

58. Government document on welfare scheme of old citizens and the disabled, 2012-13

59. Interview with a senior official of the Ministry of Women, Children and Social Welfare on October 5, 2013

60. The Interim Constitution 2007

Social protection (safety nets) The issue of social safety net, although not a new concept in Nepal, is something people do not feel at the grass-root level. Although the government, planners, academicians, and economists talk of it they have not been able to translate it into practice. A survey of literature on social safety net shows its limited existence. There are some provisions for a stipend for senior citizens, widows, medical expenses for sick people or organized work places, and allowances for the unemployed and the disabled, child grants, and scholarships for disadvantaged groups.⁶¹

Nepal's social protection framework aims at reducing multidimensional deprivations and providing people with a basic minimum livelihood. However, there is no appropriate strategy and adequate technical and organizational capacity to make the programmes effective assuring proper delivery, accurate targeting and easy reach.⁶²

Experts express in focus group discussion that there is an urgent need for developing appropriate legislations for a thorough social safety net strategy for old people, the disabled and the sick. The nominal presence of some safety net at present is too weak to respond to the growing demand, they said.⁶³

Infrastructure in Nepal particularly development, extension, and promotion of hydropower and energy sector and construction of roads, development of areas attracts priority attention of government. There is a special provision for projects of National Pride. They are related to energy, road, rail, irrigation, drinking water and tourism sectors. Some other projects of National Importance are Pashupati Area Development, Lumbini Area Development, President Chure Conservation and Bheri-Babai Diversion. Nepal produced 746 Mega Watt hydro-electricity in 2012 as compared to 705.6 MW in 2011. The country has a road network of 10,320 KM metalled road, 5,828 KM graveled road and 8,435 KM track-road. Some 1.49 million vehicles ply on the road. The number of vehicles increased by 40 percent in 2012. 13.50 million people of total population (26.49 million in 2012) had access to telecom service by August 2013.⁶⁴

Nepal's business sector is a composite of private sector enterprises operating under individual initiatives ranging from small shops to big trading houses, 37 Public Enterprises, and 27,000 Cooperatives (collective ventures by individual entrepreneurs). The government considers the private sector as the engine of economic growth.⁶⁵ Various entrepreneurs, investors, business persons and service providers are engaged in firms, trading, industries, transport, tourism, airlines, health services, education, telecommunication, banking, construction, energy –based industries, agro-forest industries, small medium and large manufacturing enterprises.⁶⁶

The 37 Public Enterprises of various sectors – categorized as industrial, trading, service, social, public utility and financial – can play an effective role in the economy. They employed 31,755 individuals. Their internal governance suffered from excessive number of trade unions affiliated to different parties. This has adversely impacted their productivity.⁶⁷

Socio-cultural foundations

Score: 50

TO WHAT EXTENT ARE THE PREVAILING ETHICS, NORMS AND VALUES IN SOCIETY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

A review of integrity in Nepali society presents a paradox in concept and practice. The literature on integrity reveals an impressive scenario of morality and duty embedded in various dimensions of culture particularly religious practices and codes of conduct. The practice, however, denotes insensitivity or laxity towards integrity.

The values embedded in Nepali society particularly in festivals, customs, and practices stress integrity at various levels of individual, family, community and nation. The specific indicators, according to culture

61. Interview with a senior official Social Welfare Council on October 5, 2013

62. Interview with a senior social worker on October 12, 2013

63. FGD with five social safety experts in Kathmandu on October 20, 2013

64. Economic Survey, Finance Ministry, 2013

65. The Budget for the fiscal 2013-14 p.4

66. Interview with a senior official of FNCCI on October 10, 2013

67. *Annual Review of the Public Enterprises*, Finance Ministry, 2013

expert Professor Dr. Mukunda Aryal, are found in the emphasis they lay: on the values of truthfulness or righteousness in speech and behavior, sense of commitment to performance of duty, honesty in public life, respect for rules and regulations, etc.⁶⁸

Religious preachers remind citizens and leaders of the need to understand and practice the values of integrity, service and duty towards the public good in daily lives. The four point formula – Dharma (righteousness), Artha (material well-being or wealth), Kama (desire or sense gratification) and Moksha (ultimate liberation)⁶⁹ is what is recited quite often by Hindu priests. The eightfold path of Lord Buddha⁷⁰ laying stress on right view, right intention, right speech, right action, right livelihood, right effort, right mindfulness and right concentration is also explained regularly by Buddhist monks. The message of integrity in Christianity, Islam and other religions is also passed on to the people during the relevant religious gatherings, festivals and events by scholars, priests and leading stakeholders.

Despite the emphasis on integrity in society, Nepali society is undergoing a crisis in integrity. There is a gap between concept and practice of integrity as a result of materialism, consumerism and commercialism.⁷¹ To respond to this, various provisions have been made in important state documents: the constitution (Article 17, sub-clause 3, and Article 35), Social Behaviour Reform Act 1976. Other related laws to prevent excessive expenses in social functions and to stress ethics in conduct, Ancient Assets Protection Act 2013 B.S. (1956 A.D.) and Guthi (a sort of trust) dispensation also seek to respond to the problem. These could be instrumental in building a sense of integrity in the mind-set of citizens and applying this life, and work. Dr. Aryal emphasizes the need to restore the teaching of morality and ethics in schools.

Trust among professionals is missing; it has been replaced by the tendency to push the other out or to pull the other down for personal benefit. But the trust at interpersonal level, family network and individual has not yet been affected. Such trust could be instrumental in spreading trust in other spheres and levels in society.⁷² A suitable way to extend or transform that trust at diverse levels of people to people, family, community, group and region into sincere confidence in democratic institutions of governance, public bodies and respect for rule of law should be worked out. That process would ultimately be helpful in checking nepotism, corruption, controlling abuse of authority, and avoiding impunity.⁷³

People derived a sense of trust from the culture followed in village life. A life they led for centuries taught them the virtue of mutual trust, and mutual cooperation. Helping each other in the farm and accompanying in the collection of water, fuel-wood, herbs and grass from the forest featured in their lives then. But today the sense of mutual trust is eroding because of the influence of money and materialism. As no attempt was made to preserve values of village-level mutual trust and cooperation in mass society of city life and since there was no effort made to transplant it into practices of rule of law and governance processes, the values remained just a glorification of the past.⁷⁴

People are apathetic towards government because of its failure to act in the interest of the people particularly the weak and the marginalized and its inability to cater amenities to the public.⁷⁵ The traditional values of keeping public property intact, public authority in high esteem, public places un-polluted, public resources intact have been forgotten. People appear ready to destroy ancestral public values with a spirit of public-mindedness. There is a tendency of turning areas of stone water taps, public baths, river banks, open spaces of public gathering spots, community centres, night shelters (inns, Paatis in Nepali), etc. into private property by manipulating legal documents.⁷⁶

Personal integrity is no longer an empowering virtue for citizens. It does not benefit them directly.⁷⁷ The public sphere emphasizes materialism, pursuit of monetary values and impunity has not allowed citizens to preserve personal integrity as an ethical norm.

68. Professor Dr. Aryal, Mukunda

69. As explained in the Hindu scripture BhagbatPurana 1.2.9

70. As mentioned in Buddhist scripture Dhammapad

71. Professor Doctor Aryal, Mukunda

72. NCSA interview with BholaDahal, a senior sociologist, on February 10, 2013

73. NCSA interview with a senior official of Culture Ministry on March 4, 2013

74. *A report of collection of scholars opinion on culture and integrity*, Worldview Nepal, Kathmandu, January 2013

75. Dahal, Bhola, a sociologist

76. NCSA interview with lawyers on March 4, 2013

77. *Report of Culture Month Programme*, Worldview Nepal, January 2013

V. CORRUPTION PROFILE

Recent surveys reveal a rather gloomy scenario in which corruption appears spreading and institutionalized in increasing number of sectors. Media reports suggest a similar picture. Public discourses also voice concern for rampant corruption including bribery in public offices, and also in policy formulation sectors.

Unavailability of evidence because of meticulous efforts to escape detection by those who indulge in corruption hinders any attempt to construct a corruption profile of the country. The weakness of oversight agencies adds to the difficulty. Lack of empirical data further makes the task of profiling corruption difficult.

Thereports of Transparency International's Corruption Perception Index (CPI) over the past few years indicates increase in corruption in Nepal. The 2013-report of CPI gave Nepal a score of 31 out of 100 and placed the country in the 116th position in the rank list of 177 countries.⁷⁸ It is an improvement over the country's earlier score. The 2012-report of CPI had given Nepal a score of 27 out of 100 (a scale in which 0 stands for highly corrupt and 100 for very clean) and had placed the country in 139th position in the list of 176 countries. Nepal with 2.2 score (on a scale of 0 for highly corrupt and 10 for very clean) was ranked 154th among 183 countries in CPI -2011.

Most of the six dimensions mentioned in Worldwide Governance Indicator (WGI) Report in 2011 also indicated corruption as a problem in Nepal. Nepal scored 29 in Voice and Accountability, 6 in Political Stability No Violence, 23 in Government Effectiveness, 26 in Regulatory Quality, 17.37 in Rule of Law and 24 in Control of Corruption.⁷⁹

At the political level corruption is adopted as a *modus operandi* for gaining power, keeping hold and generating additional resources for an enduring grasp on power.⁸⁰ More than 70 percent of corruption cases take place in private and political sectors which are largely left off the hook by the anti-graft bodies.

⁸¹

Corruption was mentioned as one of the critical challenges facing Nepali economy in a 2013-survey. It was described as challenging as weak governance, political instability and energy crisis for the private sector.⁸²

According to TI-Global Corruption Barometer (GCB) -2013⁸³, 57 % respondents said corruption increased a lot in Nepal over the past two years. 69 % indicated corruption as a very serious issue in the public sector of Nepal. 42% observed personal contacts are important in getting things done in the public sector. 34 % find a few big entities running the government in their own interest. Only 12 % think the government's actions against corruption are effective.⁸⁴

Regarding corrupt institutions, the GCB mentioned political parties as the most corrupted (77%). They are followed by the public officials/civil servants (66 %) and police (58 %). Other institutions found to be corrupted are: legislature (51%), judiciary (51 %), business/private sector (30 %), military (27 %), educational system (21 %), NGOs (20 %), medical and health services (17 %), religious bodies (16 %) and media (14 %).⁸⁵ As for paying bribes, 43 % were asked to pay a bribe while 28 % refused to do so. 69 % paid bribe for one or other services. Specifically, 40 % paid bribe for land services, 37 % for judicial system, 30 % for police, 26 % for registry and permit service, 8 % for tax and 6 % for utilities. Two most common reasons for paying bribe were for speeding things up (61 %) and for having no alternative to obtain service (32 %).⁸⁶

78. Corruption Perception Index, Transparency International, 2013

79. *Vernacular weekly Nepal dated Jestha 12, 2070 B.S. p 24 citing World Bank sources*

80. *Review of Anti-Corruption Strategy and Program of Government of Nepal*, TIN, 2012, p. x

81. Integrity Study, Nepal, TIN, 2012 p. 17

82. Business Confidence Survey, Federation of Nepali Chambers of Commerce and Industries, 2013

83. Press Release, Transparency International Nepal, citing Transparency International's The Global Corruption Barometer 2013 (a survey of 114,000 people in 107 countries), published on July 9, 2013

84. Statistics mentioned in GCB on survey of 1,000 households in 58 municipalities of Nepal engaging 53 % male and 47 % female respondents

85. Global Corruption Barometer 2013, July 9, 2013

86. Global Corruption Barometer 2013, July 9, 2013

VI. ANTI-CORRUPTION ACTIVITIES

Various initiatives have been undertaken in Nepal to fight corruption and abuse of authority under the auspices of government, non-government bodies, and anti-corruption activists. They range from prevention-measures, reform-processes to awareness raising and advocacy schemes. However, the agenda for strengthening NIS as a whole through integrity approach has not yet been pursued.

Anti-Corruption Measures and Reforms

Nepal criminalized corruption and its various forms including bribery – active or passive – money laundering and fraud through law in 2002. Persons convicted of corruption remain barred through legal measures from running for elected offices for five years.⁸⁷ There is a legal foundation for the top anti-corruption institution, a constitutional body – Commission for the Investigation of Abuse of Authority (CIAA).⁸⁸

An attempt to address corruption in the private sector has been undertaken through law. Laws regarding various acts such as undue business influences, bid rigging, cartel formation, collective price fixing, syndicate and exclusive dealing and tied selling as corrupt practices and provisions were made to check them.⁸⁹ The umbrella organization of the private sector Federation of Nepali Chambers of Commerce and Industries updated its code of conduct accordingly.⁹⁰

The CIAA worked out a scheme of cleaning from inside and emphasized specifically four areas for good governance and anti-corruption. The anti-corruption body aims at changing policies to bring about effective monitoring of public services besides drawing 80 percent of areas including defense sector under its scope. It received 11, 298 complaints in 2012-13 and settled 6,672. CIAA registered 93 cases at Special Court during the period. Of them it won 76 cases.⁹¹ It had handled 5,466 cases during July 2012-June 2013 period.⁹²

The Right to Information Act 2007 gave citizens the right to public information within fifteen days of requesting any government body or public company. Amendments brought about in the Special Court Act 2007 facilitated the Court to pursue corruption-cases vigorously. The Procurement Act 2007 contributed to consolidating the move to make proper use of public money. The three measures undertaken in the year 2007 are considered notable in the fight against corruption.⁹³

There is a legal provision in the country to make governance people-oriented, accountable, transparent and participatory.⁹⁴ It aims to create an environment in government offices that does not tolerate corruption. Anti – money laundering Act 2008 and amendments to it over the years and in mid-2013 sought to check specified corruption.⁹⁵

An Anti-Corruption Strategy and Work Plan was introduced for building a and prosperous Nepal through good governance and corruption free governance system. The Plan consisted of 13 strategies, 38 working policies and 168 activities to energize the movement against all forms of corruption rooted in the social, economic and political fabric of the country.⁹⁶ The Plan could not be implemented effectively and adequately. The government did not have commitment. The political instability in the country and frequent change in government leadership also did not allow government leaders to focus on it. ⁹⁷ Only 12 % think the government's actions against corruption are effective.⁹⁸

87. Prevention of Corruption Act 2002 (2058 B.S.)

88. CIAA Act 2002

89. Competition Promotion and Market Protection Act 2006 (2062 B.S.)

90. Business Code of Conduct, 2013

91. CIAA Annual Report, 2013

92. NICSA interview with CIAA officials on June 26, 2013

93. NICSA-interview with anti-corruption lawyers on May 3, 2013

94. Good Governance Act 2008

95. Anti-money laundering ordinance, 2013

96. The background of the Strategy and Work Plan against Corruption, GoN, 2008

97. Review of Anti-Corruption Strategy and Program of Government of Nepal, TIN, 2012

98. Statistics mentioned in GCB on survey of 1,000 households in 58 municipalities of Nepal engaging 53 % male and 47 % female respondents

A special scheme to reduce financial arrears forwarded from past years has been introduced by a Committee headed by Finance Minister. The 50th report of Auditor General underlined the need to tackle the ever growing size of arrears. The Committee is also examining ways to check corruption that contractors frequently engage in by misusing resources given under the head of mobilization of fund to start work.⁹⁹

Keeping in view the spread of corruption in various sectors of society, experts have emphasized the need to formulate or refine laws related to anti-corruption for the private and public sector including protection of witness, informants, victims, experts; mutual legal assistance (MLA), civil, criminal and administrative accountability of legal persons, assets recovery, political party accountability, bribery of foreign public officials and officials of public international organizations.¹⁰⁰ Similarly they have underlined the need to make law makers produce a constitution for the country which specifically emphasizes integrity, combats corruption, and makes provision for freedom from effects of corruption.¹⁰¹

Legal Framework

Nepal has a legal framework to address corruption particularly in prosecuting and sanctioning those involved in corruption, reforming bureaucracy through appropriate governance measures, making public officials accountable and checking financial irregularities. But the laws do not get implemented properly.¹⁰²

According to anti-corruption lawyers, the Good Governance Act 2007, The Right to Information Act 2007, the CIAA Act 1992, the Audit Act 1991, Prevention of Corruption Act 2002, and over a dozen Acts on watchdog institutions, procurement procedures, National Vigilance Centre, revenue investigation, and money laundering provide adequate legal framework to check corruption. But implementation of laws is very weak.¹⁰³

Anti-Corruption Strategy and Agency

The CIAA prioritized cases of wealth accumulation, banking fraud, tax evasion and financial irregularity in NGOs/ INGOs in June, 2013. It mobilized special intelligence investigators to investigate prominent politicians, bureaucrats and others who illicitly amassed wealth disproportionate to their income. It probed the activities of 107 civil servants including high level officials and ordered banks to block their account. The CIAA has over 400 complaints related to the excessive amassing of properties.¹⁰⁴

However, high profile cases of corruption: former Maoist combatants involving four billion rupees (USD 41.49 million), Tribhuvan International Airport runway and helipad scam are still unaddressed. The case of smuggling illegal currency notes from nine countries amounting to Rs.12.4 million (USD 128,644) through TIA on October 31, 2012 remains to be pursued. The amount was seized after a driver of SSP Ravi Raj Shrestha (constable Sobit Karki) was caught on CCTV camera smuggling the currency. SSP has not been arrested yet.

The Department of Money Laundering Investigation filed separate cases against five gangsters – Milan, Parshuram Basnet, Ganesh Lama (excess property Rs 270 million (USD 2.8 million), Deepak Manange (140.7 million (USD 1.45 million) and Abhishek Giri (20.9 million (USD 216,827)– at the Special Court on the charge of amassing millions of rupees through illegal means. All five have political patronage.¹⁰⁵

The Ministry of Local Development and Federal Affairs introduced reforms measures to address corruption particularly financial irregularities in local government bodies at village, city and district level in June, 2013.¹⁰⁶ It started a preliminary review of existing laws in July, 2013 for holding local election. The bodies receive annual budget for local development projects and others but cannot use it properly because of lack of leadership of elected authorities for the past twelve years. They are run in an ad hoc manner under the supervision of government officials who are unofficially guided by local leaders of political parties. The Supreme Court had ordered the government to make provision for local election on November 7, 2012.¹⁰⁷

99. NICSA interview with Committee members, July 28, 2013

100. *Gap Analysis of United Nations Convention Against Corruption UNCAC and its implementation in Nepal*, TIN, 2012, p IV

101. *Anti-Corruption Provisions in New Constitution*, TIN, 2011 p. 71

102. Interview with a former government secretary on October 10, 2013

103. Comments made by participants at pillar-specific workshop, TIN, July 19, 2013

104. NICSA interview with a senior official of CIAA on July 2, 2013

105. NICSA interview with a senior official of Department of MLI on July 2, 2013

106. NICSA interview with senior official in the Ministry on June 20, 2013

107. Interview with a senior official of Local Development Ministry on October 10, 2013

Civil Society, Business and External Actors

Nepal has a policy of involving various stakeholders in formulating anti-corruption policies and strategies. The government, anti-corruption organizations, NGOs, business and other actors of civil society are also interested in joint action against corruption. The trend of expressing commitment to anti-corruption is popular. But the degree of participation in combined efforts with integrated action against corruption is not encouraging.¹⁰⁸

A number of civil society organizations have conducted research into areas where corruption is suspected, produced critical reports on the government's implementation of anti-corruption measures, advocated extensive use of the Right to Information Act, underlined the need to end impunity and adopted the cause of transparency, accountability and good governance as priorities in their work.¹⁰⁹ TIN is engaged in initiating, pursuing and promoting anti-corruption activities in the country with emphasis on advocacy and interventions, coalitions/collaborations, sectoral focus, internal governance and management and promoting integrity values. It has been producing research, reviews, integrity works regularly. Its latest publications are *Gap Analysis of UN Convention against Corruption*, *Review of Anti-Corruption Strategy and Program of Government of Nepal*, and *Naya Sambidhanma Bhrastachar Biruddha Ka Prabdhhan* (Provisions for anti-corruption in the new constitution).

108. Interview with a former Commissioner of CIAA on October 10, 2013

109. NICSA interview with civil society leaders in Kathmandu on June 7, 2013

SPECIAL NOTE

Legislature

The following is a special note on the legislature. It has been prepared to provide the latest perspective on the pillar. An assessment could not be undertaken because of the non-existence of the legislature since May 27, 2012. There was no way to make the scoring and guiding questions applicable to assessing the pillar. The new legislature – Constituent Assembly (CA) – was elected on November 19, 2013. At the time of writing the report, the first session of the CA is underway.

Nepal, as mentioned above, did not have legislature for over 18 months (between May 27, 2012-November 19, 2013). It got the legislature after Nepali voters elected a 601-member Constituent Assembly on November 19, 2013 in a nation-wide election organized by the Election Commission. Although the election was boycotted by Mohan Vaidya-led Maoist-33-party alliance, it had a voter-turn- out of 78 percent.¹¹⁰

Thirty of the 123 political parties have representation in the new 601-member-Constituent Assembly. Ten managed to win the First Past the Post direct election held in 240 constituencies. Thirty of the 123 political parties selected candidates for CA through Proportional Representation System. No party has a majority in the CA.¹¹¹

The previous 601-member-Legislature Parliament (Constituent Assembly) was dissolved in May 27, 2012.¹¹² Ever since the government has talked of holding another Constituent Assembly election but it did not make an effort for nearly nine months to prepare minimum prerequisites – political and logistical – required. The political consensus essential for the poll could not be worked out among key political parties particularly the big four – the then ruling UCPN-Maoist, ruling –coalition-partner Madheshi Morcha, opposition parties Nepali Congress, and CPN –UML. The election could not take place on the date of Mangseer 7, 2069 B.S. (November 22, 2012), as originally scheduled by the government and on the re-scheduled date of Baishakh (April, 2013).¹¹³

The prevailing Nepal Interim Constitution 2063 B.S. does not have provision for holding a second Constituent Assembly poll. Yet the government announced the poll.¹¹⁴ Opposition parties denounced the move accusing the government of acting autocratically and beyond constitutional norm.¹¹⁵ They demanded the resignation of the Prime Minister Dr. Baburam Bhattarai's government over its failure to work out a political consensus and hold the poll. Because the Nepal Interim Constitution pre-supposed that a constitution would be ready in two years and some extended period, it did not make provision for another Constituent Assembly poll nor did it provide for any measure to fill the vacuum between end of one elected legislature and the opening of another.¹¹⁶

As a representative body, the previous Constituent Assembly performed a number of activities such as formulation of laws, finalizing the annual policy and programmes, annual budget, and scrutinizing the government. It framed 51 bills in 8 sessions during four year-period (2008-12).¹¹⁷

The achievements of CA included: declaration of Nepal as a Federal Democratic Republic, amendment of the Constitution for electing a government on the basis of majority support (not consensus as previously provided for) in parliament and for fast track adoption of the Constitution. It endorsed the United Nations Convention Against Corruption, and eight treaties and agreements related to various sectors.¹¹⁸ It presided over the transfer of government-power through election of four Prime Ministers – Pushpa Kamal Dahal (Prachanda) of UCPN-M, Madhav Nepal of CPN UML, Jhala Nath Khanal of CPN UML and Dr. Baburam Bhattarai of UCPN (M) in four years.¹¹⁹

110. Press release of Election Commission on December 3, 2013

111. Analysis of CA-election result, Election Commission, December 5, 2013

112. Supreme Court verdict, 2012

113. Statement of then Prime Minister Dr. Baburam Bhattarai on March 3, 2013

114. Prime Minister Dr. Baburam Bhattarai's announcement on May 27, 2012

115. Statements published by opposition parties - Nepali Congress, CPN UML and others on May 28, 2012

116. Observation made by Former Speaker of Legislature Parliament Subhash Nembang on May 28, 2012 at a public forum in Kathmandu

117. Phuyal, Rajendra, *Sambidhansabha Nirbachan Dekhi Abasansamma*, 2013, p.159

118. CA Documents related to 2012 –session, March-April, 2012

119. CA Documents on formation of new government on August 18, 2008; May 25, 2009; February 6, 2011; August 29, 2011

The CA adopted a resolution directing the government to ensure press freedom and create an environment of fear-free for journalists through prevention of the threats of murder, violence and terror. It directed the government to adopt ways and safeguard the economy from the global recession caused by financial crisis. The issue of power crisis was also discussed in-depth in the CA.¹²⁰

The CA, despite engaging in various parliamentary exercises and preparatory works for drafting a Constitution for four years, failed to produce a new Constitution. There are varied reasons for this. Some relate to the nature of a hung parliament, ideological conflict among political parties, crisis of confidence among parties, lack of homework for working out fundamental principles of the constitution at the outset, delayed peace process, excessive engagement in changing government, weak party system, disrespect for court verdict, dependence on foreigners, and concern of neighbouring countries.¹²¹

A huge amount of financial resources was invested in the CA. The Constituent Assembly Election in 2008 cost seven billion rupees. A total of three billion rupees was spent on salaries, allowance, dress, medicine, training, house rent and visits of lawmakers. Several NGOs and INGOs also spent huge amount of money for various activities on constitution drafting and parliamentary practices.¹²² In order not to waste that investment, the future CA should duly recognize and utilize the achievements and best practices of the former CA.¹²³

Fresh move

On March 12, 2013 the big four political parties – ruling UCPN-Maoist, opposition parties Nepali Congress, CPN –UML, and ruling –coalition-partner Madheshi Morcha – signed a deal to form an election government headed by Chief Justice Khil Raj Regmi.¹²⁴ This interim Government emphasized early elections in June but kept space open for up to December. The new understanding offered a solution to the prolonged political debate and cleared the way for elections by December 15, 2013. This opened the way for the exit of incumbent PM, entry of sitting Chief Justice into government as Head of the Interim Council of Ministers (not named Prime Minister) and for amending over 25 Constitutional provisions to avoid hurdles towards the elections of the legislature.¹²⁵

The fresh Constituent Assembly (Legislature Parliament) has 601 members – 240 directly elected from the prevailing 240 election constituencies in the country, and 335 elected through proportionate voting system and 26 nominated by the Council of Ministers through political consensus.¹²⁶ The poll date –November 19– was announced by the 11-member -Interim Election Government after consultation with political parties including High Level Political Mechanism consisting of UCPN-Maoist, Nepali Congress, CPN UML and Samyukta Loktantrik Madheshi Morcha. The Electoral Commission (EC) accordingly initiated the process for election including registration of new voters. The latest list has 12.7 million voters. Various laws have been amended through ordinance to accommodate the latest need.¹²⁷

Altogether 124 political parties registered in the EC for the poll until October 2013. Of them 121 submitted closed list of candidates for proportional representation election. Under the first past the post electoral system 6,352 candidates submitted nomination papers to contest the poll in 240 constituencies. Of them 1000 were independent candidates, 591 were women, 5,761 were men and one was third gender.¹²⁸

Opposition to the chief justice led government and the poll under it

A section of political parties – a group of 33 including CPN-Maoist, a party which broke away from UCPN-Maoist – and small parties are protesting against chief justice led government saying it is a challenge to

120. CA Documents related to fourth session, Mangseer, 2065 B.S. (2007 A.D.)

121. NICSA interview with a former CA member on June 24, 2013

122. NICSA interview with a senior official in CA secretariat, July 10, 2013

123. NICSA interview with a former CA member on July 10, 2013

124. The 11-point agreement on election government and 24-point proposal for clearing constitutional hurdles towards Constituent Assembly poll.

125. Presidential Ordinance of March 13, 2013

126. The 11-point agreement -3.1 (and later amendments) signed by four big parties on March 13, 2013

127. March 25- statement of Chief Election Commissioner Neel Kantha Uprety

128. Interview with a senior EC official on October 3, 2013

the values of democracy particularly the separation of powers – Executive, Legislature, and Judiciary.¹²⁹ They were besides demanding a consensus government under the leadership of a leader of a political party threatening to boycott and obstruct the poll.¹³⁰

The formation of high level political mechanism consisting of two members each of the four big parties had also been opposed by various parties and politicians. The objective of the mechanism was in theory to facilitate the Interim Election Council of Ministers to preside over the poll. Dissenting parties had termed it unconstitutional and have openly challenged its validity. It is simply a way of using the election government for the interest of the four-party syndicate at the cost of fairness of election, the party leaders said.¹³¹

Nepal Bar Association was also protesting against chief-justice led government. It took the move as insulting the norms of democracy and a bad plan to sabotage the independence of judiciary.¹³² Various key leaders of the four big parties were also against the chief justice led government and they had made their dissent recorded in their parties.¹³³ The Supreme Court, however, in a verdict on a writ petition challenging CJ-led Executive asked the Chief Justice not to identify himself as Head of Judiciary until the time he heads the Executive for the sake of ensuring independence of judiciary.¹³⁴ The SC in the meanwhile appointed an Acting Chief Justice of the Supreme Court.¹³⁵

The Mohan Vaidya-led -33-party -alliance opposed the election calling all to boycott it. It later demanded the dissolution of the newly elected legislature. The UCPN (Maoist) and 13 parties which participated in the poll-process questioned the fairness of the poll and demanded a high level probe committee to look into rigging of the election. They threatened that they would not participate in the CA if such a committee is not formed.

129. Written statement of 33 parties published on March 13, 2013

130. Protest statement of 33 parties published on March 14, 2013

131. NICSA interview with opposition party leaders on March 15, 2013

132. Protest statement of Nepal Bar Association published on March 13, 2013

133. Statement made by the leaders of the parties in public forums during March 13-17 period

134. Supreme Court verdict by Justice Girish Chandra Lall Das on March 18, 2013

135. Supreme Court announcement

VII. NATIONAL INTEGRITY SYSTEM

EXECUTIVE

Summary

The executive is the most powerful authority in Nepal's integrity system. Although it is comparatively stronger in capacity, it is weak in governance and role. The great gap between law and practice in the executive indicates its overall weakness in introducing reforms in the public interest. The executive's accountability is not ensured in practice given the dissolution of the Constituent Assembly on May 27, 2012. The judiciary has been unable to make it accountable because of its weakness in scrutiny of government (see Judiciary pillar). The political parties have also not been able to make it accountable because of their leaders' legacy to use executive as an instrument for fulfilling personal partisan interest. The Right to Information Act which ensures transparency in government is not used often by citizens.

There are extensive integrity rules such as codes of conduct, rules on conflict of interest and conditions for appointments after retirement from high posts. But the mechanisms and the system to implement them are weak because political decision makers manipulate them and interpret them to their partisan convenience. The executive branch has at times made efforts to improve the public sector, practice good governance and reduce corruption. But they have not been effective. A number of problems remain to be tackled in all the three areas.

Of great concern is the issue of an absence of democratically acceptable legitimate method of electing an executive. The election scheduled for November 19, 2013 was surrounded by a number of uncertainties until the election-day. It was sandwiched between the pro-election and anti-election politics. The manner adopted for creating an interim government has been ad hoc, but fully legal, because it has literally followed the constitutional provisions of forming a government (Article 38-1), removing constitutional obstacles when necessary (Article 158) and issuing ordinances in absence of parliament (Article 88). But it has been opposed by a section of Nepali politicians and champions of separation of powers from day one.¹³⁶

Since March 14, 2013 the executive was administered by the Chief Justice-led Interim Election Government. It was headed by the Chairman of the Council of Ministers, Khil Raj Regmi and operated under a legal frame-work.¹³⁷ The 11-member Ministry presided over the affairs of all Ministries. It introduced several amendments to the Constitution for creating a legal framework to open the way for holding poll, appointing Heads and members of Constitutional Bodies and justices and judges of Courts. On the basis of the framework some of the heads and members of the Constitutional Bodies and judges were appointed. All of them are operational at present.¹³⁸ The election- government handed over power to the elected government led by Prime Minister Sushil Koirala on February 10, 2014.

The government that the Interim Election Government succeeded was elected by parliament. It was reduced to a care-taker –government after dissolution of the Constituent Assembly. As it failed to hold elections that it announced twice, it had to quit under public political pressure. Prior to its departure, the caretaker government - the Maoist leader, Dr. Baburam Bhattarai-led Cabinet - endorsed a political document signed by four major parties and recommended President Dr. Ram Baran Yadav to remove hurdles of 25 articles of the Interim Constitution by invoking Article 158, to pave the way for the formation of a new interim election council under Chief Justice Khil Raj Regmi. It was on March 12, 2013 when the big four political parties – ruling UCPN-Maoist, opposition parties Nepali Congress, CPN –UML, and the then ruling –coalition-partner Madheshi Morcha – signed a deal to form an election government headed by Chief Justice.¹³⁹ It committed to an early poll in June but kept dates open for up to December.

136. Separate statements signed by the 33-party alliance led by Communist Party of Nepal – Maoist (Vaidya), Nepal Bar Association, and professional organizations on March 14, 2013

137. Nepal Interim Constitution 2063 – Article 43-1,2,3 and Nepal Government Division of Work Rules 2069

138. Documents related to appointment of Auditor General (May 8), Attorney General (May 24), Chief Commissioner of CIAA (May 8), Election Commission (June 1), Supreme Court Judges (April-May), district judges (June 11), 2013

139. The 11-point agreement on election government and the 24-point -proposal for clearing constitutional hurdles towards Constituent Assembly poll.

The Table below presents the indicator scores summarizing the Executive's capacity, internal governance and role within the Nepali integrity system. The remainder of this chapter presents a qualitative assessment for each indicator.

Overall Pillar Score: 45/100

Dimension	Indicator	Law	Practice
Capacity 58/100	Resources		75
	Independence	75	25
Governance 38/100	Transparency	50	25
	Accountability	50	25
	Integrity Mechanism	50	25
Role 38/100	Public Sector Management	50	
	Legal System	25	

Structure and Organization

The executive power of Nepal has been vested in the Council of Ministers led by the Prime Minister (currently Chairman of Council of Ministers), who is the Head of Government.¹⁴⁰

According to the Interim Constitution of Nepal 2007, the responsibility for issuing general directives, controlling and regulating the administration of Nepal shall, subject to the Constitution and other laws, lie in the Council of Ministers. The ministers have to be responsible to the Chairman and for what their respective ministries do.¹⁴¹

The business of the government of Nepal is conducted in consonance with the spirit of the People's Movement II, political understanding and culture of collaboration. The common minimum programme set through mutual consent is the policy basis of the operation of the government.¹⁴² The government is also guided by the operational rules.¹⁴³

There is a constitutional provision for the post of President, who is also the Head of State. The President is the Supreme Commander of the Nepal Army.¹⁴⁴ The President may promulgate any ordinance on the recommendation of the Council of Ministers. The bills passed by the Legislature Parliament are to be certified by the President but the President does not have any executive power. The main responsibility of the President is to protect and adhere to the Constitution. Annual reports of the constitutional bodies are submitted to the President through the Prime Minister.¹⁴⁵

The Council of Ministers has an elaborate mechanism to undertake various activities of the government. The Chairman of Council of Ministers has his own Office and staff. There is a provision for a Chief Secretary, the highest echelon of 80,329 civil servants (June/July 2013) under the civil service of Nepal. The CS serves under the Chairman of Council of Ministers and as a link between the office of the Council of Ministers and others in the government. The secretariat of the Chief Secretary has four secretaries, 6 joint secretaries and officers to look into specific areas. Among them are: management, human resource - (general administration, financial administration, information technology, contact with the Chairman, press and foreign relations) - finance, infrastructure development, social development, planning, supervision, Council of Ministers, constitutional bodies, good governance (complaints management branch), law gender equality and human rights promotion.¹⁴⁶

140. Nepal Interim Constitution 2063 – Article 158 , 88 (Presidential ordinances for removal of constitutional obstacles and issuance of ordinances), Article 38-1

141. Nepal Interim Constitution - Articles 37-39

142. NIC 2063 Article -43

143. Nepal Government Division of Work Rules 2069

144. NIC 2063 Article -36-a

145. Kharel, Laxmi Pd. *Constitutional Law and Comparative Nepalese Constitutions*, ParichitChhapakhana, Kathmandu, 2012, p.77

146. Organization chart, Office of Prime and Council of Ministers, July 2013

The Council of Ministers serves as a team with 26 Ministries and various departments and offices under them, Commissions, Trusts, Boards, Committees, public enterprises and other government units. It is connected with 43 secretary-level officials serving in the Ministries, and Commissions, one chief officer attached to National Vigilance Centre, and five regional administrators in the East, Central, West, Mid-West and Far –West.¹⁴⁷ The Council of Ministers is linked with local administration through the Offices of Chief District Officers in 75 districts. That link is manned by the Home Ministry.¹⁴⁸

This pillar deals with some six months of former Executive (October, 2012 – March 13, 2013) and interim Executive (March 14, 2013 – October-end, 2013).

Assessment

Resources (Practice)

Score: 75

TO WHAT EXTENT DOES THE EXECUTIVE HAVE ADEQUATE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

The executive has various provisions for human, technical and financial resources. It, however, feels that it does not have adequate resources in all the three areas.

The Council of Ministers constitutes the spinal cord of the executive consisting of human resources with varying background, status, qualification and experience. It receives resources from the annual budget of the government.¹⁴⁹ When viewed against the backdrop of rising aspirations of the citizens, the resources given under recurrent and capital expenditure categories are insufficient to offer services they need.¹⁵⁰ Moreover, government officers and staff are finding it difficult to cope with the challenges presented by a changing society, changing technology and increasing demands of the increasing population. The salaries and facilities are provided regularly through the budgetary mechanism.¹⁵¹ But they are not considered sufficient to maintain a minimum living standard for government officials. Increasing market price rises creates a gap between what employees earn and what they have to spend for daily expenses. The rise in pay-scale by 18 percent and allowance of government officials in the current budget has, however, given some comfort for officials.¹⁵² Government offices have not been able to change the old infra-structure into one suitable for information technology era to cope with the public demand for good governance and smart services. Capacity building of human resources is not given priority.¹⁵³

Independence (law)

Score: 75

TO WHAT EXTENT IS THE EXECUTIVE INDEPENDENT BY LAW?

The constitution and various laws make provision for the independence of the Executive in Nepal.¹⁵⁴

The Interim Government enjoys independence through constitutional provisions.¹⁵⁵ The political consensus that it had even before its inception continues to back it up.¹⁵⁶

147. www.opmcm.gov.np accessed March 9 2013

148. NIOSA interview with a senior official in Ministry of General Administration on March 15, 2013

149. Public Statement on Income and Expenditure for the fiscal year 2013-14 p 14

150. NIOSA interview with a government official on March 15, 2013

151. Finance Ministry allocation of budget for the government, 2013

152. Interview with a government official in the office of Council of Ministers, on July 16, 2013

153. NIOSA interview with government officials on January 28, 2013

154. Nepal Interim Constitution 2007 Article 37-43

155. Nepal Interim Constitution 2007, Article 38

156. Nepal Interim Constitution 2007, Article 43-1

The Head of the Executive is the Prime Minister (currently Chairman) while the executive consists of Prime Minister and the Council of Ministers formed under the PM's leadership. The Prime Minister used to be elected by the Legislature Parliament either on the basis of consensus or majority support. The ministers were appointed by the Prime Minister on the basis of political understanding.¹⁵⁷

Under the previous administration, the Prime Minister was accountable to the Legislature Parliament. There was room for expressing vote of no confidence against the PM.¹⁵⁸ However, a no-confidence motion could not be tabled against the same PM more than once within six months. It was the executive that presented through the President the government's policies and programmes for the year before the Parliament. Similarly the government was given the sole authority of presenting budgetary bill and bills related to Nepal Army, Armed Police Force and Nepal Police before the parliament.¹⁵⁹ Even when the parliament was not in session, the government could introduce Bills as Ordinance through the President. But the same had to be approved by the parliament within three months.¹⁶⁰

Currently, however, the Chairman of the Interim Election Council of Ministers has been appointed through a special provision of political consensus and the Chairman has appointed ministers on the advisory of the High Level Political Mechanism. Given the fact that there is currently no sitting parliament, government policies cannot be approved by parliament.

At present, the Chairman of the Interim Election Council of Ministers is responsible to the political mandate and constitutional provision which made it possible for him to head the government. Bills discussed in cabinet are promulgated as ordinances through the President.

Independence (practice)

Score: 25

TO WHAT EXTENT IS THE EXECUTIVE INDEPENDENT IN PRACTICE?

The executive is not independent in practice. Other actors particularly the political party/parties or their influential leaders generally interfere with its activities.¹⁶¹

Various questions have been raised in the public about the government's decisions on appointments and transfer of officials. Some examples are indicative: transferring the secretaries of the Election Commission and the Commission for Investigation of Abuse of Authority CIAA and the appointment of judges, the appointment to the top post of CIAA, and other constitutional bodies. They drew public criticism and questioned the much talked neutral stand of a bureaucratic government. For the decisions on the transfer and appointment, the government followed the recommendations of High Level Political Mechanism which adopted the principle of power-sharing by four parties.¹⁶²

It independently took major decisions on holding CA poll on November 19, 2013 appointing heads and members of constitutional bodies including those of Election Commission and making amendments to various clauses of the Constitution. The government took 212 decisions including endorsement of proposals put forward by various ministries in the months after March 14, 2013.¹⁶³

The way the previous government functioned even in the capacity of a care-taker for ten months after May 27 is valid proof. It had taken decisions on issues having long- term effect and serious impact on governance. They were: 19 high-level appointments, dozens of policy decisions, 13 financial decisions involving a huge amount of public money, formation of five commissions, and series of massive transfers and promotions of officials including those of the security sector. Opposition parties challenged all the decisions.¹⁶⁴ But they could not obstruct implementation.

157. Nepal Interim Constitution 2007 Article 38-1

158. Nepal Interim Constitution 2007 Article 38-7; 55-A

159. Nepal Interim constitution 2007 Article 84

160. Nepal Interim Constitution 2007 Article 88-1, 2

161. NICSA interview with senior officials of Nepal Bar Association on June 25, 2013

162. NICSA interview with senior media persons on June 20, 2013

163. NICSA interview with a senior official of the Office of Chairman on July 31, 2013

164. Nepal Weekly Chaitra 4 2069 p.23

In the past when the parliament was functioning, the political party whose selected leader was chosen as head of Government – Prime Minister – parliament exercised control over the government. All four Prime Ministers of the Republic of Nepal faced in one way or the other such interference in the past five years.¹⁶⁵ They referred to this while explaining why they failed to pursue certain programmes that they pledged to prior to becoming the Prime Minister.¹⁶⁶ The multi-party system in Nepal has not yet demarcated, in practice, the boundaries between the ruling political party and that of government.¹⁶⁷

The issue of the Government's independence in practice was widely discussed in May 2009 when the decision of the then Prime Minister Pushpa Kamal Dahal (Prachanda) to sack the Chief of the Nepal Army could not materialize because of the President's intervention. Dahal resigned over the issue questioning the independence of the Prime Minister particularly the civil supremacy over the army. The Prime Minister had taken the political decision of firing the Army Chief without fulfilling the full requirements for a cabinet decision. A partner party of his coalition government had walked out of the cabinet that took the decision on sacking the army chief. The President, therefore, overruled the Prime Minister's decision. The Supreme Court, later in a verdict on a writ petition related to the case, confirmed the President does not enjoy any special immunity or prerogatives. The President has to act as per the recommendation of the Prime Minister, the head of government.¹⁶⁸

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE REGULATIONS IN PLACE TO ENSURE TRANSPARENCY IN RELEVANT ACTIVITIES OF THE EXECUTIVE?

The activities of the executive are required to be formally recorded in a document – Cabinet Minutes. Details of the proceedings and actions of the executive are recorded in separate files of the Council of Ministers. Some of them – mostly selected ones having significance for the general public – should be placed in the government information system, which, among other things, includes a gazette, a spokesperson's office in ministries, the government website and the media operated through government finance.¹⁶⁹

The decision to publish particular activities is usually taken by the chief secretary who works under the Prime Minister. Minutes are prepared at the cabinet meetings. Information included in the minutes is usually shared by ministers and officials with the press but the minutes are not published. The budget of the government is a public document. The moment it is announced by the Finance Minister it is required to be made public. If the budget has been announced through the ordinance, the Finance Minister is required to share its details with the public through the media. All Ministers and government officials, according to law, have to declare their assets and properties. The legal power to pursue the disclosure rests with the National Vigilance Centre.¹⁷⁰

The Right to Information Act 2064 has a clear provision for transparency in government. All ministries and department should have a communication unit to inform people. But there are many government offices which do not have a communication officer.¹⁷¹

The budget is made public, but the minutes of the cabinet remain confidential for a given period of time.¹⁷² As for disclosure of assets, some declare it while others do not. Those who do not disclose assets are not penalized.

165. NIOSA interview with leaders of political parties in January 2013

166. Statements made by former PMs Pushpa Kamal Dahal, Madhav Nepal, Jhala Nath Khanal towards their final days in office in different times in the past and statements made by current PM in February, 2013

167. Focus Group discussion with political analysts on January 20, 2013

168. Media Report, July 2009,

169. The Right to Information Act 2064-5-3

170. Corruption Eradication Act 2059 B.S.-clause 50; CIAA Act -31

171. NIOSA interview with government officers in Taplejung, Janakpur, Bajhang, Achham in February, 2013

172. The Right to Information Act 2064-3 a,b,c,d, and e

Transparency (practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN RELEVANT ACTIVITIES OF THE EXECUTIVE IN PRACTICE?

The government information system does not work professionally. It is neither structured well nor responsive to citizens who seek information in accordance with the Right to Information Act.

On the one hand, it is quite progressive: ministers participating in the cabinet inform the press about the latest governmental decisions and policies. On the other hand, even government spokespersons do not provide prompt and detailed information on vital decisions and activities.¹⁷³ The officials who look after the press unit in the Prime Minister's Office and those who work as spokespersons in ministries have not developed a mechanism to disseminate the information adequately and on time.

Although citizens have the Right to Information, they do not usually seek information from the government. They do not mobilize the Commission for Information, an independent body, for this either.¹⁷⁴ That is why there is no pressure on the government and the Commission to disclose information. Sometimes the government makes efforts to translate procedures and regulations in plain language to ensure that average citizens understand them.¹⁷⁵ There is, however, a **public perception** that the executive does things in a non-transparent manner. The way the executive allowed the Constituent Assembly to be dissolved on May 27 without making any preparation for a legal framework for the future is something the general public do not know. They also do not know how the executive took the decision of holding another general election for another Constituent Assembly on Mangseer 7, 2069 B.S. and later postponed it to Baishakh, 2070 B.S.¹⁷⁶

The whole preparation done by the top politicians and the then government for many months for preparing to hand over the executive power to a non-party Chief Justice led government has not been made transparent. The public perception is that the key four parties and the head of the present executive have made an agreement not made public yet. It could relate to the tenure of election government and its role in finishing the CA poll properly.¹⁷⁷

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT MEMBERS OF THE EXECUTIVE HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

The constitutional provision that the executive has to be responsible to the Parliament was the key legal basis for making the executive answerable until May 27, 2012. Other laws developed in accordance with that spirit for Ministry-specific functions also governed the oversight of the executive by the parliament particularly its Public Accounts Committee.¹⁷⁸

The executive is audited annually as per the law and the audit –report is made public. The process of auditing does not get influenced politically but the suggestions made in the Auditor General's annual report are virtually ignored.¹⁷⁹

173. NISCA interview with a government spokesperson on January 20, 2013

174. During focus group discussion with the TIN-NIS research team, participants said "since the government and the Commission do not give information promptly, people are in no mood to acquire information from them."

175. Such attempt was made for making people understand details about the Constituent Assembly poll 2008, questions included in the Nepal Census 2011, Income Tax regulations and

176. Write up entitled State of the Nation by former Finance Minister Dr. Ram Sharan Mahat published in the Kathmandu Post, March 10, 2013

177. NISCA interview with civic society leaders on June 25, 2013

178. Nepal Interim Constitution Article 56-2

179. Media Comments, January 1-7, 2013

The reporting requirements for the Prime Minister and members of the Council of Ministers also ensured the executive's accountability for its actions. Various committees of Legislature Parliament could summon the executive including the Prime Minister to explain decisions, indecisions, actions and in-action. Each member of the executive was obliged to give reasons for decisions taken.¹⁸⁰ Similarly the executive had to consult the public for decisions on serious public issues. The Prime Minister could be challenged by a vote of no confidence in the floor of the Parliament.¹⁸¹

At present, however, there are no parliamentary provisions for the executive to report to and be scrutinized.

Accountability (practice)

Score: 25

TO WHAT EXTENT IS THERE EFFECTIVE OVERSIGHT OF EXECUTIVE ACTIVITIES IN PRACTICE?

Oversight rules are followed for simple general matters but not actually honoured in practice for serious matters having high political, economic and social stake.

The government reports on matters convenient to it but evades uncomfortable issues. The executive had not taken any responsibility for failing to create an environment for holding general election of new CA in the postponed date of Baishakh.¹⁸² There is a tendency of planting some issues related to decisions of government in the media, getting it discussed widely in public and ultimately implementing the government's decisions and ignoring the public views.¹⁸³

At present the Chairman briefs the President, organizes meetings with the four-party high level political mechanism, and informs the media on a regular basis. The present executive also gets also scrutinized by regular constitutional bodies, political parties, dissenting parties, civil society and media.¹⁸⁴

The executive holds public consultations as per its convenience and not in accordance with the public need. The sanctions and prohibition mechanisms are not practiced. This has ignited public frustration.¹⁸⁵

Hello Sarkar, an initiative launched by former Prime Minister Dr. Baburam Bhattarai in November 2012, is a programme through which people can directly complain to the Office of the Prime Minister over telephone.¹⁸⁶ It continues to respond to people's grievances. It received 612 complaints during May 15-June 15, 2013 and got 465 of them duly settled. In the past seven months (November 15, 012-June 15, 013), some 5,620 complaints were received under Hello Sarkar. Of them, 5,027 were resolved (89.44 %).¹⁸⁷

Integrity (law)

Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF MEMBERS OF THE EXECUTIVE?

There are codes of conduct for members of the executive. Some of them have evolved over time while others have been codified by parliamentarians, politicians and former Heads of Government.¹⁸⁸

180. Nepal Interim Constitution 2063 Article 57

181. Nepal Interim Constitution Article 55-A

182. Interview with politicians in January 2013

183. NCSA focus group discussion with senior officials on June 10, 2013

184. NCSA interview with civil society leaders on June 28, 2013

185. Interview with politicians and stakeholders in January 2013

186. Nepal Weekly Chaitra 4 2069 p.25

187. NCSA interview with a senior official in the office of Chairman

188. Civil Service Code 2050 and Code for Parliament members 2008

In addition to this, the political party heading the government also issues directives to the members of the executive to be ethical in decisions and behaviour.¹⁸⁹ Anti-corruption provisions are specifically mentioned in the codes of conduct. There are rules for conflict of interest. The government ministers and employees should not engage in activities that affect the performance and interest of the government.¹⁹⁰ There are rules for them not to accept gifts and hospitality, foreign visits, consultation with foreigners, post-ministerial appointments in the codes.¹⁹¹ There are, however, no restrictions on “revolving door” appointments.¹⁹²

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF THE EXECUTIVE ENSURED IN PRACTICE?

The codes of conduct for the executive are rarely referred to, and followed by members of the executive. There were various instances of conflict of interest in which ministers participated in programmes organized against their own government.¹⁹³

Revolving door appointments are a matter of concern. Each time the integrity of a member of executive is questioned publicly the issue is politicized. Politicization has been used to cover various malpractices of members of the executive. Experts believe that the notion the executive was just an extension of the major parties was responsible for the executive's failure to follow the codes of conduct of ministers.¹⁹⁴ No political party that ruled in the past four years could demarcate the line between the executive and its organizational chain of command.¹⁹⁵

However, there were two instances in which ministers were forced to resign over bribery or corruption charges. The Labour and Employment Minister Kumar Belbase resigned after media made public a videotape recording of the Minister asking for bribes in exchange for the registration of foreign employment companies on 20 October, 2012.¹⁹⁶ Prime Minister Dr. Baburam Bhattarai sacked Minister for Labour and Transport Management Sarita Giri over corruption charges on 24 March, 2012. The PM was more agitated after Giri refused to resign and instead went on a publicity campaign to defend herself. The PM had sought Giri's resignation over her decision to remove the Director General of the Department of Foreign employment, Purna Chandra Bhattarai under the direction of some controversial manpower agencies despite the latter's good work. The Prime Minister's Office informed that Minister Giri was dismissed from her position as she refused to follow the Prime Minister's direction to resign. Giri challenged it saying it was actually an act of obstructing reform process in the ministry.¹⁹⁷

Public sector management (law and practice)

Score: 50

TO WHAT EXTENT IS THE EXECUTIVE COMMITTED TO AND ENGAGED IN DEVELOPING A WELL GOVERNED PUBLIC SECTOR?

The executive has the appropriate mechanisms and bodies to effectively supervise and manage the work of the civil service. But the executive does the supervision and management in the way that suits the interest of the party it represents.¹⁹⁸

189. Political parties' directives to their government ministers issued in different times during 2008-13

190. Civil Service Code 2050, 48-2; Council of Ministers code of conduct 2008

191. Corruption Eradication Act 2059 B.S.

192. NICSA interview with a senior official in the Ministry of General Administration on January 5, 2013

193. Home Minister's party participated in an anti-government protest in Janakpur, March 2013

194. Interview with political commentators on June 10, 2013

195. Interview with a former Chief Secretary of Nepal Government, September 10, 2013

196. Senior official of Ministry quoting the fax-resignation of the Minister

197. NICSA interview with officials of PM Office and the Labour Ministry

198. Nepal Weekly May 10, 2013 p.3

In the past sometimes it seemed as if each minister developed his or her own style of supervision that went directly against the spirit of collective responsibility of the Council of Ministers. One Prime Minister in 2010 had complained “in my coalition ministry of 22 political parties each ministry is steered in the individual minister’s style.”¹⁹⁹ In 2013 another Prime Minister complained: “in my coalition ministry each party-minister is free to handle the ministry in his own way.”²⁰⁰ Although there is a mechanism for impartial supervision of staff, it is rarely honoured. Supervision is done through partisan approach in accordance with the Trade Union that is most effective in a given department or section.²⁰¹ There are plenty of directives from the Executive to the public sector on making their activities transparent, accountable and inclusive. The tools of transparency awards, financial incentives and monitoring systems and scorecards are all there.²⁰² However, their implementation depends on the political will of individuals. That is why one public sector appears to be most effective at one time under one minister while at the other the same turns out to be the worst.²⁰³

Because the executive follows highly politicized practices in Nepal, the public sector is weak in governance.²⁰⁴ Provisions such as continuity in abiding by rules, governance through a system, division of labour among officials and staff, respect for hierarchical authority and self-dignity, maintenance of files and no taking of bribes should be implemented. The salary and facilities fixed legally for services should also be updated in accordance with changing times.²⁰⁵

Legal system

Score: 25

TO WHAT EXTENT DOES THE EXECUTIVE PRIORITISE PUBLIC ACCOUNTABILITY AND THE FIGHT AGAINST CORRUPTION AS A CONCERN IN THE COUNTRY?

The Head of Government routinely focuses on values such as public accountability and anti-corruption initiatives upon assuming the high office. Commitment to this effect is given in acceptance address or new government inauguration rituals or in address to the nation through media.²⁰⁶ The immediate past leftist Maoist-Madhes -Morchha-coalition government of Dr. Baburam Bhattarai also did the same while announcing zero tolerance to corruption.²⁰⁷ Chairman of current Council of Ministers has also expressed the commitment through series of speeches.²⁰⁸

The two concepts and practices constitute highlights of the white paper or a statement similar to it that the Head of Government presents before the nation. A number of new administrative and legal reforms existing at the moment get either revised with a new tone or emphasized with special importance each time a government is changed.²⁰⁹ But every executive so far has shown that they do not command the political will essential for practicing accountability and anti-corruption measures in reality.²¹⁰ The talks on accountability and anti-corruption drive evaporate with the passage of time.²¹¹

199. Media Report, May, 2010

200. PM answering questions over radio on why Home Ministry did not initiate action against senior police officials accused of wrong doings in the airport foreign currency smuggling case in February, 2013

201. NICSA interview with a senior official on January 12, 2013

202. Civil Service Rules 2050-243, 244, 251

203. NICSA interview with a senior official of Ministry of General Administration on January 5, 2013

204. Focus group discussion with stakeholders on January 5, 2013

205. NICSA interview with senior officials of Trade Unions on January 5, 2013

206. Statements made over the past 6 years in different times on assumption of the high office by former Prime Ministers including Pushpa Kamal Dahal (Prachanda), Madhav Kumar Nepal, Jhalanath Khanal and Dr. Baburam Bhattarai and present Chairman of Council of Ministers, 2008-2013

207. Prime Minister Dr. Baburam Bhattarai's first public statement after assuming the office in 2011

208. Chairman's public speeches, March-April, 2013

209. NICSA interview with a senior official of CIAA on June 14, 2013

210. Expressions made at Political will Symposium held at TIN on March, 2013 at TIN

211. Interview with a senior anti-corruption worker, on July 15, 2013

JUDICIARY

Summary

Nepal has a number of constitutional and legal provisions for ensuring the independence of the judiciary. The judiciary has incorporated the principles of personal liberty, human rights, checks and balance, independent and competent judiciary and rule of law.²¹²

The judiciary is comparatively stronger in capacity and governance than in role. There is a wide gap between law and practice in judiciary. It also suffers from a number of problems: bribery at various levels, delays in justice delivery, and undue influence from the executive during investigations of criminal cases in which political leadership's interests are at stake. The budget allocated to the judiciary is not sufficient to pay decent salaries to staff, build infrastructure with the increase in demand for justice, and acquire efficiency-enhancing equipment for timely delivery of justice.

There are some additional concerns that have been identified as potentially weakening the judiciary. One of them is the declining number of judges at the Supreme Court (SC). Until a recent amendment to the Constitution, Justices of Supreme Court could not be appointed without Constitutional Council, and hearing in the parliament. At a time when there was no parliament in the country, the issue became more complicated with every retirement of justices of the SC. The Supreme Court functioned under six justices only until March 2013. This was the first time in 22 years in which the apex court had to deliver justice with such a minimum number of justices.²¹³

Currently, however, the situation has improved because of the amendment to the constitution through ordinances. The Supreme Court, today, has 11 justices including CJ-Head of Government and Acting Chief Justice, Damodar Prasad Sharma. Other justices are: Ram Kumar Prasad Shah, Kalyan Shrestha, Girish Chandra Lall, Sushila Karki, Prakash Wasti, Baidhya Nath Upadhyaya, Tarka Raj Bhatta, Gyanendra Bahadur Karki, Prof.(Dr.) Bharat Bahadur Karki.²¹⁴

Two recent cases indicate the vulnerability of the independence of the judiciary in Nepal. The first refers to the way the Chief Justice became the Head of Government while the second on how political parties, in the name of power-sharing, decided on appointments of judges. The fact was: the leftist political party U-CPN-Maoist announced formally the name of sitting Chief Justice Khil Raj Regmi for heading the Interim Election Council of Ministers at its seventh general convention in Hetauda on February 6, 2013. The gist of the message read: Chief Justice has been nominated by the Maoist party for the post of Head of Government. People understood this as a political party's intervention in the independence of the judiciary.²¹⁵

Similarly the appointment of 169 judges – 80 for appellate courts and 89 for district courts – on June 11, 2013 became highly controversial. The public perception was that the appointments had been made on the direct recommendation of the four parties in the High Level Political Mechanism. Nepal Bar Association objected to it as well terming it as an insult to the independent judiciary.²¹⁶

The issue of political parties' attempt to form a consensus Election government under the leadership of Chief Justice of Supreme Court was a point of discussion among politicians, intelligentsia, legal community and others during February and March 2013. Nepal Bar Association opposed it saying it would end the principle of separation of powers and independence of the judiciary. Former Chief Justices and lawyers also denounced the move as a measure to weaken the judiciary.²¹⁷ Sections of opposition parties also opposed the move as a mockery of democratic principles. The Chief Justice had, through a statement, expressed willingness to positively consider the approach of political parties in view of prolonged political deadlock and protracted absence of parliament.²¹⁸ These were perceived to be enough of a threat to affect the judiciary's high standing overall.²¹⁹

212. Supreme Court Strategic Plan (2009-13) - vision, supremecourt.gov.np accessed April 15, 2013

213. Senior Official of Supreme Court

214. Supreme Court website accessed on June 20, 2013

215. NICSA interview with senior leaders of civil society on June 5, 2013

216. Nepal Bar Association press-statement issued on June 13, 2013

217. Interview with office bearers of Nepal Bar Association and former chief justices in March 2013

218. Statement issued by CJ through an official in his office

219. Former Chief Justice Anup Raj Sharma and former Speaker of CA SubhashNembang

The Table below presents the indicator scores which summarize the assessment of the judiciary in terms of its capacity, its internal governance, and its role in the Nepali integrity system. The remainder of this section presents the qualitative assessment for each indicator.

Overall Pillar Score: 53/100

Dimension	Indicator	Law	Practice
Capacity 56/100	Resources	50	50
	Independence	75	50
Governance 54/100	Transparency	75	50
	Accountability	75	25
	Integrity Mechanism	75	25
Role 50/100	Executive Oversight	50	
	Corruption Prosecution	50	

Structure and Organization

The Constitution provides three tiers of Courts which include the Supreme Court of Nepal, the Court of Appeal and the District Courts. Supreme Court is the apex court. The Supreme Court besides being a court of record has the final authority to interpret the Constitution and the laws in force.²²⁰ All courts and judicial institutions except the Constitutional Assembly Court, are under the Supreme Court. The Supreme Court is composed of a Chief Justice, 14 justices and ad hoc judges. Until recently the number of justices in the Supreme Court had been reduced to six because of retirement of justices and constitutional hurdle in appointment of new ones to replace them. Currently there are 11 judges including an Acting Chief Justice in the Supreme Court.

The judicial power of the Supreme Court is used through various benches – Single Bench, Division Bench, Full Bench and Special Bench. They have the power to hear writ petitions, decide the constitutionality of law, hear appeal, review its own judgment, and revise the decisions of the Court of Appeal.²²¹ The power to review its own judgments has been specified by law. The judgments delivered by the Supreme Court may be reviewed on any of these grounds: if any new evidence which could make substantial difference to the decision is found after the delivery of judgment; if the decision is found contrary to the precedent or legal principle established by the Supreme Court.²²² The SC has also the power to try certain cases.²²³ It is also vested with extra judicial power such as making rules applying to the judiciary as a whole, and formulating judicial policies.

Nepal's judiciary follows a strategic plan. It has a vision to establish a system of justice which is independent, competent, inexpensive, speedy, and easily accessible to the public and worthy of public trust and thereby to transform the concept of the rule of law and human rights into a living reality and thus ensure justice to all. Some of the judiciary's twelve specific areas of emphasis are: reform case management process, making execution of judgment simple, speedy and effective, developing human resources, developing infrastructure of court and managing logistics, institutionalizing the application of information and media technology and strengthening inspection and supervision system.²²⁴

There is no distinction between Criminal and Civil court except some basic procedures. The District Court is the court of first instance upon which the Court of Appeal hears appeal. In addition to these regular courts there is provision in the constitution to establish special types of courts or tribunals for the purpose of hearing special types of cases by law. According to these provisions there are: Revenue Tribunals, Administrative Court, Labor Court, Debt Recovery tribunal and Debt recovery Appeal Tribunal and one special court are functioning under the respective laws. These institutions are under the judicial control of the Supreme Court.²²⁵

220. Nepal Interim Constitution Article 102-4, 2063 B.S.

221. Nepal Interim Constitution Article 107 -1-4

222. Administration of Justice Act 1919-12

223. Nepal Interim Constitution Article 107-3 and Supreme Court Act 1991 Section 7

224. Second five year Strategic Plan (2009-13), adopted by the full court of the Supreme Court on 2009

225. Nepal Interim Constitution Articles 108, 109, 2063

The Judiciary consists of one Supreme Court, 16 Appeal Courts, 75 District Courts, seven court type tribunals including one Special Court, four Revenue Tribunals, one Administrative Court and one Labour Court located in various parts of the country. They had the responsibility of handling in fiscal 2066-67 B.S. (2009-2010) altogether 125,380 cases of which 66,395 had been freshly registered within one year. Some 70,017 cases witnessed delivery of justice during the period while 55,363 cases had to be carried over to the next year.²²⁶

The Appeal Court, Lalitpur, settled some 6,471 cases in the past fiscal year – 2069-70 B.S. (2012-13) as against 5,916 cases on average in earlier years.²²⁷

Assessment

Resources (law)

Score: 50

TO WHAT EXTENT ARE THERE LAWS SEEKING TO ENSURE APPROPRIATE SALARIES AND WORKING CONDITIONS OF THE JUDICIARY?

There are laws for ensuring appropriate salaries and working conditions of the judiciary.²²⁸ The laws guarantee against income reduction of judges. The constitution directs the government to have a sense of cooperation towards courts and undertake facilitating efforts towards the judiciary.²²⁹ The annual budget presented by the government allocates financial resources for the judiciary under regular and developmental categories.²³⁰ The Finance Ministry seeks opinion of the Supreme Court on the budget prior to its formulation through consultation. It is not mandatory for the Ministry to have such consultations but it undertakes it every year. Such consultation offers opportunities for courts to state their needs and adjust salaries with inflation.

However, the judiciary is not legally entitled to participate in the budget-process. There is also no legal provision for the government to apportion a minimum percentage of the general budget.²³¹ However, the government has pledged to adopt a policy of gradually increasing the budget allocation for the judiciary up to one per cent of the total budget.²³²

Since it is a constitutional body its allocations cannot be intervened by any other body. It is the duty of the government to provide funds for the judiciary as per its need. Judges of Supreme Court, Appellate Court, District Court and other dispensations get their remunerations and facilities under the legal provision.²³³

Resources (practice)

Score: 50

TO WHAT EXTENT DOES THE JUDICIARY HAVE ADEQUATE LEVELS OF FINANCIAL RESOURCES, STAFFING AND INFRASTRUCTURE TO OPERATE EFFECTIVELY IN PRACTICE?

Officials are of the view that the budget of the judiciary is not sufficient but they are just managing with what they have.²³⁴ An expression of a court official in the Supreme Court reflects the situation well: "We need 10 million rupees (USD 103,745) for managing the old files (Misil in Nepali language) in courts, but we get only one million rupees (USD 10,374) for the purpose. We sought, in 2013-14, Rs 70 million (USD 726,216) for the machinery but we got only Rs 2.5 million (USD 25,936) and we sought Rs 400 million (USD 4.14 million) for purchasing vehicles but we only got Rs 70 million (USD 726,216)."²³⁵

226. Annual Report of Supreme Court 2067 B.S. (2010)

227. Progress Report presented to media by Appellate Court on July 17, 2013

228. Supreme Court Justices' Salary, Service Conditions and Facilities Act 2066 B.S. and various amendments made to it over the years

229. Nepal Interim Constitution 2063, Article 115

230. Public Statement on Income and Expenditure, Budget summary for the fiscal 2013-14, p. 8

231. NISCA interview with a senior lawyer in Kathmandu on June 26, 2013

232. Public Statement on Income and Expenditure for the fiscal 2013-14, p. 44

233. Supreme Court Justices Salary, Service Conditions and Facilities Act, 2006

234. NISCA interview with a court official on March 26, 2013

235. Court officials' comment on budget given to media, July 18, 2013

The same is true with salaries, staffing and infrastructure as well. The budget appears to be inadequate when viewed against the demand of court users. But it is difficult to blame the inadequacy for compelling judges and prosecutors to resort to corruption.

Court users and officials feel there is not an adequate number of clerks in the courts. There is dearth of trained human resources. Due to the lack of academic courses of law in intermediate level, most of the employees happen to join the courts without any basic knowledge of laws, their processes and courts. Most employees have a capital-city-preference for work, this has resulted in a shortage of employees at the operational level in districts outside Kathmandu. Although there is more or less stability in human resources, the opportunity for updating their knowledge and skill in court matters such as understanding the concept of conflict of interest, managing cases in courts, judgment writing, due process of law is not available.²³⁶

The structural provision of judiciary appears to be in line with high values of democracy, separation of powers and justice. But the operational mode of delivering justice looks poor, costly, delaying and defective.²³⁷ Court users describe it in various ways ranging from “Nepal’s judiciary is highly corrupted” to “it is not the rule of law but bribe that determines who wins court cases in Nepal”.²³⁸

Library resources are also not available in courts outside Kathmandu. But lately most courts have buildings of their own equipped with essential furniture; all possess computers and laptops. The buildings of some courts are under construction. Officials have found improvement in resources and infrastructure over the past four years. In the past courts used to borrow even paper from others but these days they do not have to do so. Currently efforts are being made to make court documents or verdicts public through the website.²³⁹

Independence (law)

Score: 75

TO WHAT EXTENT IS THE JUDICIARY INDEPENDENT BY LAW?

The Interim Constitution of Nepal 2007 has guaranteed the independence of the Judiciary.²⁴⁰

Amending the constitution as per the judiciary’s need is not difficult. The process of appointing judges is as follows: the President shall, on the recommendation of the Constitutional Council, appoint the Chief Justice of the Supreme Court. The Chief Justice will appoint other judges of the Supreme Court on the recommendation of the Judicial Council.²⁴¹ Any person who has worked as a judge of the Supreme Court for at least three years shall be eligible for appointment as the Chief Justice of the Supreme Court. There is a clear cut legal process of appointment, qualification, conditions of service and facilities of judges of Appellate courts and District Courts.²⁴²

The situation in which the judiciary is financially dependent on the government shows that its independence is limited.²⁴³ Court officials expressed dissatisfaction over the way the government neglected the financial demands of the Judiciary.²⁴⁴

There is also a provision in Article 114 for the establishment of a Judicial Service Commission (JSC) consisting of the Chief Justice as Chairman and the Minister of Justice, most senior judge of the Supreme Court, the chairperson of the Public Service Commission and the Attorney General. The government has to act on the recommendation of the JSC in all matters on the appointments, transfers, promotions or disciplinary actions of judicial personnel.

236. NICSA interview with court officials on May 3, 2013

237. NICSA interview with court users on January 15, 2013

238. NICSA interview with five court users pursuing property case in Supreme Court on January 15, 2013

239. NICSA interview with a senior lawyer on June 10, 2013

240. Nepal Interim Constitution Articles 100 -118, 2007

241. Nepal Interim Constitution Article 103, 2007

242. Nepal Interim Constitution Article 109, 2007

243. NICSA interview with a senior Supreme Court lawyer on June 26, 2013

244. Himalayan News Service on reaction to 2013-14 budget, July 15, 2013

There are professional criteria for the appointments of judges. Foreexample, any citizen of Nepal who has a Bachelor's Degree in law and has worked as a judge of a district court or in the post of Gazetted First Class of Judicial Service for at least seven years or has practiced law for at least ten years as a law graduate advocate or senior advocate or who has taught law or done research thereon or worked in any other field of law or justice for at least ten years shall be considered eligible for appointment as the Chief Judge or a judge of an Appellate Court.²⁴⁵ Similarly any citizen of Nepal who has a Bachelor's Degree in law and has worked in the post of Gazetted Second Class of the Judicial Services for at least three years or has practiced law for at least eight years as a law graduate advocate shall be considered eligible for appointment as a District judge.²⁴⁶

Members of the judiciary are involved in appointing judges. The tenure of office holders in the judiciary is specified by law. There is no provision for appointment for life. The provision for security of tenure rules out the chances of arbitrary termination of contract.²⁴⁷ There is no room for participation by civil society in appointment proceedings.

The process of removing judges has been clearly mentioned in the constitution.²⁴⁸ The provisions range from parliamentary impeachment to dereliction of duty. They also provide sufficient room for due explanation in defense by the accused.

Independence (practice)

Score: 75

TO WHAT EXTENT DOES THE JUDICIARY OPERATE WITHOUT INTERFERENCE FROM THE GOVERNMENT OR OTHER PRACTICES?

The judges, according to law, are to be appointed on clear professional criteria. But the general perception is that it is done through political influence. The High Level Political Mechanism influenced the appointment of judges recently through a power sharing understanding among four leading parties.²⁴⁹

That is why all key appointments in the judiciary have routinely invited various types of public criticism, doubts, controversy and manipulations in recent times.²⁵⁰ The latest appointment of judges to Supreme Court and district courts around April-May also drew serious public criticism. It was done through the direct intervention of four -party High Level Political Mechanism.²⁵¹

It is not uncommon for judges to be removed from their position before the end of their term without appropriate justifications. Some examples could be mentioned in this regard: the sacking of District Court Judge Upendra Lav Karna in 1990, of Dolpa District Court Judge Dhruvalal Raj in 1995, of Lalitpur District Court Judge Gopal Guragain in 2002 and of Mahottarai District Court Judge Kedar Pyakurel in 2005 have been explained as done for incapacity /misconduct.²⁵² The 1995 impeachment bid against Senior Supreme Court Justice Surendra Prasad Singh had been blocked by Speaker of Parliament. The 2001 action against controversial verdict in Robinson scandal case involving Supreme Court Justices Krishna Kumar Verma and Baliram Kumar could not proceed towards impeachment because of dissolution of parliament. They later resigned. The 2005 demotion of a Supreme Court Temporary Justice had been explained as a case of action against controversial verdict in a narcotics scandal.²⁵³

There is public perception that judges are transferred or demoted due to the content of their decisions. Court users often complain against the undue external interference in judicial proceedings, appointments, transfers, promotions and even in verdicts. The regulations protecting judges from undue influence are often ignored.²⁵⁴ According to court users, "in pre-1990-politics, it was the palace that used the judiciary for its interest. Over the past two decades, it is partisan politics that is directly manipulating the judiciary."²⁵⁵

245. Nepal Interim Constitution Article, 109-2, 2007

246. Nepal Interim Constitution Article 109-3, 2007

247. Nepal Interim Constitution Article 104-4; 109-10

248. Nepal Interim Constitution Article 105-1-3; Article 109-10

249. Nepal Bar Association press- statement June 13, 2013

250. Nepali Weekly The Janmabhoomi, June 15, 2013

251. NIOSA interview with two senior lawyers practicing in Supreme Court and district courts on June 3, 2013

252. Media Report-1990-2006, 2006

253. Media Report-2001-2006, 2006

254. Focus group discussion held by NIOSA team in Kathmandu on May 15, 2013

255. Interview with court users on June 4, 2013

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE JUDICIARY?

Judges are required by law to disclose their assets and make them available to a Judicial Appointment Commission.²⁵⁶ The judiciary is required by law to provide information on judgments, judicial statistics, court hearings and other relevant activities to the public in a timely manner.²⁵⁷

The Judicial Services Commission is also required to make its information and activities public. It is mandatory for the Supreme Court to submit an annual report to the President who has to arrange to make it public through the Chairman.²⁵⁸ Specific issues such as number of cases (filed, disposed, pending, reviewed) in the Supreme Court and subordinate courts, recovery of penalties or fines, execution of judgments, budgetary allocation and expenses have to be mentioned in the report. Other themes to be included in the report are: details of work performed under the Judicial Council, an advisory body to counsel on appointments, transfers, disciplinary actions, dismissals and other matters related to administration of justice and the Judicial Service Commission.²⁵⁹

The judiciary has provision for informing among other things daily case- list, weekly case list, decided cases, cases process details, orders, notices through notice boards, press release and a website.²⁶⁰

Transparency (practice)

Score: 50

TO WHAT EXTENT DOES THE PUBLIC HAVE ACCESS TO JUDICIAL INFORMATION AND ACTIVITIES IN PRACTICE?

Citizens can obtain information on appointments, transfers moving and removal of judges. They get it generally through the media or through enquiry at court.²⁶¹

The judiciary publishes a progress report on an annual basis. Although it is statistically and factually comprehensive, the information mentioned in it does not reflect the exact list of activities, status, spending and governance in judiciary.²⁶²

The journal *Nepal Kanoon Patrika*, although highly useful for law professionals as academic reference, does not reach the masses. The Judicial Services Commission also publishes reports in a formal manner but it does not focus on specific themes. The reports are usually publicised through the mass media. There is a guarantee of access to information on court procedures, judgments, judicial statistics, court hearing records/transcripts, etc.²⁶³ But people do not have easy, prompt, reliable access to them in practice.²⁶⁴ Judicial proceedings are usually conducted in public. The judiciary has a website but court users complain it is not updated most of the time.²⁶⁵

Mass media newsrooms pursuing court reporting as a specific beat help disseminate information about judiciary on a regular basis. At times the courts also organize press conferences to inform the public. The Supreme Court has a provision of publishing an annual bulletin and a journal *Nepal Kanoon Patrika*.²⁶⁶

256. Rules and regulations related to Judicial Appointment Commission

257. Right to Information Act 2064 B.S. (2007)

258. Nepal Interim Constitution Article 117, 2007

259. Nepal Interim Constitution Article 117-1,2, 2007

260. <http://supremecourt.gov.np>, accessed on July 6, 2013

261. Interview with a senior official of Supreme Court on June 20, 2013

262. NIOSA interview with readers of reports on June 29, 2013

263. Nepal Interim Constitution 2063 B.S.; The Right to Information Act 2064

264. Interview with court users on June 15, 2013

265. <http://supremecourt.gov.np>, accessed June 15, 2013

266. Media Law Reporting, June 2013

Accountability (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE JUDICIARY HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

The judges have to report their actions publicly and to higher authority. All of their decisions are usually public, appealable and subject to review by a higher court by law.²⁶⁷

The members of the judiciary have to be answerable for their actions. There are scrutinising units for this. The verdicts are subject to appeal and review by higher courts.²⁶⁸

The provision for making judges answerable and the mechanism for checking their whims, tilt and weakness could be termed adequate. Moreover, they have to abide by the code of conduct. They have to bear the consequences if they go off track. There is an independent body – Judicial Council – to investigate complaints against judges.²⁶⁹ A formal procedural approach has been guaranteed by law in this respect.²⁷⁰

Accountability (practice)

Score: 25

TO WHAT EXTENT DO MEMBERS OF THE JUDICIARY HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

Judges give reasons for their decisions in a very roundabout way. Court-users usually get lost in the ambiguity of language used in the decision. “We have to re-consult our lawyers to find out what the court decision actually means to us in practice,” said a court-user. According to a media-court-reporter, “The journalists have to dig hard – investigate once again – to get the real message of a court – verdict. It took us very long recently to know about what exactly was the court decision on extension of tenure of the Constituent Assembly.”²⁷¹ Law professionals also feel the need for simplifying the verdict – language to match with the general understanding-level of court –users.²⁷²

Judges have to face sanctions of sorts, in review, or in appeal if they cannot justify their decisions. The body supposed to investigate complaints and impose sanctions cannot be called effective or independent. It is always under the influence of politics, power and non-court factors. The disciplinary procedures also take a very long time.²⁷³ People in general feel discouraged to follow them. The feeling, according to a court-user, has led to “a climate of tolerance for wrong doings in court and of not complaining.”²⁷⁴

Some judges have been penalized under the legal procedural approach. There is no legal provision for protecting complainants, whistleblowers, however. Judges do not enjoy immunity in cases of corruption and criminal offences. There are instances of judges being censured, reprimanded, fined, suspended and removed.²⁷⁵

267. Code of conduct for justices, 2055 B.S., 1995

268. Code of conduct for justices 2055 B.S., 1995

269. Judicial Council Act, 1990

270. NICSA interview with senior officials of Supreme Court, on May 15, 2013

271. NICSA interview with court users on January 10, 2013

272. NICSA interview with a senior lawyer on January 10, 2013

273. NICSA interview with court users on January 10, 2013

274. NICSA interview with a court user on January 11, 2013

275. Interview with a senior official of Supreme Court on May 15, 2013

Integrity mechanism (law)

Score: 75

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE MEMBERS OF THE JUDICIARY?

The code of conduct for judges is quite comprehensive. There are regulations for judges not to receive reimbursements, compensations and honoraria in connection with privately sponsored trips.²⁷⁶

The judges are required to disclose their assets and make them available to the Judicial Council for updating records but there is no legal compulsion for judges to make their properties public.²⁷⁷ The issue whether judges should make their assets public or not was publicly debated in 2010 when the then Chief Justice sought to make judges declare assets publicly. A section of judges stood for not declaring their assets publicly. Another group of judges emphasized the need to declare assets publicly in accordance with the spirit of Right to Information Act and the principle of transparency that it sought to ensure.²⁷⁸ If a law cannot be formulated for making judges to declare assets publicly, a policy should be worked out for this.²⁷⁹

There are also rules on conflict of interest for judges. Similarly there are specific provisions for judges not to accept gifts and hospitality. Citizens can challenge a judge for failing to step down from a case. There are restrictions on judges to join private or public sector after leaving the judiciary. Various measures are in place for this in the form of laws as per the spirit of the Constitution.²⁸⁰

Integrity mechanism (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF THE JUDICIARY ENSURED IN PRACTICE?

Various measures such as the existing code of conduct, gift and hospitality regulations, post-employment restrictions, conflict of interest policies, integrity bodies, etc. are not effective in ensuring ethical behaviour by judges.²⁸¹

Most of these measures regarding integrity have book-value, they are often referred to in academic discussion and talks on judiciary themes, but they carry no importance in practical life of judges. Manipulators have built a system to by-pass each of the measure.²⁸² The statement supports the public perception that the judiciary is in a web of corruption-network and because of this people in general do not have faith in timely and impartial delivery of justice by the courts.²⁸³ Practicing judges take these expressions as no more than subjective criticisms of judges by losers of cases.²⁸⁴

Judges actually do not disclose assets in practice in public. The Judicial Council scrutinizes the judges' assets disclosed to it for updating records, and ensures compliance with the code of conduct.²⁸⁵ The provisions for regulations restricting post-government private sector employment for judges are not effective.²⁸⁶ Although citizens are able to challenge, through writ petitions, the impartiality of a judge if s/he fails to step down from a case, the provision is not used generally in practice.²⁸⁷

276. Code of conduct for justices 2055

277. Judicial Council Act 1990

278. The Himalayan, November 21, 2010

279. NICSA interview with a senior advocate on June 20, 2013

280. Nepal Interim Constitution 2063 B.S. Article 106

281. Code of conduct for legal personnel

282. NICSA interview with court users on March 25, 2013

283. NICSA interview with court users on March 25, 2013

284. NICSA interview with a senior judge on June 15, 2013

285. Judicial Council Act 1990

286. Code of conduct for justices 2055

287. Nepal Interim Constitution 2063, Article 107-2

Executive oversight

Score: 75

TO WHAT EXTENT DOES THE JUDICIARY PROVIDE EFFECTIVE OVERSIGHT OF THE EXECUTIVE?

Courts have the jurisdiction to review the actions of the executive. But this does not constitute a regular routine feature. Neither is it extensive. Nevertheless, in 2012- early 2013 the Supreme Court reviewed the decisions of the executive over 75 times and give stay orders while considering various writ petitions.²⁸⁸

There are some landmark cases through which the Supreme Court has done an exemplary review of the actions of the executive. Some recent verdicts of the Supreme Court could be helpful in justifying the point: the SC verdict on issuing citizenship to 18 year old Dolakha woman – Sabina Damai – on the basis of maternal lineage has strongly backed the cause of gender equality.²⁸⁹ Another verdict of the Supreme Court directed the government to issue voters' certificates only on the basis of a citizenship-certificate.²⁹⁰ The SC decision to provide citizenship to third sex has been described as a progressive step towards an inclusive society that Nepal wants to develop.²⁹¹ The April, 2010 decision of SC on the President's move of re-instating the then Army Chief Rukmangad Katawal despite the then Prime Minister's decision to the contrary has also been lauded as a landmark verdict on the role of the Head of State and that of the Head of Government.²⁹²

Corruption prosecution

Score: 50

TO WHAT EXTENT IS THE JUDICIARY COMMITTED TO FIGHTING CORRUPTION THROUGH PROSECUTION AND OTHER ACTIVITIES?

The judiciary is committed to acting against corruption. But citizens feel the courts do not give impartial judgment on corruption cases because of their own unseen internal corrupt -network.

The general perception is that impunity has been the rule in the country. That is why citizens do not go to court for settling corruption cases. The delay, the high cost and various types of manipulations that people face in courts discourage them to pursue corruption cases through the courts.²⁹³ The judiciary provides statistics on prosecutions including corruption prosecutions. But they are not comprehensive.²⁹⁴ The judiciary suggests anti-corruption measures and reforms to the government based on its experience and expertise. The domestic judicial authorities cooperate and offer mutual legal assistance in accordance with law to requesting foreign judicial authorities when it comes to corruption-related crimes with a cross-border element.²⁹⁵

The portion of corruption cases in total cases handled by courts in Nepal was just 7.84 % in the fiscal 2009-10.²⁹⁶ The Supreme Court has been emphasizing settlement of corruption cases over the past five years. The rate of settlement of corruption cases was 8 % five years ago, it gradually rose to 20%, 33 % and 34 %. But in the last fiscal year 2069-70 it fell to 14 %.²⁹⁷

There are some high profile cases in recent times that show the judiciary's commitment to anti-corruption actions. Some examples could be mentioned: the SC convicted general manager of Nepal Airlines – Ramagya Prasad Chaturbedi – on corruption charges and fined him 13.9 million rupees (USD 144,205)

288. NISCA interview with senior officials of Supreme Court on June 10, 2013

289. Sabina Damai citizenship case, 2011

290. Voting right on the basis of citizenship certificate, February 7, 2011

291. Third gender recognition case, December 21, 2007

292. Presidential re-instatement-decision case, April 2010

293. Interview with an official of Nepal Bar Association, on June 20, 2013

294. NISCA interview with senior officials of SC on June 10, 2013

295. NISCA interview with a senior lawyer on June 10, 2013

296. Literature review of court cases and NISCA interview with court users on March, 2013

297. Supreme Court statistics published in vernacular Nepal weekly on June 2, 2013 p. 22

accompanied by a prison term.²⁹⁸ This has been taken as a bold step towards the cause of anti-corruption in the country. The SC had earlier fined former minister and politician Chiranjibi Wagle a sum of 20.3 million rupees (USD 210,602) with 18-month prison sentence for his involvement in corruption. The verdict has been described as the first punishment for a politician on corruption charges.²⁹⁹

The case of Public Interest Litigation disposal rate in the Supreme Court fell 12 percent in the past fiscal year. According to senior officials of the Supreme Court, the disposal rate stood at 33 percent (6,361 cases) for 2011/12, down 12 percent in 2012/13 to 21 percent (4,358). This is the lowest disposal rate in five years. For instance, disposal rate for 2008/09 was 38 percent, while that for 2009/10 was 46 percent. Similarly, for 2010/11 it was 41 percent. According to the apex court officials, 16,415 cases and writ petitions are yet to be cleared. These will now be placed for the fiscal year that commenced last week. The apex court is yet to clear 8,174 appeals, while the number of backlog writs stands at 3,245. The yet-to-be-cleared cases and petitions for 2011/12 stand at 12,682.³⁰⁰

298. SC verdict, September 9, 2011

299. NICSa interview with a senior official of SC on June 2, 2012

300. NICSa interview with senior officials of Supreme Court on June 24, 2013

PUBLIC SECTOR

Summary

The public sector in Nepal covers a wide area of services essential for public life. But it has not been able to deliver services effectively and function properly because of political interference and lack of adequate resources. The independence of public sector employees is not protected effectively. The legal provisions for making public sector transparent are not applied consistently. There is no proper environment to use the Right to Information Act to ensure transparency of the public sector. The public sector does not have specific schemes to educate the public about corruption. It does not engage in joint efforts on anti-corruption with civil society or the private sector. The existing system of public procurement contains important safeguards against anti-corruption but they are not implemented adequately.

The Civil Service, which constitutes one important component of the public sector, ensures impartiality and independence in the process of governance. The Public Service Commission contributes to making the civil service more professional and public spirited; all recruitments, promotions, retirement and dismissals have to follow the PSC rules and regulations. However, PSC has been bypassed by political high-handedness.

There is no clear cut provision for whistleblower protection in the country. There is a specific code of conduct for the civil service. The “revolving door” syndrome, however, can be seen quite often. High level government officers get appointed to various posts in non-government institutions after retirement from government. There is room for new employers to take advantage of insider knowledge or experience of government officials. Although there are provisions to guard against this trend, they are seldom applied.

Although the public sector is conscious of eradicating bribery, it has not been checked effectively. 69 % of respondents, according to Global Corruption Barometer 2013, considered corruption as a grave problem in the public sector while 57 % experienced sharp rise in corruption over the past two years.

The Table below presents indicator scores summarizing the assessment of the public sector in terms of its capacity, governance and role within the integrity system of Nepal. The remainder of this section presents qualitative assessment for each indicator.

Overall Pillar Score: 40/100

Dimension	Indicator	Law	Practice
Capacity 42/100	Resources		50
	Independence	50	25
Governance 46/100	Transparency	50	25
	Accountability	75	25
	Integrity Mechanism	75	25
Role 33/100	Public education		25
	Cooperation with public institutions, CSOs and private agencies in preventing / addressing corruption		50
	Reducing corruption risks by safeguarding integrity in Public Procurement		25

Structure and organization

The public sector of Nepal is a composite form of government at the centre, five regional offices, 75 district offices, 75 district development committees, 58 municipalities, 3915 village development committees and 37 public enterprises producing goods and services for the public. The backbone of the public sector is the civil service which enjoys among other things the right to form a trade union.³⁰¹ Its personnel administration is supervised by the Ministry of General Administration and service conditions are governed by the Public Service Commission.³⁰² The number of people engaged in it stood at 80, 329 including 48 secretaries, 404 Joint-Secretaries and 5,683 section officers by Asar, 2070 (July 2013).³⁰³ Women comprise just 14 percent of the civil servant work-force (or 12,172 in number).³⁰⁴ The Trade Unions of civil servants, which are 7 in number with indirect affiliation to various political parties, claim the figure to be 121,197.³⁰⁵ This could be because Trade Unions, in an attempt to muster strength, offered membership to members of other TUs.

The Chief Secretary, the senior-most government official, serves as a bridge between the political leadership and bureaucracy through the Secretariat of Council of Ministers. At the time of writing, there are 28 ministries. Each Ministry is steered by a Minister and is guided bureaucratically by a secretary. The government at the centre is connected with the region through five regional offices in the East, Centre, West, Mid-west and Far-west and 75 district offices at the headquarters of the district. According to legal provisions the government should be led by an elected member of parliament.³⁰⁶

There are 37 public enterprises (PEs) and corporations in Nepal established with a view to delivering goods and services easily to the public at reasonable prices. They operate in the industrial sector, business, service, special sector, public utility, and financial sector. The number of employees in PEs stands at 32,383.³⁰⁷ PEs should follow the PSC rules and regulations in services: recruitment, promotion, and dismissal.³⁰⁸ The same is often ignored by the PEs. The government has realized this.³⁰⁹

There are over a dozen entities called Boards constituted under the Development Committee Act 2013 B.S. (1957 A.D.) and governed by rules and regulations endorsed over time by parliament.³¹⁰ They are operational and providing services in public areas such as transportation, tourism, stock exchange, insurance, investment, supply of milk, cooperatives and film-entertainment. They are autonomous by law but dependent financially on government particularly line – ministries in practice. They are either headed by ministers or secretaries or persons appointed by political leadership.

Assessment

Resources (Practice)

Score: 50

TO WHAT EXTENT DOES THE PUBLIC SECTOR HAVE ADEQUATE RESOURCES TO EFFECTIVELY CARRY ITS DUTIES?

The public sector has resources which could be termed as inadequate for fulfilling the requirements essential for performing its increasing duties. The overall wage-bill of the public sector has been officially termed “sustainable.”³¹¹ However, the wages in the public sector are not adequate to sustain an appropriate standard of living in the context of the country’s economy. The pay and benefit levels in the public sector deter talented people from joining it. As a result, public services are not delivered effectively.³¹²

301. Civil Service Act Second Amendment clause 53

302. Nepal Interim Constitution 2063 B.S. Article 125

303. Record of personnel administration, Ministry of General Administration, June/July 2013

304. Record of Ministry of General Administration, June/July 2013

305. Figures of seven Trade Unions of civil servants

306. Nepal Interim Constitution 2063 B.S. Article 38 -2

307. Economic Survey, 2011/12, Finance Ministry p

308. PSC rules 2067- 7, 31, 35,36

309. Economic Survey, 2011/12 p 297

310. NICSA interview with officials of Nepal Tourism Board, Nepal Investment Board, Road Board, Railway Board, Milk Development Board, National Cooperative Development Board and Nepal Film Development Board on June 20-22, 2013

311. Public Statement on Income and Expenditure for the Fiscal Year 2013-14

312. NICSA interview with officials of Administration Reform and Recommendation Commission on July 10, 2013

All the ministries and public sector agencies get the resources through the annual budget of the government under regular and development categories. The Finance Ministry allocates and releases funds for the public sector.³¹³ The amount earmarked under the regular expenditure is sufficient for salary, grading, provident fund and performance management arrangement. But the sum set aside for development expenditure is not enough to meet the expenses of the growing demand for innovation, computerization, effective management and for hiring skilled personnel.³¹⁴

Of the 37 PEs operating in the country, 15 are in profit and have resources sufficient for offering services. The rest are dependent on government funding and are under-resourced.³¹⁵ The Boards are also dependent on line-ministries for funds and do not get resources adequately to meet their need. For example, the National Cooperative Development Board (Rashtriya Sahakari Bikas Board) demanded 5 billion rupees (USD 51.87 million) in resources for fiscal 2013-14 but a sum of 5 crore (USD 518,726) rupees only was allocated to it.³¹⁶

Most of the PEs have not been able to formulate and implement their plans in line with their respective visions, strategies, and work policies defining objectives, tasks/performance, results, quantities, and means of verification clearly.³¹⁷

The civil service in Nepal was established at a time when the government was considered to be basically a controller functioning more secretly than transparently.³¹⁸ It is, therefore, finding it difficult to cope with the current public demand for the government to be more a facilitator, transparent and accessible to the citizens suitable to the values of democracy and good governance.³¹⁹ Some efforts are being made by computerizing some services of the executive. Senior officers use computers in an extensive manner. But there is a long way to go for introducing e-governance.

Independence (Law)

Score: 50

TO WHAT EXTENT IS THE INDEPENDENCE OF THE PUBLIC SECTOR SAFEGUARDED BY LAW?

The independence of the public sector is guaranteed by law. The institution of the civil service is based on the principle of independence: political leadership makes decisions and civil servants implement them; in the process of decision making the civil servants may advise the leadership. The code of conduct of civil servants has a provision for restricting civil servants from any political activity either on duty, in uniform or on official premises.³²⁰

Public Service Commission is responsible for upholding the principle that selection to appointments in the civil service must be based on merit and in a fair and open competition. Commissioners are appointed by the President on the advisory of the Constitutional Council. The PSC audits compliance with the recruitment code, deals with complaints. Public Enterprises have to follow PSC rules and regulations for recruitments, promotions, dismissal of employees.³²¹

To guarantee the independence, the Constitution has made provision for the Public Service Commission in Articles 125-127. PSC conducts examinations for the selection of suitable candidates to be appointed to positions in the civil service.³²² The PSC has developed regulations for ensuring fair competition in selection of employees. The PSC has to be consulted on the general principles to be followed in the course of making appointment and promotion to any position of the military, armed police or police service or other government service. The same applies to appointments in corporations and other bodies of the public sector.³²³

313. Public Statement on Income and Expenditure for the fiscal year 2013-14 p.25

314. Interview with senior officials of Ministries on July 16, 2013

315. Economic Survey 2069-70 B.S. Ministry of Finance, p 255

316. NIOSA interview with a senior official of National Cooperative Development Board on July 20, 2013

317. Economic Survey 2011/12 p.288

318. Khadka, Narayan, *Politics of Development in Nepal*, 1994 p. 62

319. Pradhan, Shirish, Nepal Weekly, Feb 19, 2013 p. 2

320. NijamatiSewaNiyamawali (Civil Service Regulations) 2050 B.S.

321. LokSewaAyog (Karyabidhi) Ain 2048 (PSC Act, Regulations)

322. Nepal Interim Constitution Article 126

323. NIC Article 125-5

Unfortunately, the sector cannot be called independent because of various sorts of interferences and manipulations in implementation of the laws. Today most aspects of public service employees including appointment, transfer, promotion and dismissal are determined by politics.³²⁴ Although there are regulations regarding professional impartiality of public sector employees, they are mostly ignored or manipulated or replaced by loyalty to political parties particularly the political leaders in the government.

There are a number of legal provisions for ensuring independence of government ministries,³²⁵ local bodies³²⁶ and PEs.³²⁷

There is no institution specifically dedicated to protecting public sector employees against arbitrary dismissals or political interference.

There is no law as such to check parliamentary lobbying for inclusion or exclusion of publicly procured projects in plans, programmes and budgets. Parliament can, however, press for discussion on them and take appropriate decisions to guide the executive in this regard.³²⁸

Independence (Practice)

Score: 25

TO WHAT EXTENT IS THE PUBLIC SECTOR FREE FROM EXTERNAL INTERFERENCE IN ITS ACTIVITIES?

The Public Service Commission emphasizes that appointments be made on merit after a fair, open and transparent process. But there is weakness in implementation of PSC rules.

Public sector employees witness change in their positions every time the government changes at the centre.³²⁹ The practice continues soon after the Council of Ministers is reshuffled. The changes caused by transfers affect mostly the secretaries of ministries, heads of departments, corporation chiefs, and other key officials in public offices. Officials are supposed to follow the line given by politicians. If they do not, they are transferred into the General Administration Ministry where they are supposed to mark themselves present but nothing specific is given as assignment. There is no atmosphere for following the rules and regulations for taking decisions on plans, programmes, contract, and employees.³³⁰

There is limited opportunity for civil servants in government offices to follow the laws and the administrative system. The politically appointed advisors in ministries expect the civil servants to perform in accordance with their political convenience.³³¹ Although there are specific regulations for recruitment, transfer and promotion, they are mostly ignored. The selection committees legally in existence cannot do anything but be a silent observer of political interference. Ministers who lead ministries appoint their own advisors in accordance with their wish and get civil service officials mobilized through them. The process is unhealthy but is institutionalized under five different Prime Minister over the past six years.³³²

There is evidence to indicate that the public sector has not been allowed to function independently. Prime Minister and Ministers ignore the provisions related to public sector independence and make it act in accordance with their wish. They also ignore the provisions made by government for appointing CEOs of PEs and Boards.³³³

There is no dedicated institution to safeguard the public sector from political interference.³³⁴ There is a legal framework for ensuring independence of civil service, that does not allow civil servants membership of a

324. Interview with a senior member of Administrative Reform and Recommendation Commission on July 20, 2013

325. Good Governance Act, Council of Ministers rules and regulations, General administrative procedures

326. Local government Act 2055

327. Company Act, Consumer Protection Act 2054 B.S. (1998), Public Utility Act

328. Nepal Interim Constitution Article 57

329. Interview with senior government officials in January 2013

330. NICSA interview with a senior civil servant in Kathmandu on July 5, 2013

331. NICSA interview with a senior secretary of Government of Nepal on July 5, 2013

332. Interview with senior government officials on June 6, 2013

333. Interview with top bureaucrats who resigned protesting against the promotion of a junior secretary to the post of Chief Secretary ignoring the seniority clause of PSC

334. NICSA interview with a recently retired government Secretary on June 28, 2013

political party and make political speeches.³³⁵ But the same is not followed by some existing public sector employees because they can receive protection of the Trade Union they are affiliated to.³³⁶

There is no environment in the public sector for safeguarding the sanctity of public sector service because various Trade Unions affiliated to political parties particularly UCPN (Maoist), Nepali Congress, CPN UML, and Madhesh parties seek to politicize the public sector. Although the law allows one Trade Union for public sector, it is virtually ignored and all parties create a base in the public sector by creating separate Trade Unions. This has made Trade Unions wings of political parties.³³⁷ The same has not allowed TUs to concentrate on professional interests of workers.³³⁸

Some evidence from 2012-13 indicate lack of independence of the public sector. Five high ranking bureaucrats, Secretary level, resigned protesting flouting of laws and PSC regulations in appointing a junior Secretary to the post of Chief Secretary in July, 2012. Several transfers of secretaries, officials, and promotions in government have also featured under the influence of political leadership over the years. The trend is also evident in local bodies and PEs. The trend did not change, but further intensified under the Council of Ministers led by the Chief Justice and consisting of former bureaucrats.³³⁹

Transparency (Law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE TRANSPARENCY FINANCIAL, HUMAN AND INFORMATION MANAGEMENT OF THE PUBLIC SECTOR?

The legal provision for annual auditing, data protection provisions and Freedom of Information act delineate approaches to financial, data management and right to information.

Officials have to make a declaration (by filling up a form and submitting it to authority) on personal assets, income and financial interests.³⁴⁰ The same should be updated every fiscal year.³⁴¹

There is a specific provision for public information management.³⁴² It is mandatory for various ministries, departments, corporations and others in the public sector to inform the public about their activities and decisions and update information.³⁴³ There are specific regulations for keeping record, managing it and making it public. The information considered extremely sensitive for national sovereignty, security cannot be made public. Similarly the information affecting court proceedings or sub-judice cases, privacy of citizens and social harmony can be withheld.³⁴⁴

The financial transactions of all public sector offices are subject to regular annual auditing by authorized auditors.³⁴⁵ Records of public procurement have to be well managed as per Public Procurement Act 2063 B.S and other laws closely or remotely related to it such as Financial Transactions Act 2055 B.S., Income Tax Act 2058 B.S., Company Act 2053 B.S., Contract Act 2056 B.S. (and various amendments made to them).³⁴⁶

335. Civil Service Act 2050-43,44

336. NICSA interview with a senior civil servant in Ministry of General Administration on June 28, 2013

337. Report of Administration Reform and Recommendation Commission, July 11, 2013

338. Interview with a senior activist of Trade Union Movement in Nepal, June 25, 2013

339. NICSA Interview with senior officials in Office of Prime Minister on June 6, 2013

340. Civil Service Act 2050 -54

341. Corruption Eradication Act 2059

342. The Right to Information Act 2064 B.S.-5,6

343. The Right to Information Act 2064 B.S.-4

344. The Right to Information Act 2064 B.S. 3-3

345. Nepal Interim Constitution Article 123-1,2

346. Corruption Eradication Act 2059, Government Contract Management Act 2020 B.S.

Transparency (practice)

Score: 25

TO WHAT EXTENT ARE THE PROVISIONS ON TRANSPARENCY IN FINANCIAL, HUMAN RESOURCE, AND INFORMATION MANAGEMENT IN THE PUBLIC SECTOR EFFECTIVELY IMPLEMENTED?

Citizens do not have reasonable access to information on public sector activities and the records that public sector entities keep on them.³⁴⁷

Public sector employees rarely disclose their personal assets, income and financial interests. Those who do disclose do so for symbolic and for purposes of formality only. The information on public procurement is neither timely nor comprehensive. Vacancies are advertised publicly in a nominal and formality-fulfilling manner but the modality of recruiting candidates is manipulated. It is usually against the PSC's principles of fair and open competition. "Announcement of vacancies is just a formality (some dub it just a lip-service gesture to cover internal manipulation); vacancies are announced usually to formalize appointments made through non-transparent manner," said Kathmandu youths who were fatigued by applications for posts advertised in papers.³⁴⁸ Fair and open competition that is pledged on advertisement never takes place.³⁴⁹

Although all public authorities are legally bound to make documents about plans, programmes, policies, procedures, functions and operations and keep them open for the public, people find it very difficult to get them.³⁵⁰ Notice Boards, Citizens' Charter displayed in 10 government offices and five PEs in Kathmandu were found to be outdated on June 20, 2013.³⁵¹

Accountability (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT PUBLIC SECTOR EMPLOYEES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

There are laws under which public bodies have to report to authority on progress made and plans to execute on a given period. The bodies have to be answerable for their actions to authorities and to a supervisory (follow-up) and evaluation committee.

Public bodies are required to report to authorities in time in the form of monthly, three monthly and annual reports.³⁵² They have to present themselves, report and answer questions if the office of Chief Secretary, Public Account Committee or any other Committee of Legislature Parliament supervising their line-ministries or departments. The office of Auditor General Office has provisions to summon them to explain their actions and decisions.³⁵³

The authority that constitutes the Board or apex unit of public bodies is the one to which they are accountable. They are also required to explain their decisions to the National Planning Commission, Board directors or stakeholders in the annual meetings or general assembly of PEs.³⁵⁴ Offices such as customs, revenue administration and Commission for Investigation of Abuse of Authority offices have provisions for covert methods of informing (whistle-blowing) about corruption like smuggling, tax evasion and abuse of authority.³⁵⁵ But there is no official policy on whistle-blowing in other public sector offices. But there are various ways through which wrong-doing in public bodies can be exposed: complaint box, secretly reporting to media, writing to the CIAA, informing decision makers through letters, and moving the court. There are legal ways to charge public sector employees with extortion, bribery, corruption and abuse of

347. NICA interview with citizens seeking service government offices in Singha Durbar on June 14, 2013

348. Interview with 15 Kathmandu youths on December 29, 2012

349. Nepal Weekly editorial page article June 24, 2013

350. Interview with civil society leaders on use of Right to Information Act on February 10, 2012

351. NICA assessment-survey

352. Good Governance Act 2008, Management and Operation Rules- 7-1,2,3,4,5, and 6

353. Good Governance Act 2008, Management and Operation Rules -26

354. Good Governance (Management and Operation) Act 2064 B.S. (2008)

355. Corruption Eradication Act 2059-section 56; CIAA Act 1991, Customs Act 2064- 47-6

privileged state of information.³⁵⁶ Some oversight mechanisms are also in place: unannounced inspection, abrupt summon by authority, move by stakeholders, complaint by citizens or consumers' forum. The usual audit mechanism is used in auditing the account of public bodies.³⁵⁷

Accountability(practice)

Score: 25

TO WHAT EXTENT DO PUBLIC SECTOR EMPLOYEES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

Public bodies undertake reporting and answering questions just for the sake of fulfilling formalities. The emphasis is on preparing papers that look well drafted and formality-fulfilling. They often fail to reflect the ground reality however.

The version of receivers of goods and services is rarely mentioned. People term the reports as promotional to cover weaknesses and highlight strengths.³⁵⁸

Some examples in this regard, often cited in public functions by victims are worth mentioning. Health Ministry reports claimed all health posts in the country had adequate supplies of 25 types of medicines considered as very essential for public health.³⁵⁹ Stakeholders complained they could not have even simple medicines for fever and x-ray service. Education Ministry reported that text books for primary and secondary schools had been made available in all 75 districts. Students of districts said they did not receive the textbooks for six months after the beginning of the academic session.³⁶⁰ Transport Ministry reported that arrangements for the disabled, senior citizens, children and women in public transport buses has been made. Commuters complained the public buses were meant only for the strong and those who can push their way in and out.³⁶¹

The existing oversight mechanisms are not effective. The complaint mechanisms are also no more than formalities.³⁶² There are very few instances in which public body employees have been charged with malpractice, with the exception of some managers and chairpersons of public bodies. The issue makes good media headlines for some time. Because of manipulations, employees escape penalty. The public impression is that the chain of impunity prevailing in the country safeguards all wrong doers.³⁶³

Integrity Mechanisms (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF PUBLIC SECTOR EMPLOYEES?

There is a provision for a code of conduct for all public bodies. The code has rules to check conflict of interest, gifts, hospitality, implement post-employment restrictions, avoid unauthorized use of official properties and facilities and employment of family members.³⁶⁴

Both the law and the code regard bribery as a crime. In addition to this the general professional code applies to professional public bodies. The rules and regulations of Public Service Commission also seek to ensure the integrity of public sector employees.³⁶⁵ Public bodies have comprehensive arrangement for making employees responsible in financial transactions.³⁶⁶

356. Corruption Eradication Act 2059 B.S., Nepal Health Service Act, 2053 B.S., Revenue Leakage Act 2052 B.S., Education Regulations 2049 B.S., Local Self Governance Act 2055 B.S.

357. Regulations for officials of Auditor General's Office 2050 B.S.

358. NICSA interview with public service-users Kathmandu ward No. 13, 14 on June 25, 2013

359. Report of TIN programme held in Nepalgunj, May 13, 2013

360. Report of TIN programme held in Biratnagar May 30, 2013

361. Report of TIN programme held in Kathmandu May 14-15, 2013

362. Nepal Weekly, February 26, 2013

363. Report of TIN programme held in Kathmandu May 14-15, 2013

364. Good Governance Act 2064-44; Civil Service personnel-conduct rules 2065- 3-15

365. Good Governance Act 2064

366. Public Procurement Act 2007

Integrity Mechanisms (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF PUBLIC SECTOR EMPLOYEES ENSURED IN PRACTICE?

The public sector bodies and employees have not been able to function professionally with a sense of service. As noted above, current salaries are not sufficient for maintaining their daily life.

This compulsion leads to devising ways to subvert public bodies for personal benefit. This opens the door to abuse facilities, resources, and services of the public bodies by the employees in myriad ways. The cycle engages individuals with ministerial posts to those of office assistants and security guards at the bottom.³⁶⁷ Although the laws and regulations are binding, they manipulate them quite often for their personal economic interest. The annual audit report routinely points out various irregularities of employees for years but it is simply ignored by concerned authority.³⁶⁸

Public sector corruption is a very widespread in Nepal. People have the impression that they cannot get service from public offices without paying a bribe ranging from tea-expenses to handsome payment.³⁶⁹ The existing code of conduct and laws appear ineffective in practice.

Since public procurement mobilizes a large amount of funds annually for various development, construction and maintenance purposes, it attracts the attention of most manipulators of law. Laws for following financial discipline in public procurement and auditing the financial records have been carefully worked out and updated. They also provide room for scrutiny, supervision and checks and balance. But they are not followed scrupulously.³⁷⁰

The existing codes of conduct, gift and hospitality regulations, post-employment restrictions, conflict of interest policies, and integrity bodies are adequate. But they are ineffective in making their behaviour ethical.³⁷¹ Factors such as consumerism, materialism, greed, using political connections and changing materialistic life style of office workers compel employees to ignore the codes.³⁷²

Although there are references to values and other ethical standards in employment contracts, they are never taken seriously.³⁷³ The core values of public sector services are rarely communicated to employees. There are no training programmes to orient employees about the content of codes. This applies also to anti-corruption clauses mentioned in the bidding and other documents under public procurement.³⁷⁴

Role: Public Education

Score: 25

TO WHAT EXTENT DOES THE PUBLIC SECTOR INFORM AND EDUCATE THE PUBLIC ON ITS ROLE IN FIGHTING CORRUPTION?

There are no specific programmes developed by the public sector to educate the public on corruption and ways to curb it. However, anti-corruption institutions such as CIAA and NVC organize public education programmes in the public bodies as part of their promotional activities.³⁷⁵

They also organize interaction programmes from time to time on issues: building moral ethics, awareness about conflict of interest, value of public service, avoiding misuse of public funds and the need to respect

367. NICSA interview with public service-users on June 20, 2013

368. Report of Auditor General 2012

369. Working paper presented at TIN programme held in Biratnagar on May 30, 2013

370. Working paper presented at TIN programme held in Nepalgunj on May 13, 2013

371. NICSA interview with a senior civil service personnel in Kathmandu on June 20, 2013

372. NICSA interview with a senior lawyer engaged in anti-bribe movement on June 22, 2013

373. Provisions related to issue of employment letter or contract agreement; Civil Service Regulations 2050 B.S.

374. NICSA interview with stakeholders on January 10, 2013

375. Booklets, stickers, pamphlets, interaction programmes of NVC, CIAA, 2013

consumers' right.³⁷⁶ The programmes organized in 2013 were successful in impressing the people but ineffective in changing their attitude and behaviour. The high-level people do not support these programmes with a sense of commitment.³⁷⁷ Average citizens do not actually know how to complain about corruption. There is clearly a great deal of scope for public education for informing citizens about corruption and ways to fight against it.³⁷⁸

Cooperation with public institutions, CSOs and private agencies in preventing /addressing corruption

Score: 50

TO WHAT EXTENT DOES THE PUBLIC SECTOR WORK WITH PUBLIC WATCHDOG AGENCIES, BUSINESS, AND CIVIL SOCIETY ON ANTI-CORRUPTION INITIATIVES?

The public sector, sometimes, works with public watchdog agencies, business and civil society on anti-corruption initiatives. These initiatives, however, are usually neither regular nor focused.

It is done for publicity. An anti-corruption activist termed it as done "for ornamental show."³⁷⁹ Partnership between public bodies and other watchdog agencies of society has to be promoted to fight corruption effectively. It should be undertaken with the spirit of a campaign to create will, attitude and behaviour against corruption in society.³⁸⁰

Reducing corruption risks by safeguarding integrity in Public Procurement

Score: 25

TO WHAT EXTENT IS THERE AN EFFECTIVE FRAMEWORK IN PLACE TO SAFEGUARD INTEGRITY IN PUBLIC PROCUREMENT PROCEDURES, INCLUDING MEANINGFUL SANCTIONS FOR IMPROPER CONDUCT BY BOTH SUPPLIERS AND PUBLIC OFFICIALS AND REVIEW AND COMPLAINT MECHANISMS?

The law has appropriate provision for open bidding as a rule. The rule is mostly manipulated one way or the other by bidders.³⁸¹ According to the law the selection process of contractor has to be both objective and fair. People complain "In practice the influence of power politics and groups patronized by politicians, plays a decisive role in selection."³⁸²

In all cases contractors have to do the bidding in a standard formal document.³⁸³ There is a provision for bidding standards: it clearly states about conditions of cost, goods, and works: direct purchasing for up to Rs. 100,000 (USD 1037); sealed quotation from Rs100,000 (USD 1037) to Rs 1 million (USD 10,374); open tendering from Rs. 1 million on. There is also a legal way to seek prequalification (for goods worth more than Rs 10 million (USD 103,745) and works more than Rs. 60 million (USD 622,471)).³⁸⁴

A number of provisions have been made for standardizing contracts: when awarding contracts for consulting services, quality and cost must be considered; to attract the greatest possible number of bidders, tender opportunities must be published at least twice in the national print media (and for transparency purposes, the selection criteria have to be clear in the advertisements); no post tender negotiations are permitted.³⁸⁵

The laws also have provision for identifying the authority who is responsible and who is to preside over all dimensions of the whole contract offer affair. There is legal arrangement of supervising the implementation

376. Promotional programmes organized by anti-corruption agencies in Kathmandu public sector offices during June – September, 2013

377. Media Report, 2013

378. Interview with a senior anti-corruption activist in Kathmandu on October 3, 2013

379. A discussion paper entitled Lip -service to Anti-corruption Move "presented at a seminar held in Kathmandu on June 10, 2013

380. Working paper presented at TIN programme held in Biratnagar on May 30, 2013

381. Interview with a senior official of Public Procurement Monitoring Office on August 15, 2013

382. Interview with a lawyer dealing with cases of procurement irregularities in Supreme Court on August 20, 2013

383. Public Procurement Act and related laws, 2007

384. Public Procurement Act-bidding process, 2007

385. Public Procurement Act –bidding process details, 2007

of contract. According to the law the staff in charge of evaluations must be different from those responsible for the elaboration of the terms of reference/bidding documents; they both cannot engage in control activities. A standard register should be maintained for recording facts, figures, names and details about bidding and contracts. The provisions are applicable to all procurements that are made at the central and local level including districts and villages.

Moreover, the Public Procurement Monitoring Office attached to the Office of the Prime Minister and Council of Ministers also plays an instrumental role in ensuring integrity of employees. Similar units also exist in all chief district officers' offices as well.³⁸⁶ All the bidding, contracting documents related to public procurement have to follow specifically prescribed ways that seek to check corruption.³⁸⁷ The centralized e-bidding system scheduled to be launched in August 2013 is expected to contribute to making public procurement transparent and competitive.³⁸⁸

The laws on procurement do not provide scope for civil or social control mechanisms to monitor the control processes of public contracting. But the Right to Information Act opens room for control. But it has not been used for the purpose. Similarly consumers' committees formed for safeguarding the public interest have not yet developed the techniques of exercising civil or social control over bidding, contracting and public procurement.

Literature review of laws regarding procurement shows: more or less appropriate provisions for ensuring integrity and transparency in bidding/tendering/ contracting documents.³⁸⁹ But provisions are not practiced effectively. One gets a sense of corruption in procurement through much publicized cases such as Sudan scam in which a sum of 4 million dollars was found stolen during procurement of obsolete sub-standard armoured vehicles for Nepal's UN peace-keepers. The CIAA, on September 1, arrested senior officials of Nepal Electricity Authority accusing them of procurement of low quality transformers. The CIAA arrested on August 18, 2013 telecom officials accusing them of embezzling funds in procurement of air conditioners and gas supply equipment.³⁹⁰ Various manipulations are undertaken to bypass the law, its spirit and provisions should be addressed for creating an environment for clean public procurement.³⁹¹

386. NICSA interview with a senior official of PMO on June 25, 2013

387. Public Procurement Act 2063

388. NICSA interview with a senior official of Public Procurement Monitoring Office on June 28, 2013

389. Public Procurement Act 2007 Chapter 3; Public Procurement Regulation, 2007

390. Interview with an expert on procurement process in Nepal on June 28, 2013

391. Experts' view expressed at a Kathmandu seminar on June 15, 2013

LAW ENFORCEMENT AGENCIES

Summary

The law enforcement agencies LEAs of Nepal are backed by specific laws and institutional framework of more than seven decades. They also undertake actions against crimes and corruption from time to time. But their performance has not earned public confidence in matters of internal security and actions against criminals and the corrupt.

Funds for LEAs are ensured through the state budget on an annual basis. There is a gap between the material and human resources that they have and the growing demands of internal security. There is no budgetary provision for improving efficiency and introducing innovative approaches to the task of law and order. This has made LEA unable to cope with emerging demands of society.

The legal framework has provisions for the independence of LEAs. But in practice they are not independent. The public have the impression that they are often used for promoting partisan interest of the political leadership and that they are not adequately responsive to the needs of the public. The LEAs disseminate information at their convenience. People, therefore, face difficulty in getting the information they need. Law enforcers report to senior officials. The provision for making them publicly accountable is weak.

The agencies have launched anti-corruption activities resulting in occasional actions against bribery and other crimes in the public administration. A number of pressing problems, however, remain in terms of regularity, transparency and accountability of these agencies.

The Table below presents the indicator scores which summarize the assessment of the Law Enforcement Agencies in terms of their capacity, internal governance and role.

Overall Pillar Score: 47/100

Dimension	Indicator	Law	Practice
Capacity 50/100	Resources		50
	Independence	75	25
Governance 42/100	Transparency	50	25
	Accountability	50	25
	Integrity	75	25
Role 50/100	Corruption Procecuton		50

Structure and organization

The Ministry of Home Affairs, two police forces and the Office of Attorney General (a constitutional body) are the main law enforcement bodies in the country.³⁹² The Home Ministry is mainly responsible for law and order, and for protection of citizens' life, property and freedom. It operates through a Minister (at the leadership-level), secretary, five Development Region Administrators' Offices, and 75 offices of Chief District Officers. The Home Ministry has various divisions including law and order division, national emergency operation centre, legal advisory section which contribute to ensuring public order, peace, and internal security.³⁹³

The National Civil Police force is the traditional police force performing a number of police functions ranging from patrolling to investigation of crimes with the motto: "peace and security in the nation and

392. NICSA Interview with Senior official of the Home Ministry on March 4, 2013

393. Government of Nepal (Allocation of Functions) Rules 1996

homely service to citizens.” It is committed to ensure law and order, provide clean police service, end impunity and make investigation effective and control crime. The total strength of the Civil Police Force stands at 61,171 including 3,632 women.³⁹⁴ For operational purposes at the national level, the Civil Police gets direction from the Ministry of Home affairs.³⁹⁵ It functions through a Headquarter in Kathmandu and five regional offices in East, Centre, West, Mid-West, and Far-West of the country. At the local level the CPF is mobilized through the district security committee which is chaired by the Chief District Officer.³⁹⁶

The Central Investigation Bureau is another wing of Nepal Police assigned to look after crimes particularly organized crime.

The Armed Police Force, a paramilitary force specifically established through an ordinance issued on January 22, 2001 for combating the then prevailing armed conflict, is under the operational command of the Army. It is guided by its ethos: “peace, security and commitment.” It remains on call by the district security command for responding to incidents or for supporting the civil police. Among the main functions of APF are: to control any ongoing or would be armed conflict, or riot within the country, to assist in rendering relief to natural calamity or victims of epidemics, to rescue any citizen from hostage captivity or in the event of occurrence of heinous and serious crimes or unrest of grave nature or of anticipation, and to guard the borders of the country.³⁹⁷

The Attorney General is the chief legal advisor of the Government of Nepal and the main public prosecutor of the country. The Office of the AG operates through the main office in Kathmandu, and 91 centers³⁹⁸ including the offices of 16 Appellate Government Attorneys, one Special Court Attorney, 75 District Government Attorneys. There are altogether 242 Public Prosecutors or Government Attorneys in the country with differing status. They are serving as part of a sub-group of Government Attorneys under the Judicial Service Category of employees.

Assessment

Resources (practice)

Score: 50

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES HAVE ADEQUATE LEVELS OF FINANCIAL RESOURCES, STAFFING, AND INFRASTRUCTURES TO OPERATE EFFECTIVELY IN PRACTICE?

The funding allocated to law enforcement bodies through the regular budget makes it possible for them to carry out their minimum functions. It is, however, not sufficient to make their services efficient and effective.

The budget earmarked by the Finance Ministry is not sufficient to the growing demands for law enforcement in various parts of the country. A sum of Rs. 35.564 billion (US \$ 39.4 million) has been set aside for the Home Ministry for the fiscal 2013-14 for regular and development expenditure. Of the amount, just Rs. 86.58 million has been allocated for development expenditure.³⁹⁹ The amount ensures salaries of staff in offices under the Home Ministry, it cannot meet the needs over time because of increasing market prices, growing demand for security, outdated infra-structure and equipment. There is an established provision in the budget every fiscal year for allocating fund for the law enforcement bodies – Home Ministry, Nepal Police, Attorney General and district attorneys and District Administration Offices.⁴⁰⁰

Although law enforcement agencies can request more resources in the budget in accordance with fresh requirements prior to the announcement of new fiscal year budget, it is generally ignored by the Finance Ministry.⁴⁰¹ This usually results in no increase or nominal increase in their regular budget. Since there is no room for law enforcement bodies to seek out-of –budget –funding, the insufficiency of financial resources is what has affected their services. Low pay, old infrastructure, outdated equipment are taken to be the main cause of ineffective law enforcement. It is also responsible for making law enforcement

394. <http://www.nepalpolice.gov.np> Organizational structure retrieved on February 8, 2013

395. NCSA interview with senior official of the Home Ministry

396. Local Administration Act, 2028 (amendment 2064 – 4th amendment -7)

397. Armed Police Act 2058

398. Interview with Joint Attorney Yuba Raj Subedi

399. Public Statement on Income and Expenditure for the fiscal year 2013-14, p 25

400. Details of financial resources for law enforcement agencies, Finance Ministry, 2012, p 36, p143, p 152

401. Interview with a senior official of Nepal Police on June 6, 2013

bodies unattractive for qualified and committed staff.⁴⁰² Service-seekers have the impression that the law enforcement bodies raise funds through indirect means or “manipulated tactics.”⁴⁰³ Computers are used extensively in offices of law enforcement bodies but services cannot be rendered electronically. Many layers of law enforcement bodies have to operate without a computer.⁴⁰⁴

Although there is no provision for an anti-corruption police, the Nepal Police acts against corruption in cooperation with District Administration Offices, Attorneys, and other anti-corruption agencies. There are provisions for people to approach Nepal police with complaint against corruption. In practice, however, this is not usually honoured.⁴⁰⁵

Independence (law)

Score: 75

TO WHAT EXTENT ARE LAW ENFORCEMENT AGENCIES INDEPENDENT BY LAW?

The legal framework has been designed to make the law enforcement agencies independent. It provides the agencies the mandate to address problems related to maintaining law and order, investigating crimes, and ensuring public security.

Home Ministry has to function in accordance with the civil code and various laws related to law and order, governance, internal security.⁴⁰⁶ The provisions in the code and laws relate to dos and don'ts focusing on the responsibilities to various posts in civil service, maintenance of political neutrality, avoiding conflict of interest, loyalty with a sense of accountability to profession, government, and the public. Some acts such as engaging in literature, sports, arts and scientific pursuits, participating in open competition for public awards and going to court for justice are considered as not against the code.⁴⁰⁷

The law prohibits politics in police organization. The law has provisions for general rules for recruitment, postings, transfers and promotions and those who join the Police have to undergo training and be familiar with the law under which they operate. Specific professional criteria have been worked out under the rules.⁴⁰⁸ Police personnel are prohibited to work with other agencies or commercial institutions. Interference with police work is prohibited except for the case where it is specifically allowed by law. There is room for police officials to address courts to seek their rights and freedoms. Police can be dismissed only on the basis of legitimate grounds such as gross violation of discipline or involvement in corruption.⁴⁰⁹

The law on the Attorney General provides for various provisions such as exercising the right to make the final decision on instituting or not instituting a case on behalf of the AG in any court or judicial authority. This reflects on the independence of the AG to be capable of representing the government for protection of rights and interests of the State.⁴¹⁰ The AG has to emphasize political neutrality and observance of legislative provisions in performance. Prosecutors cannot be legally instructed by another authority not to prosecute a specific case. Employees of the office of AG cannot join political parties; they cannot engage in political or commercial activities. Obstruction of a work initiated by AG is a punishable offence. The law on AG requires that appointments in the office be made on the basis of professional criteria.⁴¹¹

One major question regarding the independence of AG in Nepal is the fact that the Attorney General is appointed by the Prime Minister (a political official and a political party person) and remains in office in accordance with the desire and convenience of the Prime Minister.⁴¹² The provision provides room for the Prime Minister to override decisions of the AG office and undermine the independence guaranteed to AG by law. This has adversely affected the laws related to prosecutorial career particularly promotion of prosecutors.⁴¹³

402. NICSA interview with a senior official of Home Ministry, June 3, 2013

403. NICSA interview with civil society members in Kathmandu, June 3, 2013

404. Interview with senior four officials of Nepal Police Office in Nepalgunj, Janakpur, Gaighat and Biratnagar respectively during last week of May, 2013

405. Right to Information Act 2007 and Nepal Consumers Protection Act 1998

406. Public Security Act 2046 B.S. (1989 A.D.) and amendments of the period between 1990-2012

407. Civil Service Rules 2065, Number 3 -25

408. Police Act 2012 B.S. (1955 A.D.) Chapter 3 (second, fourth, fifth amendments)

409. Police Act 2012 B.S. (1955 A.D.) 10, 11 (second amendment)

410. Interim Constitution of Nepal 2063, Article 135 (2)

411. Interim Constitution 2063, Article 134, 135 and Nepal Public Service Commission rules 2067

412. Interim Constitution 2063, Article 134 -1

413. NICSA interview with a senior prosecutor of AG -office on April 6, 2013

Independence (practice)

Score:25

TO WHAT EXTENT ARE LAW ENFORCEMENT AGENCIES INDEPENDENT IN PRACTICE?

The law enforcement agencies are not capable of serving the public in practice because they have to serve the interest of the political leadership.

The law enforcement agencies are not independent in practice. They have to operate in accordance with the desire and command of political leadership; the Home Minister, a political official, presides over the Home Ministry, and the Police while the Prime Minister guides the AG.⁴¹⁴ Because of their highhandedness, the personnel management system providing for recruitment, transfer, promotion, evaluation and dismissal, civil code, Public Service Commission's directives, and other laws are interpreted to suit the need of the Minister and the Prime Minister. In practice the law enforcement agencies appear as serving the interest of the political leadership at the cost of public interest.⁴¹⁵

Available evidence indicates political highhandedness in the law enforcement bodies. The latest among them was Prime Minister's direct instruction to the AG not to allow court hearing in a journalist-murder case in January 9, 2013 at Dailekh, Mid-West Nepal and his subsequent interference in obstructing the court procedure. The directives of the prime minister and the attorney general would affect the ongoing interrogation and prosecution process regarding the killing of the journalist.⁴¹⁶ The Supreme Court had to intervene to invalidate their order. Both Prime Minister and AG were subjected to Supreme Court appearance in contempt of court case in this regard.⁴¹⁷

The need for mobilizing the AG for cases on revenue-evasion, corruption, abuse of public posts in promoting organized crime, immigration, drug trafficking, and excesses of manpower export companies is pressing.⁴¹⁸ But the same cannot be done without the green light from the political leadership. Moreover, the present resource base of AG and the number of Attorneys are not sufficient to allow it to pursue the cases.⁴¹⁹ Factors such as dependence on political leadership and resource-deficit do not allow the AG office to carry out independently what it thinks right, professional, efficient and innovative.⁴²⁰

Ministerial interference in police through manipulation of transfers and promotions has affected the performance of LEAs. The transfer of 450 Inspectors in November 18, 2011, and the transfer of 50 Superintendents of Police (SPs) and 133 Deputy Superintendents of Police (DSPs) in October 11, 2012, had been undertaken through direct involvement of the Home Minister. The promotion of five DIGs by government decision on December 18 has been challenged by a fellow senior police official and the Supreme Court ordered non-execution of the decision.⁴²¹

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN ACCESS THE RELEVANT INFORMATION ON LAW ENFORCEMENT ACTIVITIES?

The law enforcement bodies have to be transparent in accordance with the law. Making police activities transparent is what Law provides and what the Right to Information Act demands.

The Police has to provide information about its activities to state bodies, civil organizations, media and ordinary citizens on a regular basis.⁴²² No specific provisions have been made for disclosure. For this, much has been entrusted to the discretion of law enforcement officials. There is a law that requires law

414. Nepal Interim Constitution 2063, Article 37

415. NIOSA interview with a senior official in Home Ministry on June 3, 2013

416. Republica, January 14, 2013

417. Interview with senior officials of Prime Minister's Office, Supreme Court and AG

418. Five Year Strategic Plan of AG (2068/69 – 2072-73 B.S. (2012-17A.D.)) p ii

419. NIOSA interview with a senior government advocate on January 15, 2013

420. NIOSA interview with a senior joint attorney, on January 15, 2013

421. Interview with senior Police Officials on December 25, 2012

422. Nepal Interim Constitution 2063 B.S. Articles 24-29

enforcement bodies to ensure secrecy of certain types of information particularly those related to criminal investigation.⁴²³ The code related to criminal procedure prevents information about ongoing investigation from becoming public. The right of victims to access all material of the case and the relevant evidence has been ensured.⁴²⁴

All personnel engaged in the law enforcement bodies are required by law to regularly disclose their assets.⁴²⁵

Transparency (practice)

Score:25

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF LAW ENFORCEMENT AGENCIES IN PRACTICE?

The law enforcement bodies – Home Ministry, Police, AG – disseminate information through their own websites and publications.⁴²⁶ They disseminate information through their spokesperson as well. But the agencies have not been able to respond to complaints in accordance with the public demand.

Although the law enforcement bodies use modern tools for disseminating information to the public, the websites they operate are not updated on a regular basis.⁴²⁷ People have to approach the agencies for information through the Right to Information Act.

Since the disclosure of assets by personnel engaged in law enforcement bodies is not done regularly, people find it very difficult to make sense of it.⁴²⁸

Although the Home Ministry claims information on law enforcement bodies is transparent, security service seekers do not know much about the things happening in the Ministry and the security bodies under it. For example, the Home Minister talked of 58 schemes worked out in the Ministry in 18 months on February 16, 2013 for improving law and order in the country. Very little was explained to the public.⁴²⁹

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT LAW ENFORCEMENT AGENCIES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

There is an extensive arrangement for accountability provisions in the legal framework for the law enforcement agencies. Provisions like scrutiny by parliament, room for public complaint, disciplinary sanctions in case of wrong doing by law enforcers and financial audit have been made for making the law enforcement agencies accountable.

Home Ministry is subject to parliamentary, executive and judicial control. It has to answer questions in the parliament and respond to queries by various committees in the parliament on internal security matters. As there is no sitting parliament, they are accountable to Council of Ministers.⁴³⁰ It requires judicial approval for the activities that involve restriction of civil right and freedoms guaranteed by the Constitution. The Office of Auditor General scrutinizes the financial activities of the law enforcement bodies.⁴³¹ There is also a legal provision that allows the Commission for Investigation of Abuse of Authority (CIAA) to look into irregularities, corruption or wrongdoings in LEAs.⁴³²

423. The Right to Information Act 2007-11 b; d; and e

424. Justice Administration Act 1991, Section 7

425. CIAA Act 1991; Prevention of corruption Act 2002

426. Home Ministry (www.moha.gov.np); Nepal Police (www.nepalpolice.gov.np); Attorney General (www.officeofattorneygeneral.gov.np)

427. Home Ministry

428. Interview with a senior official of National Vigilance Centre on June 20, 2013

429. NIOSA interview with security service seekers in Kathmandu Hanuman Dhoka Police office on February 20, 2013

430. Responsible to parliament and ministerial responsibility to answer parliament

431. Interim Constitution Article 123-1,3

432. CIAA Act, 1991

There are specific rules on gifts and hospitality.⁴³³ There are restrictions against post-employment as well.⁴³⁴ Law enforcement officials should declare their assets and property. Officials are required by law to declare their and their families' assets and property within 60 days of appointment and update them within 60 days following the end of every fiscal year.⁴³⁵

One weakness in the legal framework of financial accountability of law enforcement agencies is the funds used in emergencies, under miscellaneous head and emergency procurement of services and goods do not have to follow the general rule of financial expenses.⁴³⁶

There is in Police Law series of provisions for holding police officers accountable. There are series of mechanisms for supervising the operational and investigative activities of the police.⁴³⁷ The Police Offices are required to respond to complaints and appeals within a specified period of time ranging from three days to three months. Citizens can file complaints against the Police.⁴³⁸ The latest provision allows people to complain online.⁴³⁹ A number of disciplinary actions ranging from warning, reprimand, to demotion and dismissal are provided in law for controlling police excesses.⁴⁴⁰ Police officers who commit crimes or administrative offenses do not enjoy immunity and can be charged according to the general laws.⁴⁴¹ The Home Ministry has the overall responsibility of supervising the ministry officials.⁴⁴²

Prosecutors are required to give reasons to relevant stakeholders regarding their decision to prosecute or not to prosecute.⁴⁴³ There are provisions for victims of certain crimes to access the justice system to ensure prosecution.⁴⁴⁴ There is a legal provision for an agency or entity to investigate and prosecute corruption committed by law enforcement officials.⁴⁴⁵

Accountability (practice)

Score: 25

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

There is no adequate mechanism in practice for making law enforcement officers accountable for all cases particularly those in which political interests or high level officials are involved. Instances of undermining accountability in such cases appear as a rule.

In view of the power that the law enforcement bodies enjoy, the provision for making officials in the Home Ministry and Police accountable for their actions is weak. Factors such as lack of willingness and courage to use adequate oversight tools to check corruption and abuses of power further complicate the problems.⁴⁴⁶ These observations are reinforced by instances of senior officials evading responsibility with the protection of the political leadership. Officials involved in various anti-corruption cases of land office, irregularities in customs, and wrong doing in red sandal wood smuggling enjoyed impunity.⁴⁴⁷

The public prosecutor's office gives account periodically and publicly for its activities in a formal manner through its own information dissemination channel such as periodic progress reports, bulletins, website and annual reports.⁴⁴⁸ However, they do not have any reference to the way the office fixes priorities in prosecution. Prosecutors do not offer explanation to stakeholders about their decision to prosecute or not to prosecute. The law enforcement complaint reporting mechanism is weak in responding to citizens'

433. Police Act 2012 B.S. (second amendment) 9 – 3, 4

434. Police Act 2012 B.S. 5, 7 (second amendment)

435. Police Act 2012 B.S. (second amendment) 15- a-f, Civil Service Act 2049 B.S. 54, Corruption Eradication Act 2059

436. NICSA interview with lawyers on security issues on June 5, 2013

437. Police Act 2012 B.S. -8 (fifth amendment)

438. Police Act 2012 B.S. -9 ((second amendment)

439. www.nepalpolice.gov.np

440. Police Act 2012 B.S.- 9 – 4 – a,b, c (fourth amendment)

441. Police Act 2012 B.S. – 10 A (second amendment)

442. Police Act 2012 B.S.-4 (second amendment); Local Administration Act 2028 (1971)

443. State cases Rule 1998 Rule 15

444. Police Act 2012 B.S. 36, 37 (third amendment)

445. Police Act 2012 B.S. 30 (second amendment)

446. NICSA interview with a senior official of Home Ministry on May 25, 2013

447. Media report, February 10, 2013

448. www.attorneygeneral.govt.np Annual Report of Office of Attorney General

complaints.⁴⁴⁹ The agency initiating investigation into allegations of corruption by law enforcement officials is not independent in practice. Law enforcement officials are not immune from criminal proceedings.⁴⁵⁰ But they evade such proceedings through the influence of political leadership.⁴⁵¹

The discretionary power is used by officials under the provision of emergency situation.⁴⁵²

The government is vigilant in checking emerging corruption activities: International Revenue Sharing fraud, telecommunication crime and illegal call bypass –Voice Over Internet Protocol VOIP. Some 96 individuals were arrested on charges of VOIP in the past three years.⁴⁵³

The positive development is that a few police officials have faced action. A case against those involved in the airport foreign currency smuggling is in judicial process.⁴⁵⁴ A Special Court has convicted three IGPs in the multi-million dollar Sudan scam.⁴⁵⁵ Several former ministers have been convicted in the cases initiated by The Commission for Investigation of Abuse of Authority.⁴⁵⁶

Integrity Mechanisms (law)

Score: 75

TO WHAT EXTENT IS THE INTEGRITY OF LAW ENFORCEMENT AGENCIES ENSURED BY LAW?

The integrity mechanism of law enforcement agencies by law could be termed strong. The specific laws of the law enforcement agencies such as Home Ministry, prosecutors and Police along with provisions of general rules, anti-corruption –regime laws and conflict of interest area provisions ensure the mechanism.

Provisions on Police Law on norms of professional ethics, Police Code of conduct provide enough room for respect for the rights of citizens, freedoms, dignity and privacy of individuals besides ensuring a decent human, treatment of detainees, unbiased and non-discriminatory discharge of duties. The mechanism also provides for restrictions on political activities of police officers.⁴⁵⁷

The code of ethics of Attorneys plainly urges prosecutors to conduct their work in an independent, impartial, and fair manner.⁴⁵⁸ It does not allow them to use their offices for the personal benefit or illegal pressure on any individual or engaging in any activities that could cast a shadow upon their independence. Various provisions related to laws on conflict of interest and corruption in public services also ensure independent functioning by Attorneys.⁴⁵⁹

Integrity Mechanisms (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF LAW ENFORCEMENT AGENCIES ENSURED IN PRACTICE?

Although the government is committed to consolidating the mechanism of ensuring integrity of members of law enforcement agencies, the pressure of political leadership on law enforcers has not allowed it to be effective.

449. NICSA interview with a senior lawyer on criminal cases in Kathmandu on June 3, 2013

450. Police Act 2012 B.S. 33 A, B (third amendment)

451. NICSA interview with a senior government attorney in Kathmandu on June 7, 2013

452. Police Act 2012 B.S. -16, 17 (second amendment)

453. NICSA interview with senior official of CIB, July 18, 2013

454. Senior police officials at Tribhuvan International Airport

455. Officials in the Special Court

456. CIAA officials

457. State Cases Act 1991, Section 7; State Cases Rule 1998 – 4, 9, 14, 15, 17, 21

458. Prevention of Corruption Act 2002

459. State Cases Act 1991

The efforts made to ensure the integrity of law enforcers are: check on illegal acts, checking violations of ethical norms, implementing disciplinary norms.⁴⁶⁰ Various provisions of Police Act are applied as and when law enforcers deviate from duty.⁴⁶¹ The Office of Attorney General also undertakes scrutiny of their personnel from time to time. But experts believe the integrity mechanism cannot be strengthened unless political interference in law enforcement is avoided.⁴⁶²

The Government claims that its Integrity Mechanism was instrumental in contributing to strengthening it. Deputy Prime Minister and Home Minister Bijaya Kumar Gachhadar at a February 16, 2013 press meet in Kathmandu claimed his 18 month tenure in the Home Ministry resulted in the consolidation of integrity mechanism in the law enforcement agencies.⁴⁶³ **The public impression** is, however, the contrary. The experience is that the people cannot get service through the law enforcers without giving something in return. Although extortion, raising funds through force is on rise law enforcers do not do anything to discourage fund raisers. They believe that impunity and corruption increased under the Ministry during the period when law and order situation deteriorated.⁴⁶⁴

The existing codes of conduct, conflict of interest policies, integrity - bodies are not effective in ensuring ethical behaviour by law enforcement officials. The disciplinary mechanisms are also ineffective. They are rendered ineffective by political interference.⁴⁶⁵ There are very few training programmes for employees.

Role: corruption prosecution (law and practice)

Score: 50

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES DETECT AND INVESTIGATE CORRUPTION CASES IN THE COUNTRY?

The law enforcers have been working diligently to detect and investigate corruption cases through various schemes. Yet they have not been able to address the problem of corruption at high offices where it is prevalent and institutionalized.

The State Case Act 1992 and other prevailing laws including State Case Rule 1998 Rule 4, Justice Administration Act 1991 empower police and public prosecutors to detect and investigate cases. It has entrusted the police as an investigating institution and Office of the Attorney General as a prosecuting authority. Although the law expects a collective and coordinated effort of both police and Government Attorney in detecting and investigating crimes including corruption, this is lacking, say senior Police officials. This is the reason why the Police consider their duty done once the case file is handed over to OAG which has limited role in the investigation process.

The powers of police and prosecutors with regard to corruption cases are adequate. The legal provisions for search warrants, arrest, and access to personal information are also in place. The only problem is that the police and prosecutors cannot use them professionally because of undue political interference.⁴⁶⁶

A few cases of bribes in massage parlours, dance restaurants, kickbacks in public offices and abuse of power by officials have been detected on a regular basis. On occasions big scandals such as fraud in housing, looting through lottery, irregularities in public procurement, misuse of public funds have been detected.⁴⁶⁷ Home Ministry launches anti-corruption drive from time to time, initiates surprise check on offices, and encourages prosecutors to follow up on cases of corruption. Police also follow the exercise. But the practice of corruption prosecution cannot be termed promising. There is neither sincere follow-up of the case nor is there any effort to sensitize officials about anti-corruption mindset.⁴⁶⁸

The CIAA received 11,298 complaints in 2012-13 and settled 6,672. It registered 93 cases at Special Court during the period. Of them it won 76 cases.⁴⁶⁹ It had handled 5,466 cases during July 2012-June

460. Prevention of Corruption Act 2002; Police Act 2012 B.S. 35 (third Amendment)

461. Police Act 2012 B.S. 13

462. NIOSA interview with a senior attorney on June 3, 2013

463. Home Minister's presentation

464. Interview with civil society members on February 20, 2013

465. NIOSA interview with a senior official in Home Ministry on June 6, 2013

466. NIOSA interview with a senior police official in Kathmandu on June 5, 2013s

467. Media Report, September, 2013

468. Interview with stakeholders

469. CIAA Annual Report, 2013

2013 period.⁴⁷⁰ It worked out a scheme of cleaning from inside and emphasized specific four areas for good governance and against corruption. The anti-corruption body aims to change policies for effective monitoring of public services by extending its areas by 80 percent including defense sector under its scope.⁴⁷¹

The National Vigilance Centre (NVC) referred 142 complaints to CIAA for further investigation against corruption besides settling 1,218 complaints in the past year (July 2012-June 2013). It intensified monitoring of public offices under ministries and in districts and detected in unannounced sudden check, unauthorized absence of 405 officials in 28 ministries, 433 officials in 11 public corporations, 1096 officials in 460 offices of 38 districts.⁴⁷²

The Central Investigation Bureau, a wing of Nepal Police designed to investigate organized crimes, arrested 818 persons accused of crimes and launched prosecution against them in the court over 2011-2013 period. Among them were 113 persons convicted by court and those involved in various cases including human trafficking, banking frauds, organized financial corruption –crimes, and wildlife smuggling.⁴⁷³

470. NICS interview with CIAA officials on June 26, 2013

471. NICS interview with CIAA officials on June 26, 2013

472. NVC Annual Report, June, 2013

473. NICS interview with a senior official of CBI on July 25, 2013

ELECTORAL MANAGEMENT BODY

Summary

The Election Commission(EC), the electoral management body of Nepal, has the institutional mandate to hold polls in the country in a systematic manner guaranteeing voters fairness, freedom and reliability. It is an independent constitutional body which is also an important component of Nepali governance system.

Its role in making preparation for polls, organizing and supervising the whole process of voter-registration, election campaign, voting, vote counting, result announcement, handling election complaints etc. is considered important for the country. The EC operates in a transparent manner and it does not usually face problems for getting resources needed for administering elections.

The EC recently conducted the election for the 601-member Constituent Assembly on November 19, 2013 successfully. The election was held in 240 constituencies under the First Past the Post System (direct election) and Proportional Representation System (indirect election).

The EC's record is impeccable: presiding over 15 elections and by elections during 1951-2008- period. It shows that its performance in the 2008 Constituent Assembly election and various general/local elections in the 1990s (1991, 1994, and 1999) was assessed positively by the public and observers – national and international. On the negative side, two weaknesses of the EC emerge: it cannot discipline political parties for failing to meet the rules of election-campaigning particularly the rule governing the ceiling of poll expenses agreed collectively by them and the EC fails to respond to poll-related complaints properly in time. Moreover, the EC does not have a mechanism to retain, and transfer institutional experience and memory for future use.

The EC does not have the power to make decisions on the poll particularly the date, purpose, number of seats open for voting etc. The decision related to poll is taken by the government on the basis of consultation with political parties.

At the time of writing the EC has demonstrated its competence to hold general election for the Constituent Assembly. It is also ready to hold local election for Village Development Committees, District Development Committees and municipalities in at least three months after the poll date announcement.

All five Commissioners, the official Board of EC have been appointed by the Interim Election Government. It has been provided with the necessary legal framework (worked out through ordinance) and finance to be operational.

The EC required some new legislative provisions to accommodate new voters on the basis of the population-statistics of National Census 2011 and needs of changing times. It has accordingly updated the voters' list, the number of voters in Nepal stand at 12.308 million (as of Asar –end 2070 B.S or July 15, 2013). It includes youths who were 16 at the time of census and are now 18 but it does not include the 3 million Nepalis who are abroad.⁴⁷⁴

Until recently the absence of a law making body made it difficult to formulate/amend the required laws or amendments. All amendments or formulation of laws etc. have been undertaken through Ordinances by President on the recommendation of the Chairman of the Council of Ministers.⁴⁷⁵ It needed the backing of political consensus among the political parties represented in the dissolved Constituent Assembly (Legislature parliament).

The Table below presents the indicator scores which summarize the assessment of the Election Commission in terms of its capacity, its internal governance, and its role within the Nepali integrity system. The remainder of this section presents the qualitative assessment for each indicator.

474. Chief Election Commissioner's statement to the press given on June 22, 2013

475. Nepal Interim Constitution Article 158 and

Overall Pillar Score: 54/100

Dimension	Indicator	Law	Practice
Capacity 67/100	Resources		75
	Independence	50	75
Governance 58/100	Transparency	50	50
	Accountability	75	50
	Integrity	75	50
Role 38/100	Campaign Regulation	25	
	Election Administration	50	

Structure and Organization

The Election Commission is the electoral management body of Nepal. It is an independent constitutional body comprised of up to five commissioners including a Chief Election Commissioner, who heads the Commission.⁴⁷⁶ It has the mandate for preparation of electoral rolls for the election.⁴⁷⁷

The Commissioners of the EC are appointed by the President on the recommendation of the Constitutional Council following a parliamentary hearing. The terms of office of the CEC and the Commissioners are six years from the date of appointment. If, before the expiry of his/her term, the CEC or a Commissioner attains the age of sixty five, she/he must retire.⁴⁷⁸ The functions, duties and powers of the EC have been constitutionally defined. It derives the legal power to conduct, supervise, direct and control legislative, local and other elections as well as referendums in accordance with the Constitution and other relevant laws of the state.⁴⁷⁹

It has a Secretariat which reports to the Commission headed by the CEC. It is responsible for implementing the policies and decision of the Commission and for general administration. The Secretariat is headed by Secretary and comprises three divisions: Administrative Division, Election Management Division and Legal and Political parties Management Division. The Commission has over a hundred staff in its head Office in Kathmandu and over 475 in its District Election Offices, which are located in each of the 75 districts of Nepal. During elections, the Commission may re-add additional human resources from all government institutions including security forces for smooth conduct of the elections.⁴⁸⁰

The EC is responsible for, among other things, democratic, efficient and competent management of elections, preparation and update of accurate electoral rolls and registration, regulation and monitoring of political parties. It drafts electoral laws, develops regulations and procedural guidelines, determines polling centres and locations besides conducting voter education programmes and undertaking interactions and discussions with stakeholders. Other major functions of the EC are: capacity development of employees and stakeholders and improvement of the electoral system and processes through research and development.⁴⁸¹

At the time of writing the EC Secretariat is operating its administration in accordance with the Constitutional and legal provisions.⁴⁸² It is preparing the final report of the CA-poll held successfully on November 19, 2013.⁴⁸³

476. The Interim Constitution of Nepal, 2007, Part 14-Articles 128-130

477. The Interim Constitution of Nepal, 2007, Article 129

478. The Election Commission, Nepal, a publication of the EC, p. 7

479. The Interim Constitution of Nepal, 2007, Article 129

480. The Election Commission, Nepal, a publication of the EC, p.8

481. Election, a publication of EC, Nepal March-April 2012

482. Senior official in the EC Secretariat

483. NICS interview with a senior official of EC on December 10, 2013

Assessment

Resource (Practice)

Score: 75

TO WHAT EXTENT DOES THE ELECTORAL MANAGEMENT EC HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

The Election Commission is the Electoral Management Body of Nepal formed for holding periodic elections – general (national) and local. under the provision of Clause 128 of the Interim Constitution of Nepal 2007. As it is the constitutional body it receives the budget in time through the Finance Ministry as per its demand.⁴⁸⁴

Since the state increases its budget if it expresses its demand to this effect, there is no problem in securing financial resources for the EC.⁴⁸⁵ It received Rs. 97 crore (USD 10.10 million) from the government for undertaking programmes during the fiscal 2010-11. It also received aid of Rs. 97 crore (USD10.10 million) from donors such as UNDP, USAID, and DANIDA for logistics. The Carter Centre of USA is also helping the EC to be more professional in electoral management.⁴⁸⁶

It has sufficient human resources and operational structures – administrative, financial and technical - to undertake its electoral function. The number of staff in EC is 583. They man the offices located in each of 75 districts of the country. It employs 81 thousand clerical staff on a temporary basis. Because of EC activities, a sum of some Rs. 70 crore (USD 7.26 million) is spent in villages. This has opened opportunities for employment in rural areas.⁴⁸⁷ During elections the Commission makes arrangement for adding more staff either through transfer from other offices or recruiting on temporary manner. As regards offices, transport and communications, it has all necessary facilities and it has the resources to increase them should there be any need.⁴⁸⁸

The technical capacity of EC is also sufficient with 4 thousand laptops and 800 portable generators. Most of its records are digitally recorded. The EC has completed the collection of digitalized updated voters' name list with pictures.⁴⁸⁹

The EC has developed a systematized archive and regular publications such as Election Bulletin. It has its own website where data are updated regularly.

The EC staff has a mixture of qualified and unqualified staff. Similarly it has staff with sufficient work-experience and staff with no experience. Emphasis is laid on equality of opportunity for ethnic, and minority groups. There are some opportunities for staff to be trained, but they are not sufficient.⁴⁹⁰

Independence (law)

Score: 50

TO WHAT EXTENT IS THE ELECTORAL MANAGEMENT BODY INDEPENDENT BY LAW?

The electoral management body in Nepal is independent by law. The legal status of the Nepal's EC has been defined constitutionally.

All the provisions related to it are mentioned in Clauses 128 - 130 of the constitution. Six Acts such as Constituent Assembly Election Act 2064 and Constituent Assembly Election (First Amendment) Rules and Regulation 2064 direct its activities. The other Acts guiding EC are: Election (crime and punishment)

484. Nepal Interim Constitution, Article 128, 2007

485. Interview with senior official by TIN NCSA research team

486. Interview with a senior official of EC on October 3, 2013

487. *Election*, a publication of EC, March-April 2012, p. 64

488. Interview with a senior official of EC on October 3, 2013

489. The EC officials encountered opposition in collection of voters' name list in 10 districts. It tackled the problems in eight districts through participatory dialogue. Dialogue is underway in two problem-districts Banke and.....

490. A discussion paper presented at Kathmandu Seminar October 4, 2013

Act 2063, Election Commission Act 2063, Voters' name list Act 2063 and Voters' name list Rules and Regulations 2063. Implementation of the Acts results in impartial and transparent functioning of the EC. Some recent amendments have updated them. The management of the EC has been divided between the 5 commissioners who decide policy and administer staff who implement policy.

The recruitment in EC is on a non-discriminatory manner. It is inclusive, provides for women, Dalit, indigenous people, Madheshi, oppressed, excluded, minority and backward (deprived) communities.⁴⁹¹ The President appoints the Chief Election Commissioner and other election commissioners on the recommendation of the Constitutional Council. The tenure is for six years and they can be removed only through constitutional provision mentioned in Clause 128-3.⁴⁹² The government provides necessary employees to the EC. One point that affects its independence is that it cannot take decision of holding polls on a specific date as soon as the tenure of elected bodies is legally completed.⁴⁹³

Independence (practice)

Score: 50

TO WHAT EXTENT DOES THE ELECTORAL MANAGEMENT BODY FUNCTION INDEPENDENTLY IN PRACTICE?

The Election Commission functions independently in practice. The government trusts it. So do the citizens. They have not yet questioned the performance of the EC.

The EC acts in accordance with the constitutional provisions.⁴⁹⁴ The accountability and efficiency of EC is not usually questioned.⁴⁹⁵ It is because of the consultative and participatory procedure through which it handles elections. It follows the procedure while fixing the schedule of election, updating poll rules and regulations and other poll matters including vote counting and result-declaration.⁴⁹⁶

One weakness is that the EC cannot independently fix the date of the election. It is also weak in enforcing the code of conduct on political parties during election campaigning.⁴⁹⁷

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE ELECTORAL MANAGEMENT BODY?

There are provisions to make the public informed about how EC decides on various election issues and what it does.⁴⁹⁸

The Election Commission is required to issue public notice with sufficient information on registration of voters, party registration, electoral rules, election system (First Past the Post (FPTP) and Proportional Representation (PR), election campaign rules, election expenses, election code of conduct, electoral offences, punishment and election observation rules.⁴⁹⁹

It is mandatory for the EC to announce dates of poll, polling procedures, poll candidates' names, vote counting procedures and addresses of polling stations publicly.⁵⁰⁰ The election rules and regulations

491. Nepal Interim Constitution, Part 4, Obligations and Directive Principles and Policies of the State, 2007

492. It is similar to the removal that applies to the judge of Supreme Court. The Commissioners can be relieved of office if they resign, or attain 65 years of age, or are impeached by Legislature parliament.

493. Interview with a former Commissioner of EC on September 20, 2013

494. Nepal Interim Constitution, Article 129, 2007

495. Media Report, CA Election, 2008

496. NIOSA interview with a senior official in EC on June 16, 2013

497. The Nepal Samacharpatra, a vernacular national daily, editorial, November 1, 2013

498. Election Commission Act, 2007

499. Election Commission Acts 2013 updated through ordinances in April, 2013

500. *Building a Democratic Future for Nepal*, a publication of Election Commission, Nepal

require that the parties concerned present their poll expenses to the EC in time after the poll.⁵⁰¹ But the EC cannot compel the parties to do so.

Transparency (practice)

Score: 50

TO WHAT EXTENT ARE REPORTS AND DECISIONS OF THE EC MADE PUBLIC IN PRACTICE?

The EC ensures that the information on voters' list, poll, polling procedures rules and regulations, election campaign, and results of election is published or broadcast publicly.

The Election Commission provides information to the public directly through notice published or broadcast in the mass media – local, regional and national, its website, press conferences, and the press information centre (during elections).

The EC issues press releases, organizes press conferences as per need. It is mandatory for the EC to publish notices of registration dates, party registration, election - day and polling stations. It has its own website which is updated regularly on facts, events, decisions and data. It opens a call centre as and when events demand it. The spokesperson of the EC is available for disseminating information. All EC offices at the grass-root level in the districts follow the same level of transparency. Since district offices are led by senior officials, they are appropriately structured to follow the central pattern of informing the public through the local media.⁵⁰²

Parties generally ignore the provision of submitting the report of poll expenses. The EC appears helpless.

Accountability (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE EC HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

The legal framework defines the EC's role in three dimensions: holding referendums, organizing periodic elections and registration of political parties.⁵⁰³

Since the EC takes decisions on all the three components in accordance with the law and in consultation with stakeholders concerned, reviews of its decisions are done on a regular basis. The EC has to produce a comprehensive report on its activities and make it publicly available. It is required to produce a full account of its activities as soon as they are completed. It is required to mention details of registration of political parties, latest voters' list, electoral programmes, expenses, administrative schemes and decisions, and voter - education⁵⁰⁴. They are usually comprehensive and they are made public either through the website and media. The EC has its account audited by the Auditor General's Office.⁵⁰⁵

The EC Acts have provision for political parties and candidates to complain against poll irregularities, register complaint or express dissatisfaction and get appropriate response from EC.⁵⁰⁶

The EC provides for observers for elections – national and international - when they are held. The EC makes arrangements for field visits, observations, meetings with candidates, voters, prepare their own reports on the poll and make them public through the media of their choice. The EC analyzes the reports particularly the suggestions made in them.⁵⁰⁷

501. Political Party Registration (Election Purpose) Rule

502. NICA interview with senior officials of Election Commission, Nepal on January 25, 2013

503. Election Commission Act, 2007

504. Election Commission Act, 2007

505. Audit Act, 2048 B.S.

506. Election (Offences and Punishment) Act, 2007

507. CA Election Observation Directives, 2013

Accountability (practice)

Score: 50

TO WHAT EXTENT DOES THE EC HAVE TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS IN PRACTICE?

The EC holds regular meetings with political parties, media and observers to answer queries on poll matters, status of registration of parties, voters' name list, and preparatory works of election or post –poll reports, election results (during polls).⁵⁰⁸

As far as the complaints and disputes are concerned the EC tackles them as per the Election procedures and six election Acts.⁵⁰⁹ They are effectively resolved through fines and sanctions. But the losing party always has one or the other thing to complain against the EC.

Political parties, which are not satisfied with the EC functions, could file complaints against the Election Commission in the Election court (such as CA court), which is set up as per the poll laws.⁵¹⁰

Integrity (law)

Score: 75

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE ELECTORAL MANAGEMENT BODY?

The code of conduct for Commissioners, officials and staff is the main tool to ensure the integrity of EC particularly the principle of non-partisanship, independence, impartiality, integrity, transparency, efficiency, professionalism and service-mindedness.⁵¹¹

Staff must sign the code of conduct which requires them to uphold the principles of non-partisanship and independence. The provision seeks to commit election workers to fairness of election. The staff must express commitment to the values of impartiality, integrity and transparency. This helps the EC to garner public trust and the staff be efficient in delivery of services to the public..⁵¹²

It is comprehensive and covers, among other things, safeguards against manipulations in pre-poll, during poll and post-poll. It has conflict of interest rules, regulations on gifts, hospitality and post-employment restrictions.

Integrity (practice)

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF THE EC ENSURED IN PRACTICE?

People perceive that the EC holds elections as fairly as possible in Nepal. The political parties and leaders, however, complain against some procedures that the EC follows. Its record indicates that the EC does not have problems in making poll staff observe the code of conduct.

Whenever there is a breach, irregularity or corrupt practice at the polls, the EC undertakes investigation as per its Acts and appropriately penalizes wrong doers. There are instances where the EC has polls cancelled or postponed or re-pollled because of complaints against poll staff or lapses in poll procedures

508. Election to members of CA Act 2013

509. Acts related to election of CA, party registration, voter registration, electoral rules, electoral offences and punishment updated in 2013

510. Constituent Assembly Court Act, 2007 section 4

511. Guiding Principles of Election Commission, Nepal 1, 5, and 6

512. NICSA interview with a senior official of EC on June 8, 2013

or capturing of poll camps or looting of votes or deaths of poll candidates.⁵¹³ Similarly various problems related to counting of votes have been resolved by the EC staff following the Code of Conduct.

Campaign regulation

Score: 25

DOES THE ELECTORAL MANAGEMENT BODY EFFECTIVELY REGULATE CANDIDATE AND POLITICAL PARTY FINANCE?

Campaign regulation is an area where the EC has room for improvement. Although there are various rules regarding campaigning, sticking brochure on walls of public places, poll-finance-ceiling, disciplinary measures for candidates, parties and cadre, none of them is observed with a sense of honesty during campaigns.⁵¹⁴

Politicos and candidates agree in principle to strictly follow the campaign regulation. But in practice they simply ignore the rules and the EC does not have any appropriate tool to check it. At times campaigning becomes a game of over-estimating oneself and under-estimating opponents.⁵¹⁵ The EC has, therefore, to enhance its competence to monitor all aspects of poll campaigning. There are guidelines for media advertisements for campaigning. The government - run media, however, allocates time to campaign for parties and candidates in more or less equal manner proportionate to their status in previous polls. Parties and candidates are required to audit their poll finance.⁵¹⁶ But the same is rarely observed and those who do not audit and report to this effect face no action or penalty. This in turn further encourages the trend to ignore campaign regulation. The EC is a helpless onlooker of severe violations of campaign regulations.⁵¹⁷

Such violations have been instrumental in making polls costly. This has also made the poor unable to afford to stand and run as candidate.⁵¹⁸ In other words polls are increasingly becoming a game for the rich or those who can afford it. More expenditure means the winner would like to get a return on expenses through unfair means by abusing the post to which he/she has been elected. This has set in motion a cycle of corruption after poll.⁵¹⁹

Election Administration

Score: 50

DOES THE EC ENSURE THE INTEGRITY OF THE ELECTORAL PROCESS?

The practices developed by the EC over time for ensuring integrity of the electoral process could be termed appropriate.

The EC publicizes the places where voters can exercise their adult franchise. Voters are given ample opportunity to check their names in voters' list. But some do not care to check and cannot vote. Problems such as wrong registration, lack of time/materials/security emerge quite often. The EC also undertakes voters' education programmes. It takes special care that the sensitive electoral materials (ballots, seals, tally sheets) are tamper-proof and well-accounted for. As and when it receives complaints on these it follows a procedure to make sure that the electoral materials are intact in all ways.⁵²⁰ Its procedure to count votes and validate results has not been generally criticized.⁵²¹ There is a well established procedure to follow as and when the EC receives complaints challenging the accuracy, efficiency, and objectivity of poll vote counting and results.⁵²²

513. Focus Group discussion with EC officials during TIN NICSA- research period 2012-13

514. NICSA interview with a former election observer on June 2, 2013

515. Interview with voters in past polls on September 4, 2013

516. Political Parties Act, 2008

517. Interview with former Commissioner of EC on September 3, 2013

518. Interview with civil society members on June 4, 2013

519. A discussion paper presented at Kathmandu Seminar October 4, 2013

520. Interview with a senior official of EC on October 2, 2013

521. Media Report, CA Election, 2008

522. Election (Offences and Punishment) Act 2063

SUPREME AUDIT INSTITUTION

Summary

The Office of Auditor General (OAG), the supreme audit institution of Nepal, is charged with the responsibility of overseeing the spending of state funds. It audits the expenses of the Supreme Court, parliament, constitutional bodies, Nepal Army, Nepal Police, several government offices and organized sectors under government ownership. The OAG audits accounts of various other institutions like committees, academies and Universities in accordance with some Special Acts and executive decisions. Various factors in spending : regularity, economy, efficiency, effectiveness and justifiability are taken into consideration by the OAG during auditing. The OAG presents its annual report to the President. It is later taken up for discussion by the Public Accounts Committee of Legislature-Parliament (a sitting parliament) in accordance with the constitutional provision.

The legal framework governing the OAG could be termed generally sound. It has improved performance and efficiency over time through reforms in operational system under the strategic plan 2010-12. There is unity of purpose and coherence in the vision, mission, core values, goals and operational mode of OAG. But it faces capacity- challenges and its independence and ability to perform its role in the governance system can be influenced by the environment of political highhandedness, and instability in which it operates.

The OAG did not have a fully- fledged Auditor General for the past six years. Although it functioned adequately under 6 different Acting AGs, it suffered from lack of a decisive institutional leadership essential for supervising the use of state fund and public finance. Currently the newly appointed Auditor General has been functioning in accordance with the constitutional provisions.

The OAG's dependence on the executive for financial resources has been a bane to its independence. Absence of a separate legal service-provision (like Audit Service) for those who work under OAG also poses as a problem in human resource management. The OAG is conscious of quality auditing and pursues a directive for of auditing and preparing model files for quality audit.

Various factors: growing government expenses, increase in revenues, increase in the budgetary allocations, complexity in financial transactions, innovations in techniques of auditing, and the need for completing audit immediately after the end of financial transactions have pressed the OAG to work out fresh legal provisions. Similarly the need for using Information Communication Technology (ICT) in auditing, focusing auditing on risk-areas of financial transactions, and adopting a separate code of conduct for audit-human resources also demands new laws for making the OAG more effective.

The OAG performs in a transparent manner and makes relevant information available to the public. It has developed a mechanism for dissemination of information.

The Table below presents the indicator scores which summarize the assessment of the Supreme Audit Institution in terms of its capacity, its internal governance, and its role with the Nepali integrity system. The remainder of this section presents the qualitative assessment for each indicator.

Overall Pillar Score: 54/100

Dimension	Indicator	Law	Practice
Capacity 58/100	Resources		50
	Independence	75	50
Governance 54/100	Transparency	75	50
	Accountability	75	25
	Integrity	75	25
Role 50/100	Effective financial audits	50	
	Detecting and sanctioning misbehavior	50	
	Improving financial management	50	

Structure and Organization

The Office of Auditor General is a constitutional body for overseeing the spending of government funds.⁵²³ There is an elaborate legal provision for it to function as the Supreme Audit Institution in the country.⁵²⁴

It audits the expenses of the Supreme Court, parliament, constitutional bodies, Nepal Army, Nepal Police, several government offices and organized sectors under government ownership. The OAG audits accounts of various other institutions like committees, academies, trusts and Universities in accordance with some Special Acts and executive decisions.

The top official of the OAG is the Auditor General. There is a Central Co-ordination Committee chaired by the deputy Auditor General for providing advisory to the AG and for monitoring and evaluating audit works. The AG is assisted by four divisions headed by deputy AGs (gazetted special class officials) for systematically guiding organizational development and management, financial and social service, infrastructure development and constitutional bodies, security and local development. Under them are 14 directorates led by a gazetted first class official. A group of 27 offices serve under the directorates. The chief of the offices is a gazetted second class official.⁵²⁵ Various auditors and clerical staff operate under them in accordance with the demand of work-load. The OAG has, at present, 368 permanent staff (24 of them are women), 13 under contract and five under daily wages. The human resources of OAG are recruited as government staff and then assigned to auditing.⁵²⁶ It pursues a policy of inclusiveness in recruitment and has 22 staff under various categories of inclusiveness: women, indigenous community, Madheshi, Dalit, and backward.⁵²⁷

The OAG manages the audit professionally along streams of concurrent audit, ICT auditing, work related auditing, and corporation auditing. In 2068 B.S. (2011-12) the OAG completed the financial audit of 4,589 offices of government, organized sector, and committees. During the period it undertook audit of 23 themes besides completing ICT audit of two offices. It also presented the annual report to the President.⁵²⁸

Assessment

Resources (Practice)

Score: 50

TO WHAT EXTENT DOES THE AUDIT INSTITUTION HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

The SAI gets its budget through the Finance Ministry. Although the Ministry provides the SAI with financial resources as per its demand in accordance with the constitutional provision, the amount in practice is under the discretion of the Executive: the Ministry. Once the budget is available, the SAI has the final say on the control and management of its resources.

If the SAI requires an increase in financial resources, it does not get the same⁵²⁹ easily; it has to convince the Finance Ministry through bureaucratic measures and provide rationale for increment. This contrasts with constitutional provision for non-votable budget⁵³⁰ for the AG. The human resources of the SAI generally come from the civil service and are more or less stable but not all are adequately qualified for auditing. Currently the SAI has 368 permanent staff, most are management graduates. All do not have previous work experience. There is no opportunity for career development or training. All Directorates operate manually; computer and other modern facilities are not available.⁵³¹ There is a need for improving the working conditions in SAI.

523. Nepal Interim Constitution Article 123

524. Audit Act 2048 B.S.

525. Annual Progress Report 2068/69 B.S., a publication of OAG p.3

526. Civil Service Act 2049 B.S.

527. Civil Service Act 2049 B.S. 7.7

528. Nepal Interim Constitution Article 124

529. Officials confirm this during interview

530. AG Publication No. 25 p 4

531. Interview with a senior official of OAG on August 20, 2013

Independence (law)

Score: 75

TO WHAT EXTENT IS THERE FORMAL OPERATIONAL INDEPENDENCE OF THE AUDIT INSTITUTION?

The SAI is a constitutional body. Provisions for it are in Clauses - 122 to 124 - under Part 12 of the Interim Constitution 2007, which guarantees its independence and defines its relation with the legislature. Audit Act 1991 and other Acts also help the SAI to operate independently.

The AG is constitutionally permitted to hire the services of any expert required for the task of audit under contract with reasonable remuneration. The AG audits freely mobilizing its Directorates in the country. These measures help the SAI to operate in a professional and non-partisan manner.

There is no law that allows any state body to interfere with the SAI agenda. The body carries out its audits in accordance with its programme and methods. The Office is completely independent in working procedures. The officials in the Office have not perceived political interference yet.⁵³²

The AG, according to the Interim Constitution, is appointed by the President on the recommendation of the Constitutional Council for a period of six years. The present AG has been appointed through special ordinance because of the absence of a legislature after the dissolution of CA. It is the law that determines the remuneration and other conditions of service of the AG and it cannot be altered during the tenure. A person once appointed as the AG cannot be eligible for appointment to any other government office.⁵³³ There is, however, no restriction in utilizing former AG's services in political positions, or any other advisory, enquiries, and investigating bodies. The AG and other staff are protected by law from removal without relevant justifications. They are also immune from prosecutions resulting from the normal discharge of their duties.

According to the IC, the SAI can carry out its audits in accordance with its programmes and methods. The AG audits the accounts of government and constitutional institutions as per law with due consideration given to values such as regularity, economy, efficiency, effectiveness and the propriety. It audits specifically the accounts of the Supreme Court, the Legislature Parliament, the Constituent Assembly, The Commission for the Investigation of Abuse of Authority, the AG Office, the Public Service Commission, The Election Commission, the National Human Rights Commission, the Office of the Attorney General, other constitutional bodies, Nepal Army, Nepal Police, Armed Police, other government offices and courts as bodies whose account should be audited by AG.⁵³⁴ It is the duty of all the bodies to ensure access to documents for AG in the process of auditing.⁵³⁵

Independence (Practice)

Score: 50

TO WHAT EXTENT IS THE AUDIT INSTITUTION FREE FROM EXTERNAL INTERFERENCE IN THE PERFORMANCE OF ITS WORK IN PRACTICE?

The Audit institution is free from external interference in the performance of its work in practice. Officials say: "It can exercise full discretion to select audit issues, planning, reporting and follow-up, demand at all time access to documents and information, and carry out performance audit."

The auditors, however, are influenced through manipulative strategy of the officials while auditing. Since the internal audit system of offices is not professionally institutionalized, there is a tendency among account officials to develop their account report and documents in a manner that suits their offices. The external auditors find it difficult to detect manipulations.⁵³⁶ Auditors deny this charge.⁵³⁷

532. Interview with a senior official of OAG on July 24, 2013

533. Nepal Interim Constitution Article 122

534. Nepal Interim Constitution Article 123

535. Good Governance (Management and Operation) Act 2064 B.S.-41-1

536. NISCA interview with a senior official of OAG on January 15, 2013

537. Interview with a senior auditor on January 15, 2013

Transparency (Law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE RELEVANT ACTIVITIES AND DECISIONS BY THE SAI?

The AG has to produce an annual audit report every year and submit it to the President who sends it to parliament for perusal by members. They, however, do not discuss it but the points raised by the report could be referred to by members during their discussion in parliament. It later becomes a public document.⁵³⁸

Nepal has been conducting the annual AG report from the time it was established in 1959 as a constitutional body. If government offices and other establishments care to read the advisory mentioned in the AG reports, they would discover ways to reform public finance, accounting system and financial administration.⁵³⁹ Because the AG reports are based on ground reality, its findings would be highly useful in correcting flaws in accounts and finance. It is “unfortunately regarded more as a formality to be fulfilled by AG and to be stored in reference sections of offices,” added a former member of Public Account Committee of the dissolved CA.

There is also an elaborate provision for complaint-hearing, audio notice board service (No. 1618014253270), citizen charter on services provided, measuring the satisfaction rate of service seekers, etc.⁵⁴⁰

Transparency (practice)

Score: 50

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISIONS OF THE AUDIT INSTITUTION IN PRACTICE?

A full fledged audit report of government offices and institutions is prepared by the AG. The document reaches the Legislature Parliament through President.⁵⁴¹

Information on expenses, revenues, their trends, financial position reflected in the balance sheet, assets, liabilities, financial irregularities, financial administration, accounting procedures and recommendations is made public usually at the end of the fiscal year. The report gives a clear picture of what activities AG performs and how AG operates.⁵⁴²

The AG has a website through which the report could be accessed.⁵⁴³ In the annual report the AG mentions details about the audit, points out weaknesses in financial administration, and suggests measures for improvement. Officials opine the suggestions made in the report are usually ignored. The press also is not interested to report it in detail. Citizens also do not send feedback.⁵⁴⁴

Moreover, the AG prepares a separate document on itself and places it on the Website. This provides information on AG-activities, internal organization, method of audit, staff, financial capacity, budget etc. The AG makes public its annual plan, strategic plan, audit guides and methodology. People can access them easily. It also issues press releases from time to time on AG activities for the mass media.⁵⁴⁵ The OAG has developed a mechanism for information dissemination through a spokesperson, and assistant spokesperson, contact official, assistant contact official, information officer and assistant officer in accordance with the law.⁵⁴⁶

538. Good Governance (Management and Operation) Act 2064 B.S. (2007 A.D.)

539. NICSA Interview with officials in January, 2013

540. Annual Report 2068/69 B.S. OAG p. 22

541. Nepal Interim Constitution Article 123

542. The 49th Annual Report 2068 B.S. (2012), Office of Auditor General

543. www.oagnep.gov.np

544. People, during focus group discussion in January 15, 2013, observed that they generally regarded the Audit Report as formality –ritual performed every year. They do not believe that the suggestions mentioned in the Report will ever be implemented by the Authority concerned.

545. Audit Act 2048 B.S. (1992 A.D.)

546. The Right to Information Act 2064 B.S.

The AG also does not have plans to make government offices and institutions sensitized about how “the exercise of auditing ultimately pays by improving their financial system and why they should have a sense of “ownership” of auditing.

Accountability (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE SAI HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

It is mandatory for the AG to publish an annual report giving details about the audit it does throughout the year. It is accompanied by a report on itself.

As per the Constitutional provision it has to audit its own account and that of various Constitutional bodies, and government offices such as Supreme Court, Parliament, Nepal Army, Nepal Police, Public Service Commission etc. As for the content of the AG report it has to include among others the general financial information on income, expenditure, situation of irregular amounts, attempts to settle irregular amounts, methodology of auditing and recommendations for bringing about effective financial discipline in spending and managing income. The AG report has to be sent to parliament through the President. There is an opportunity for challenging audit results. The parliament committees particularly the Public Accounts Committee can seek explanation from AG on its report or any of its activities.⁵⁴⁷

The issues mentioned in the AG Report can be debated and parliamentary committees can take up the issues for focused discussion on them. OAG has to be answerable for everything mentioned in the report in parliament, media and public forums.⁵⁴⁸

Accountability (practice)

Score: 50

TO WHAT EXTENT DOES THE SAI HAVE TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS IN PRACTICE?

The Auditor General’s Report, published every year, is a comprehensive document. It reflects the general condition of finance, accounting, irregularity in financial management of the government offices and constitutional bodies.

Although there is no separate method of auditing the AG Office, its account is audited in the same professional manner and standard in which other offices’ accounts are audited.⁵⁴⁹

Integrity mechanisms (law)

Score: 75

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE AUDIT INSTITUTION?

The code of conduct⁵⁵⁰, gift and hospitality regulations, post-employment restrictions, conflict of interest policies are the key tools to ensure ethical behaviour of the AG officials and staff. There is, however, a need for a separate code of conduct for auditors to make them free from influence: personal, material and organizational.⁵⁵¹

547. Nepal Interim Constitution, Financial work procedures 89

548. Audit Act 2048 B.S. (1992 A.D.)

549. Audit Act 2048 B.S. (1992 A.D.)

550. Civil Service Code

551. The scheme introduced by OAG in 2056 B.S.

The OAG has provisions for rewarding good performers and penalizing wrongdoers.⁵⁵²

The officials and staff receive orientation on integrity and preparation for the auditing profession.⁵⁵³

Integrity mechanisms in practice

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF THE AUDIT INSTITUTION ENSURED IN PRACTICE?

The codes of conduct, gift and hospitality regulations, post-employment restrictions, conflict of interest policies and other integrity tools have more or less ensured the ethical behaviour of AG officials and staff. The popular impression is however critical of this view.

The public perception is that the auditing process itself is manipulated during auditing.⁵⁵⁴ Moreover, some opine: institutions make auditors hide the weaknesses in the account and exaggerate the positive points. As soon as complaints are lodged, the AG has mechanism to address them. Officials are not trained on integrity in a focused manner. But they develop a sense of integrity as they train themselves as an auditor.⁵⁵⁵

The ethical component forms an integral part of auditing course or training. There are, however, times when some auditors violate the code of conduct. They are penalized as per the law. The punishment depends on how serious the violation is. It ranges from simple warning to dismissal from service.⁵⁵⁶

Effective financial audits

Score: 75

TO WHAT EXTENT DOES THE AUDIT INSTITUTION PROVIDE EFFECTIVE AUDITS OF PUBLIC EXPENDITURE?

The AG examines the way the internal audit is undertaken in government offices. The focus of auditing by AG is generally on legality and regularity of financial management and accounting.

The audits are regular and reported annually to parliament in a standard manner. There are 15 specific points developed by AG which have to be specially taken into consideration while auditing.⁵⁵⁷ While conducting the audit, the AG pays special attention to regularity, economy, effectiveness and propriety.

As for example, audit would seek to find out:- whether the amount appropriated in the concerned heads and sub-heads of the Appropriation Act for respective task and services have been expended or not for the specified purposes of designated task and services within the approved limit, say officials of the AG. Other examples include:- seeing whether the financial transactions comply with the existing laws and the evidence relating to items of income and expenditure are sufficient or not; whether the accounts have been maintained in the prescribed forms or not and whether such accounts fairly present the position of financial transactions or not; whether the inventory of government asset is accurate and up to date or not and whether the arrangement for protection and management of governmental property is adequate or not.⁵⁵⁸

Performance audits, however, are not usually done in the real sense of the term, say some experts.⁵⁵⁹ They opine the current AG's mandate to audit refers to the "accounts" of government offices and others

552. Segment operational model of OAG

553. OAG-developed rules and regulations 2056 B.S. (1999 A.D.)

554. NICSA interview with audit stakeholders in January 2013

555. Interview with a senior auditor on September 6, 2013

556. Civil Service Code

557. AG's publication Strategic Plan 2010-12 p 5/6

558. Audit Act 2048 B.S. (1992 A.D.)

559. Interview with auditors in January, 2013

which in turn would mean auditing the economy, efficiency, effectiveness, regularity and propriety aspects only. They underline the need for a separate specific mandate in the constitution for the AG to make it competent to undertake financial and performance audit specifically. The AG is conscious of performance audits and has actually developed a Performance Auditing Guide in June 2000 for specific purposes of auditing.

But this is not to say that the present auditing is silent on performance. Auditors look into whether the organization, management and job allocation of the office are adequate and suitable or not and whether they are operating accordingly or not. They also seek information on whether the available resources, means and assets are properly utilized and maintenance and safeguarding thereof against any loss or damage has been suitably arranged or not.⁵⁶⁰

Present legislation does not allow conducting specialized audit such as forensic audit, environment audit, fraud audit, social audit, etc. "Legislators and audited entities suggest to carry out concurrent audit to enable them to initiate corrective actions on audit observations."⁵⁶¹

Detecting and sanctioning misbehaviour

Score: 50

DOES THE AUDIT INSTITUTION DETECT AND INVESTIGATE MISBEHAVIOUR OF PUBLIC OFFICEHOLDERS?

The access to all records relating to financial management and power to request necessary information are the twin tools the AG has for identifying misbehaviour. The AG has the competence and independence to identify responsibilities of officeholders. This gets reflected in the annual report OAG publishes.⁵⁶²

The issue of investigating the misbehaviour is tricky for the AG. It can point out the misbehaviour on the basis of facts, says a senior auditor adding "there is confusion about its role of investigating the misbehaviour and determining sanctions." New legal measures are necessary for addressing the problem of misbehaviour.⁵⁶³

Improving financial management

Score: 50

TO WHAT EXTENT IS THE SAI EFFECTIVE IN IMPROVING THE FINANCIAL MANAGEMENT OF GOVERNMENT?

The AG has been working diligently to make grounded and realistic recommendations to the government for promoting efficiency of the use of public money. The recommendations it usually makes on patterns of financial irregularities, malpractices, the economy, efficiency, effectiveness, regularity and propriety are strong.⁵⁶⁴

But it does not have the wherewithal to make the authority concerned follow its advisories. Although it occasionally reviews and assesses whether the government has followed its recommendations or not, it cannot compel the government to implement its recommendations.⁵⁶⁵

Experts complain that the AG – recommendations are not properly honoured by the authority concerned. A review of AG reports over the past decade shows that most of its recommendations have not been taken into consideration. The malpractices reported around ten years ago and the irregularities pointed out then also feature in reports published in 2012.⁵⁶⁶ This indicates how OAG's review of malpractices in accounting has not been instrumental in improving the financial management of the government.

560. The 49th Annual Report 2068 B.S.

561. NICSA focus group discussion with audit stakeholders in January, 2013

562. The 49th Annual Report 2068 B.S p. 13-29

563. Interview with a senior auditor on January 10, 2013

564. NICSA interview with a senior auditor on January 10, 2013

565. Interview with a senior official of OAG on September 6, 2013

566. NICSA literature review of AG reports 2002-2012

ANTI-CORRUPTION AGENCIES

Summary

Nepal has developed a strong legal framework for anti-corruption agencies. The Commission for Investigation of Abuse of Authority CIAA is the apex anti-corruption agency. There are other units which act against corruption, abuse of authority and impunity. They receive resources from the annual budget of the state. Although their independence is ensured by law, they do not function independently. Information about their activities is disseminated through the media, their website, reports which are published annually. There are provisions for making anti-corruption agencies answerable. A code of conduct has been developed for staff and office bearers. But it is not practiced. Although there is room for ACAs to undertake preventive activities, educational campaigns to fight corruption, they do not undertake such programmes. The investigation process they follow is strenuous. The provisions for anti-corruption agencies in constitution, laws and other areas are notable. But the implementation of the provisions is weak. However, the CIAA has been diligent in undertaking actions against corruption after May, 2013. Its investigation has been quite serious and expanding in recent times.

The Table below presents indicator scores summarizing the assessment of the Anti-Corruption Agencies in terms of their capacity, their internal governance and their role within the Nepal-integrity system. The remainder of this section presents a qualitative assessment for each indicator.

Overall Pillar Score: 51/100

Dimension	Indicator	Law	Practice
Capacity 50/100	Resources	50	50
	Independence	75	25
Governance 54/100	Transparency	75	50
	Accountability	75	50
	Integrity Mechanism	50	25
Role 50/100	Prevention	50	
	Education	50	
	Investigation	50	

Structure and organization

The apex anti-corruption body in the country is the CIAA, a constitutional organ.⁵⁶⁷ The president appoints the Chief Commissioner and Commissioners on the recommendation of the Constitutional Council when the parliament is in existence. Their tenure is six years and they can hold the post of Commissioners until they are 65.⁵⁶⁸ However, the CIAA functioned for the past six years without a Chief Commissioner. It did not have Commissioners as well since September 2011.

It was only in May, 2013, the CIAA –Chief Commissioner -Lok Man Singh Karki -was appointed. The appointment was made through a special ordinance. It was criticized publicly.⁵⁶⁹ Currently it is functioning with one CC and a Commissioner Keshav Baral. Soon after their appointment they initiated some steps to check corruption, excessive amassing of property, money laundering and abuse of authority. They also undertook the task of revising two key documents – work procedure and the code of conduct – prepared in 2003, to meet the demands of changing times. The CIAA expanded its regional offices to five development regions with appropriate staffing. It introduced a massive organizational reshuffle inside its organizational set-up as well in July.⁵⁷⁰

567. Nepal Interim Constitution 2063, Part 11, Article 120

568. Nepal Interim Constitution 2063, Article 119

569. Media Report, May- June, 2013

570. Interview with CIAA officials in June, 2013

The Secretariat has a number of civil servants, police and special service officials who are deputed to CIAA for a given period by the government. The number of officials and staff attached to the CIAA stands at 294. There are six investigation-wings and one police wing under the Secretary. Various other sections related to cases, administration and planning are mobilized under the wings.⁵⁷¹

CIAA follows an operational mode for all procedures in investigation, analysis of complaint, establishing merit of cases and detecting minimum evidence of the case and moving court for the case in accordance with the Strategic Plan of CIAA.

The CIAA also delegates authority to the Regional Administrators in five Development Regions and Chief District Officers in 75 districts. The anti-corruption agency settled 5,466 cases in the fiscal year 2012-13.⁵⁷²

The National Vigilance Centre established on Shrawan 27, 2059 B.S.(July 2002 A.D.) operates under the supervision and control of the Prime Minister. Established in accordance with the Anti-Corruption Act 2059 B.S., the NVC focuses mainly on preventive and vigilance role to ensure good governance by creating an environment of fair economic discipline, moral ethics and transparency.⁵⁷³

The other anti-corruption agencies operate independently or under the bodies concerned in accordance with the laws related to them. They keep an eye specifically on public procurement, revenue investigation, asset/money laundering, financial irregularities, policy-based corruption, and illegal activities in foreign employment sector.

Assessment

Resources (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE THAT PROVIDE THE ACA WITH ADEQUATE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

The Anti-Corruption Agency – Commission for Investigation for Abuse of Authority CIAA - has its own budget as per the arrangement made for the Constitutional bodies. Because of this, officials term the ACA has a guarantee for fiscal stability over time.⁵⁷⁴

Although it gets the budget through the Finance Ministry there is a process through which it can propose what it needs in the budget. No objective indicators, except the projected expenses for future, inflation-rate, and previous experience or record, are followed for determining the changes in the budget. (This is actually the methodology that Finance Ministry generally follows in Nepal.) The concepts of using the tools of performance –based approach and problem-based technique are discussed in seminars but not practiced professionally. Since the CIAA is a Constitutional body it has the leeway for acquiring further funding specially from confiscated assets.

However, other ACAs do not have specific laws for independent arrangement for budgeting. They have to depend on the allocated amount by units superior to them. Of course, they do have opportunities to express their needs through the internal mechanism of the body under which they operate.⁵⁷⁵

As for providing the budget for specifically addressing the growing needs related to human resources and infrastructure, the legislation is not specific. In Nepal the human resources need is generally calculated only in terms of salary-amount while that of infrastructure is measured in terms of bare maintenance. This has been recognized as a flaw specially for ACAs but it has not been addressed yet.⁵⁷⁶

571. CIAA Organogram

572. The Good Governance Report released by Prime Minister's Office, July 19,2013

573. Anti-corruption Act 2002, Chapter 4

574. NICSA interview with CIAA officials in January 2013

575. Interview with a senior official of NVC on January 8, 2013

576. Interview with a senior official of CIAA on January 8, 2013

Resources (practice)

Score: 50

TO WHAT EXTENT DOES THE ACA HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

The budget for the CIAA is considered to be generally sufficient. The way it increases is, however, actually responsive to the need. Regarding human resources, it is not that stable.⁵⁷⁷

The high officials do have academic background and work experience but lower level staff do not have the same. The general rules of the Public Service Commission including police report on individuals are applicable in recruitment but ethics screening is not followed.

There is no hard and fast rule for basic initial or specialized training for new staff members. Yet there is provision for a 2-week in-service training for officials and non-officers.

The Head of CIAA – Chief Commissioner - and other Commissioners are appointed by the President on the recommendation of the Constitutional Council. Their tenure of office is six years. The CIAA has functioned without Chief Commissioner for the last six years; it did not have Commissioners from September 2011. The Parliament has provision of hearings prior to appointment. Officials say there is no adequate opportunity for career development.⁵⁷⁸

Independence (law)

Score: 75

TO WHAT EXTENT IS THE ACA INDEPENDENT BY LAW?

The CIAA has constitutional status. It exists because of the Part 11 of the Interim Constitution of Nepal 2007. It, therefore, does not have to work under any Ministry.⁵⁷⁹

There are mechanisms and legal provisions for keeping CIAA free from political interference in carrying out its mandate. The officers have to meet professional criteria, others do not have to meet these. There are legal provisions which restrict political and other activities of the Commissioners. The Commissioners are protected by law from removal without justification.⁵⁸⁰

Independence (practice)

Score: 25

TO WHAT EXTENT IS THE ACA INDEPENDENT IN PRACTICE?

Anti-corruption activists detect a connection between the CIAA and the government of the day in fixing (or not fixing) the priority on selecting cases particularly high profile cases or the ones with political connections. They say “the pursuit (non-pursuit) of cases that directly or indirectly help the government at a given time clearly establish this.” The recent examples are: Nepal Airlines Corporation Aeroplane purchase case, Red passports, sandal wood smuggling, etc. The top officials of the CIAA have not faced frequent removal over the years.

Although efforts are made on various occasions to use political influence, they cannot be effective in CIAA.⁵⁸¹

577. NICSA interview with CIAA officials in January 2013

578. Interview with a senior official of CIAA on January 15, 2013

579. Nepal Interim Constitution, Article 119

580. CIAA Rules and Regulations 2059

581. Interview with a senior official of CIAA on January 14, 2013

Officials express satisfaction on the relationship between CIAA and other law –enforcement agencies. However, sometimes they experience friction in the relationship as they pursue cases which necessitate cooperation from law enforcement agencies. Sometimes, conflict of interests becomes instrumental in suppressing or pursuing investigation of cases.⁵⁸² People suspect most of the major cases on corruption or irregularities or abuse have been kept pending because of this.⁵⁸³

Transparency (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE ACA?

The CIAA has to prepare annual report as per the constitutional requirement.⁵⁸⁴

The CIAA prepares an annual report, submits it to the President who in turn sends it to Legislature Parliament through the Prime Minister. The report usually sums up activities of the fiscal year and is finalized within the second month of the next fiscal year.⁵⁸⁵ All ACAs are required to provide information on publicly available activities⁵⁸⁶. They do so in a pro-active way through press release or press conference; they disseminate information on the initiative of the mass media as well. They, of course, take into consideration issues of reasonable confidentiality.⁵⁸⁷

Transparency (practice)

Score: 50

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF ACA IN PRACTICE?

The CIAA provides information on its activities through a comprehensive Annual Report.⁵⁸⁸ The 23rd Annual Report - was released on December 9, 2013 (Mangseer 24, 2070 B.S.).⁵⁸⁹ The previous publication was released on Bhadra 29, 2069 B.S. 22nd (September, 2012).⁵⁹⁰ It has a website www.ciaa.gov.np. But it does not shed light on the decision making processes of the ACA, complain anti-corruption activists.⁵⁹¹

The information given by CIAA is generally detailed. However, the timing and urgency of information are factors that the CIAA does not consider in releasing information. There is a conflict between the CIAA and the press as and when high profile cases are reported. "The CIAA does not consider the deadline of the media particularly the pressure of round the clock news for some mass media," complain journalists.⁵⁹² The CIAA explains that "the needs of the press in points of urgency, timing and details cannot always be considered because of the nature, seriousness, the process of accusation, the need to keep some sensitive facts of cases intact, and the privacy of citizens accused."⁵⁹³

The CIAA interacts with the public through its promotional programmes. It, for example, has, over time, made 35 thousand students, teachers and academic staff aware of the need for anti-corruption vigilance and the adverse effects of corruption on society. It has a radio programme on community education for good conduct or integrity through which it informs the people about the CIAA.⁵⁹⁴ The website is another

582. Interview with a former Commissioner of CIAA on January 14, 2013

583. Interview with anti-corruption activists on March 10, 2013

584. Nepal Interim Constitution 2063, Article 121-1

585. Nepal Interim Constitution 2063, Article 121-2

586. Right to Information Act 2064 -4

587. Right to Information Act 2064- 3-3

588. Nepal Interim Constitution, Article 121

589. The 23rd Annual Report of CIAA, 2013

590. The 22nd Annual Report of CIAA, 2012

591. Interview with a senior lawyer who deals with anti-corruption cases on January 20, 2013

592. Interview with a national daily reporter who covers ACAs on January 20, 2013

593. Interview with a senior official of CIAA on January 20, 2013

594. CIAA promotional programme, 2012

regular medium to inform the public.⁵⁹⁵ The mass media have been helpful in spreading the information of ACA. The prominent way through which they publish or broadcast corruption-news shows it effectively. The spokesperson of the CIAA also makes information available to the public. Citizens can approach the CIAA for the information they need.⁵⁹⁶

People have the impression that the CIAA makes information available to the public in the way it suits it. But it does not give people the information that they require.⁵⁹⁷ Anti-corruption –media- beat reporters do not get the information on corruption cases that they need for explaining matters to the public.⁵⁹⁸

Accountability (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE ACA HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

The CIAA has to defend cases in courts. Its annual report reaches the legislature regularly. It advises government ministries on various issues it finds important during performance of its duty.⁵⁹⁹

It has to do all these with a sense of accountability. It fulfills the responsibility entrusted to it by the Constitution in accordance with the spirit and letters of the Constitution and laws such as: The Interim Constitution of Nepal 2007 (specifically Article 120), CIAA Act 2048 B.S., Corruption Elimination Act 2059 B.S., CIAA rules and regulations 2059 B.S., CIAA procedures 2063 B.S., directives for investigation, CIAA office bearers and staff code of conduct, 2065 B.S. the procedures related to committees against corruption. It has to have its account audited by the Auditor General.

The head of the CIAA has to account for the activities of its staff in practice. The reports in this regard are to be filed. Some of the information related to such files are made publicly available.⁶⁰⁰

The public can file complaints against the ACA as well. There are toll free phone numbers (16600 and 22233) in the CIAA through which people can make their complaints in the way they like. The CIAA has a standing principle of keeping the complainants' names and details secret; it opens that secret only when legally necessary and in a way that does not victimize the persons. There is a provision for fining complainants up to Rs. 5,000 (USD 51.8) for complaints based on false reports. The functions of the CIAA can be reviewed judicially. The citizens' oversight bodies related to anti-corruption are in nominal existence; their presence is, however, not perceived in public. The conduct of ACA staff and office bearers has to be compatible with the code of conduct.⁶⁰¹

Accountability (practice)

Score: 50

TO WHAT EXTENT DOES THE ACA HAVE TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS IN PRACTICE?

The head of CIAA accounts for the activities of its staff in practice. The reports in this regard are filed. Some of the information related to such files are made publicly available.⁶⁰²

The reports are generally comprehensive. The whistle-blowing policy is considered not to be effective. People in practice generally feel a sense of fear of retaliation or loss of job to make complaint. The citizen oversight bodies are mostly dormant; they become active as soon as the political parties they are

595. [www.http://ciaa.gov.np](http://ciaa.gov.np)

596. Right to Information Act 2064 – 3-2

597. Interview with a senior editor on January 22, 2013

598. Interview with a senior anti-corruption- media -beat reporter of a national daily of Kathmandu on January 22, 2013

599. NIOSA interview with CIAA officials in January 2013

600. CIAA code of conduct 2065 B.S.

601. CIAA Directives related to investigations

602. CIAA code of conduct 2065 B.S.

affiliated to are active. The judicial review mechanism is in place but rarely used because it is highly time-consuming and costly as well.⁶⁰³

During fiscal 2066-67 B.S. it provided advisories to 20 ministries including Prime Minister's Office. Some 4,295 complaints were received in the past year while 6,145 have been received this year.

Integrity mechanisms (law)

Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF MEMBERS OF THE ACA(S)?

All the Anti-Corruption Agencies including CIAA have developed codes of conduct for ensuring their integrity. They are generally comprehensive and include among others: asset declaration, conflict of interest rules and regulations on gifts and hospitality.⁶⁰⁴ The post-employment restrictions are also included in the codes. But there is no provision for integrity screening (except police report) in recruitment.⁶⁰⁵ However, the issues of integrity, honesty and devotion to duty are mentioned in the codes. The same is understood to be compensating for integrity screening.⁶⁰⁶ An official explanation is that the provisional period of service accompanying all recruitments, is in itself an integrity oversight mechanism. The general recruitment rules follow the Public Service Commission's standard.⁶⁰⁷

Integrity Mechanisms (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF THE ACA(S) ENSURED IN PRACTICE?

The existing codes of conduct, gift and hospitality regulations, post-employment restrictions, conflict of interest policies, integrity provisions, etc. are generally sufficient but not effective in ensuring ethical behaviour among the staff of the ACAs.⁶⁰⁸

People have the impression that power and money can manipulate the mechanisms in ACAs easily. They base their impression on several instances of impunity in which corrupt individuals are seen enjoying life and facilities openly.⁶⁰⁹ Officials and staff of ACAs reject the views outright.⁶¹⁰ They base their rejection on the cases in which the corrupt have been duly punished. The ACAs do not have a regular comprehensive programme to train staff on matters of integrity. There have been cases of violations of codes and they have been addressed. In some cases sanctions were also levied. But this may not discourage future violations of codes.

Prevention

Score: 50

TO WHAT EXTENT DOES THE ACA ENGAGE IN PREVENTIVE ACTIVITIES REGARDING FIGHTING CORRUPTION?

The CIAA has competence to undertake activities that help prevention of corruption.

603. Interview with officials of anti-corruption bodies

604. CIAA code of conduct 2002; Civil Service Code of Conduct 1993

605. Interview with a former Commissioner of Public Service Commission on October 2, 2013

606. Interview with a lawyer on September 3, 2013

607. Interview with a senior official of Public Service Commission

608. NICSA interview with office bearers of anti-corruption agencies

609. NICSA interview with civil society leaders in January 2013

610. NICSA interview with senior officials of ACAs in January 2013

Its actions specially departmental actions against those who commit irregularities have worked as preventive measures for would be corrupt.⁶¹¹ Similarly the measures of alerting officials in their act, drawing attention to their flaws, advisories of various sorts have also served as preventive measures.⁶¹²

The CIAA is legally competent to make recommendations for legislative reforms. It can also present its advisories to the government on its own and to the parliament on request.⁶¹³ There is no single institution to coordinate anti-corruption activities. Yet the CIAA is considered to be the key anti-corruption body. The CIAA does not have a Research and Development section but officials of the Commission have felt its need and have voiced for this. The Planning Division looks after research and development in the way it can. Yet the CIAA has developed a comprehensive three year plan. It has also recommended in a proposal what provisions should be incorporated in the new Constitution that is in the process of being written.⁶¹⁴

Education

Score: 50

TO WHAT EXTENT DOES THE ACA ENGAGE IN EDUCATIONAL ACTIVITIES REGARDING FIGHTING CORRUPTION?

The CIAA undertakes educational programmes designed to fight corruption. They are focused on awareness raising, alerting, sensitization, and orientations on integrity and accountability.⁶¹⁵

It engages officials of the public sector including secretaries, departmental chiefs, public leaders, youths, teachers and civil society in these programmes. Programmes had been held in 2066 B.S. (2009 A.D.) in various districts: Kathmandu, Jhapa, Nawalparasi, Myagdi, Mustang, Syanja, Ilam, Panchthar, Bhojpur, Gulmi, Palpa, Kanchanpur, Darchula, etc.⁶¹⁶

It also organizes interaction-programmes on the International Day against Corruption and CIAA-Day in the presence of the Head of State, Head of Government, Ministers, chiefs of Constitutional bodies, parliamentarians and political leaders.⁶¹⁷ In 2011 some 11 anti-corruption research - papers were presented for discussion at programmes held under the auspices of the CIAA.⁶¹⁸ A few programmes engage the civil society as well. At times the CIAA reviews its educational activities.

For example, the CIAA organizes series of interactions, awareness raising programmes, orientations, seminars, community education on integrity, radio programmes for good conduct and integrity, develops slogans and reminder-posters against corruption, etc. in various parts of the country – rural and urban. Officials say they have been proven to be very effective.

Investigation

Score: 50

TO WHAT EXTENT DOES THE ACA ENGAGE IN INVESTIGATION REGARDING ALLEGED CORRUPTION?

The CIAA is a competent body to act against corruption. Its functions and legal status are defined in the constitution. The functions and scope of nearly a dozen Anti-Corruption Agencies operating in various capacities are also defined.⁶¹⁹ Their nature makes them distinct from other law enforcement agencies.

611. Nepal Weekly editorial page article, March 15, 2013

612. Interview with a senior official of Ministry of General Administration on March 15, 2013

613. CIAA Act 2048

614. Interview with a senior official of CIAA on February 10, 2013

615. NICSA interview with a CIAA official on March 3, 2013

616. Interview with a CIAA official on February 12, 2013

617. Interview with a senior official of CIAA on March 3, 2013

618. CIAA Annual Report 2069 B.S.

619. See brief profile of Anti-Corruption Agencies in the beginning of ASA section

The CIAA has conducted investigations into corruption of high ranking officials from the ruling party and administration. Because of this one senior leader (a former minister) of the Nepali Congress is in jail, some parliamentarians have lost their seats in the legislature, former civil servants have been penalized, etc.⁶²⁰ However, people perceive that the CIAA lacks courage to investigate high ranking leaders and administrators who are in the good books of government and wealthy people.⁶²¹

The CIAA handled 5,466 cases during July 2012- June 2013. The average number of complaints it receives per year stands at 8,000. It intensified investigations after May 2013 in various sectors including airport-custom and procurement of Nepal Electricity Authority. It undertook investigation into illegal issuance of licenses to 77 individuals by officials of the Department of Foreign Employment arresting 17 employees of the Department and 18 employees of the Department of Immigration.⁶²²

The ACA in the year 2068-69 (2011-12) received 8,839 complaints from various sources. Altogether 5,466 (61.84 %) have been attacked upon in accordance with the law. The rest 3,373 complaints have been forwarded for action in the next year. During the year CIAA registered 111 corruption -cases in the Supreme Court. The CIAA appealed against 18 cases challenging the verdict of the Special Court.⁶²³ In the process of responding to complaints, CIAA ordered 1092 due actions and 14 departmental actions, sent 6 alert notices, offered 36 advisories, drew attention of 7 institutions, and commandeered 8 revenue recoveries during the period.⁶²⁴ The five regional administrators' offices received 323 corruption/irregularities complaints of which 101 have been acted on. The rest have been forwarded for next year. Similarly 75 Chief District Officers received 1843 corruption/irregularity complaints during the period of which 636 have been acted upon.⁶²⁵

In the past year 2066-67 B.S, the CIAA handled 4,295 complaint cases; tackled 3067 of them (71.41 %). It undertook extensive investigation into 289 cases while solving 1604 cases outright and taking action in 1174 cases. It took decisions to prosecute 32 cases, appealing 35 cases, taking departmental action in 13 cases, drawing attention to 18 cases, advising in 75 cases and alerting in 11 cases.⁶²⁶

The CIAA's effort to control corruption in government offices through directives appear to have failed. According to media reports quoting a CIAA official, 90 % of its directives are unattended. Only 10 % reach the court.⁶²⁷ The Ministry of Health which tops the list of defiant government institutions ignored 28 directives mostly related to abuse of power and corruption in fiscal year 2009-10.⁶²⁸

The National Vigilance Centre (NVC) handled 1885 cases during July 2012- June-2013 period. It referred 142 complaints to the CIAA for further investigation besides settling 1,218 complaints (July 2012- June 2013). It intensified monitoring of public offices under ministries and in districts and detected in unannounced checks, unauthorized absence of 405 officials in 28 ministries, 433 officials in 11 public corporations, 1096 officials in 460 offices of 38 districts. The NVC also undertook during the year technical investigation of various development projects classified as projects of national importance, pointed out a number of weaknesses and suggested measures to correct them.⁶²⁹

The Department of Anti-Money Laundering is also intensifying its investigation. Other anti-corruption agencies also undertake investigation in an effective manner.⁶³⁰ The Appeal Court of Lalitpur settled 6,471 cases in the past year.

620. Interview with a former government secretary on January, 2013

621. Interview with a reporter who covers ACA for a national daily on January 3, 2013

622. Interview with a senior official of CIAA on October 20, 2013

623. NISCA interview with senior officials of CIAA on June 29, 2013

624. CIAA 22nd annual report 2069 p 372

625. CIAA Secretariat

626. 20th edition of CIAA annual report page 7

627. Front page news report of The Kathmandu Post dated October 3, 2011

628. The Kathmandu Post October 3, 2011

629. NISCA interview with NVC officials on June 26, 2013

630. NISCA interview with a senior official of CIAA on June 29, 2013

POLITICAL PARTIES

Summary

The legal framework of Nepal guarantees for the free establishment and functioning of political parties and provides safeguards against state interference in the activities of political groups. This assessment, however, finds that in practice there are conditions under which political competition is not effective.

The process to establish political parties legally is to get it registered in the Election Commission.⁶³¹ There are no legal restrictions on party ideology. But the political parties are required to honour the Constitution, national sovereignty and unity.⁶³² There are laws on freedom of association.⁶³³ Political parties are not banned by law. The political parties and their role are mentioned in the country's constitution.⁶³⁴

The minimum requirements for getting a political party registered are: party statute, manifesto (declaration), party rules, a complete executive committee and signed –support of 10 thousand voters.⁶³⁵ The political parties can appeal against de-registration or rejected registration. The political parties are required to have a general convention and election of all office bearers every five year. They have to follow the code of conduct and rules worked out by the Election Commission while campaigning and while undertaking internal democratic decision making.⁶³⁶ The state does not fund political parties. There are some financial subsidies and in-kind subsidies for political parties to enable them develop their organizational structure. Political parties are dependent on financial donors.⁶³⁷

There has been no case of the state dissolving or prohibiting political parties in Nepal during 1990-2013-period. The state has not made any attempt to do so.⁶³⁸ As for state interference in the activities of political parties, the ruling party or parties make efforts to win the support of other parties. There are instances where opposition parties have been harassed by the governing party. The authorities do not treat all political parties equally. It is not common for the ruling party to arrest opposition political party members. When political party members are attacked the state investigates but it is not impartial or proper.⁶³⁹

There are some legal provisions which provide room for monitoring/investigation of political party operations. It is not possible for the state authorities to order banning of a specific political party. The legal powers of state authorities for surveillance of political parties are derived only from the Acts.⁶⁴⁰ There is no government oversight designed and limited to protect legitimate public interests. There are no regulations allowing for mandatory state attendance at political party meetings.⁶⁴¹

The political parties' failure to deliver the Constitution through the elected Constituent Assembly during 2008-2012 -period, and their inability to work out a consensus for nine months after the demise of CA for an election government to preside over 2013 Constituent Assembly election frustrated the people. Moreover, their 2013-March-agreement to hand over the Executive to sitting Chief Justice and an Interim Election Ministry to former bureaucrats further eroded public trust in parties. The agreement raised serious issues of democratic values, separation of powers, the Executive, Legislature and Judiciary.

They, however, believe their glorious past helped them overcome the loss and regain fresh trust in the poll of November 19, 2013.

Nevertheless, from a historical perspective, political parties have been instrumental in fighting for freedom through violence and nonviolence, and mobilizing people for independence and democratic values: multi-party system, parliament, and rule of law over the past seven decades. This contribution has been appreciated by the historic 2006 -November -21 -(2063 -8-5 B.S.)- Peace Accord which, at the outset, expresses respect for “ the people's mandate expressed in favour of democracy, peace and progression

631. Nepal Interim Constitution 2063, Article 142-1

632. Nepal Interim Constitution 2063, Article 12

633. Association Registration Act 1976; National Directorate Act

634. Nepal Interim Constitution 2063, Part 18, Articles 141-1-3; Article 142-1-6

635. Political Party Registration Rules 2007

636. Election Commission Act 2007

637. Interview with an office bearer of apolitical party on October 10, 2013

638. Interview with a senior lawyer in Kathmandu on October 15, 2013

639. Interview with a former member of CA on October 15, 2013

640. Election Commission Act 2007, Electoral Offences and Punishment Act 2013, Election to members of CA Act 2013

641. Interview with a senior lawyer on November 10, 2013

through the historical struggles and people's movements launched by the people of Nepal at various times since before 2007 (1951)."

The political parties have played a historic role in ending decade long violent conflict through the Peace Accord, restoring parliament, working out The Interim Constitution of Nepal 2007 to administer the country as per law, organizing the Constituent Assembly election 2008 as per the Constitution, structuring the people-elected House and operating it in order for four years, changing Nepal from the Monarchy to the Republic and restoring the Constituent Assembly through election to finish the task of drafting constitution and complete peace process in 2014.

The Table below presents the indicator scores which summarize the assessment of political parties in terms of their capacity, their internal governance, and their role in the integrity system of Nepal. The remainder of this section presents a qualitative assessment for each indicator.

Overall Pillar Score: 46/100

Dimension	Indicator	Law	Practice
Capacity 63/100	Resources	75	50
	Independence	75	50
Governance 38/100	Transparency	50	25
	Accountability	50	25
	Integrity Mechanism	50	25
Role 38/100	Interest aggregation and representation	50	
	Anti-corruption commitment	25	

Structure and Organization

There are currently over 123 political parties operating in the country.⁶⁴² Thirty of them have representation in the 601-member-Constituent Assembly elected on November 19, 2013. Ten parties managed to make their candidates win the First Past the Post direct election held in 240 constituencies. Thirty of the 123 political parties got their candidates elected through Proportional Representation System election. No party has a majority in the CA.

The leading party, Nepali Congress, has 196 members including 105 directly elected members. The rest are elected under Proportional Representation System. The CPN UML has 175 members in the CA including 91 directly elected. The UCPN-Maoist has 80 members including 26 directly elected. The Rastriya Prajatantra Party Nepal has 24 members in the CA, all of whom are elected under PRS. Forum Loktantrik has 14 members, four of whom have been elected directly. Rastriya Prajatantra Party has 13 members with 3 directly elected. Tarai Madhesh Loktantrik Party has 11 members including 4 directly elected. MJF Nepal has ten members including 2 directly elected. Sadbhavana Party has 6 members including one directly elected. Nepal Majdoor Kisan Party has four including one directly elected. Tarai Madhesh Sadbhavana Party has 3 including one directly elected.

The number of parties which got registered and received symbols for 2008- Constituent Assembly election was 74. 25 of them had representation in the CA dissolved on May 27, 2012; some split and the number of parties having representation in the CA rose to 35 in four years.⁶⁴³ The big four – UCPN-M, NC, CPN UML and Madhesh Forum have organizations based throughout the country. The CPN-Maoist (Mohan Vaidya)-led 33-party alliance, the Federal Democratic Front led by Upendra Yadav and the Federal Socialist Party Nepal led by Ashok Rai have extended their organizations throughout Nepal in recent months. Ten others also claim country-wide base. Some are known as regional. A number of parties are in existence in name and signboard only. Fight for power – retaining power any way when in power or accessing it any way when in opposition – has been a driving feature of Nepali political parties over the past five years.⁶⁴⁴

642. Nepal Election Commission statistics of October, 2013

643. Statistics published in CA publication in May 2012

644. Journalist ShirishBallav Pradhan speaking at a public forum held in Kathmandu on March 3, 2013

Political parties have built their organizational structures from the village to the district, zone, region and central level. They have trade unions among professionals, students, youths, farmers, women, labourers, etc. Some are mass-based parties while others particularly the leftist parties are cadre –based.

Assessment

Resources (law)

Score: 75

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCIVE TO THE FORMATION AND OPERATIONS OF POLITICAL PARTIES?

The legal process is to apply for registration in the Election Commission presenting details about the constitution, manifesto, rules of the political party, name, central office-address and names and addresses of the members and other office bearers of the party. A petition with the support and signature of at least ten thousand voters is also required for the purpose of registration of a party for election. There are some legal conditions on party ideology which, in other words, could be taken as restrictions: it should be democratic, disciplined and inclusive, it should provide for election of office bearers of the party at all levels at least once in every five years; it should follow the spirit and essence (competitive multiparty democratic system of governance for the federal democratic republican state) of the Preamble of the Interim Constitution of Nepal, 2007.⁶⁴⁵

The freedom of association has been guaranteed by the Constitution and a number of laws have been made for strengthening it. Political parties cannot be banned by law. They could face action if they fail to observe specific laws. The Interim Constitution of Nepal 2007 has devoted a section – Part 18 – on political parties and their role, mode of registration. The political parties can start functioning immediately by having an ad hoc committee consisting of founders and five office-bearers. But for registering a political party in the Election Commission, signatures and support of at least ten thousand voters are a requirement. Political parties could go to court for justice if they face a situation of deregistration or denial of registration by using the constitutional provision for freedom of association and Article 141 that specifically prohibits imposition of restrictions on political parties.

There are no restrictions on the activities of political parties. Their freedom to organize campaigning and internal democratic decision-making has been fully honoured.⁶⁴⁶ The state does not provide financial subsidy to parties. However, there are some specific in-kind-subsidies, telecommunication facilities and tax incentives for the parties⁶⁴⁷. The issue of not making political parties dependent on private donors crops up in political discussions from time to time but no law has been made to this effect.⁶⁴⁸

Resources (practice)

Score: 50

TO WHAT EXTENT DO THE FINANCIAL RESOURCES AVAILABLE TO POLITICAL PARTIES ALLOW FOR EFFECTIVE POLITICAL COMPETITION?

The financial status of political parties, according to political analysts, could be termed as a black box in Nepal.⁶⁴⁹ Although some talk about donations as contributions made by members, friends, well wishers or supporters, nothing specific is made public. This applies to opposition parties, small and new ones as well. The funding sources of political parties are mainly industrial business community, wealthy individuals and donation by well wishers.⁶⁵⁰ The reports that parties publish on occasions do not have clear cut specification of funding; they mention it generally under the category of donation by supporters.⁶⁵¹ Political

645. Part 18 of the Interim Constitution of Nepal 2007

646. Nepal Interim Constitution 2063 Article 141-1

647. Interview with a senior official of Finance Ministry on August 5, 2013

648. Interview with a political analyst attached to a national daily newspaper on September 4, 2013

649. Interview with a freelance political analyst on September 4, 2013

650. Interview with three senior leaders of three big parties on September 6, 2013

651. Parties' reports published after their big gatherings

parties are given equal access to air-time during campaigns by the government media. Both media people and politicians have the impression that political competition is very effective despite variations in their financial resources. “Had it not been so, the Constituent Assembly election in 2008 would not have elected representatives of 25 parties,” they explain adding “the position of the big four parties – UCPN-M, NC, CPN UML and Madhesh parties- itself suggests effective competition.”⁶⁵² The election of Constituent Assembly on November 19, 2013 also indicated political competition among three big parties Nepali Congress, CPN UML and UCPN-Maoist. Seven other parties could also make their candidates win the direct election on FPTP system and thirty parties got their candidates elected under the PR system. This indicates the presence of political competition.⁶⁵³

Independence (law)

Score: 75

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF POLITICAL PARTIES?

The relevant legislation regarding state monitoring/investigation/dissolution of political party activities is found in the Preamble of the constitution. Parties cannot challenge the spirit expressed in it. Laws of Election Commission (EC Act 2047 B.S., Poll crime and penalty Act 2046 B.S., State Offence Act 2049 B.S.) particularly those on registration and campaigning also apply to the task of monitoring. The state authorities cannot ban political parties but they can take action against those breaking laws. Various constitutional bodies can also initiate investigation in case political parties do not follow laws. The government has provisions for oversight of political parties for protecting public interests. There are, however, no regulations allowing for mandatory attendance by state in political party meetings. The political parties are given supreme power to hold their meetings in chamber and in ways they consider most useful for them.

Independence (practice)

Score: 50

TO WHAT EXTENT ARE POLITICAL PARTIES FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN THEIR ACTIVITIES IN PRACTICE?

In the last five years no political party has been dissolved or banned. There have been some isolated cases in which the state has prohibited certain activities of political parties. The state has also not taken any action against any political party. There are examples where governing parties' cadre have harassed or attacked (from murder to injury) on different occasions the opposition parties' leaders and cadre.⁶⁵⁴ Authorities pursue a friendly way of treating parties in power but follow a different style in handling issues with parties outside power. There is no chance of equal treatment from authorities, said a politico adding “the authorities are highly power-sensitive.” The arrest or detention of political party members is rare. There are instances where authorities have not been able to arrest party cadre accused of serious crimes. A proper and impartial investigation is pledged by the state but seldom pursued. There are instances where the state machinery has acted with double standard (one for governing party and the other for parties in opposition).⁶⁵⁵

652. Focus group discussion with officials of parties on January 12, 2013

653. Interview with four senior leaders of the four big parties in new CA on December 20, 2013

654. Interview with four senior leaders of four big parties

655. NICSA interview with opposition leaders on January 10, 2013

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE REGULATIONS IN PLACE THAT REQUIRE PARTIES TO MAKE THEIR FINANCIAL INFORMATION PUBLICLY AVAILABLE?

There are comprehensive regulations governing the financial accounts of political parties. They require disclosure of information on government subsidies and on private financing at regular and clearly defined intervals.⁶⁵⁶ There is a constitutional provision: the parties ensure transparency and make their financial accounts public during annual assembly and before the expiry of term of elected officials. The parties are legally required to make their financial accounts transparent to the party-body and the public through internal communication channel and the mass media including website if they are run democratically.⁶⁵⁷ It is compulsory for political parties to update the Election Commission on campaign funding and other electoral expenses days after the polls. Laws on the association, political parties, donation, local bodies, election are applicable to political parties in making their organizations legally transparent.⁶⁵⁸

Transparency (practice)

Score: 25

TO WHAT EXTENT CAN THE PUBLIC OBTAIN RELEVANT FINANCIAL INFORMATION FROM POLITICAL PARTIES?

Political parties do not make financial information publicly available. They simply ignore the law. The public, the media and others also find information inaccessible. A senior journalist complained “the law demands transparency in the party but the office bearers make financial matters particularly donations from the public and private sources, and party expenditures a top secret. Whatever leaks from the party office or whatever gets disclosed by parties is not sufficient for ensuring transparency.”⁶⁵⁹

The parties are not pro-active in making the public aware of such information. They have to present an audited financial report at their convention in accordance with party-statute. This, they do, in a very formal manner. But on the basis of that report they claim to be transparent. There is a tendency to withhold information from the Election Commission. Because of non-transparency on financial matters, cadres inside the party and politicians outside the party always develop some sort of suspicion on party –finance. Many exaggerate matters and provide room for kite flying on party finance. Moreover, critics accuse some parties of financial help of trade lobbies inside and outside the country. A few point the connection between the party-finance and foreign governments.⁶⁶⁰ The parties, leaders and cadre dismiss such viewpoints or criticisms or accusations as motivated by a desire to make the party concerned unpopular. Leaders in general ignore the media criticism.⁶⁶¹

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS GOVERNING FINANCIAL OVERSIGHT OF POLITICAL PARTIES BY A DESIGNATED STATE BODY?

The Election Commission legally requires financial reports from parties during and between election periods. All types of finances have to be accounted. But there are many loopholes, said a senior lawyer. Because of this many financial matters are settled by top leaders or high officials and they are not considered as accounts to be audited. The provision of sanctions for not submitting the finance –reports is in place.

656. Political Parties Act 2002

657. Nepal Interim Constitution 2007 Article 142

658. Electoral Act 2008

659. Interview with a senior editor of national daily on September 4, 2013

660. Interview with a former Speaker of Parliament on September 2, 2013

661. Press statements by political parties published during 2010-13

The Election Commission has developed a standard format for parties' election expenses. It covers both donations and expenditures. The statutes of all parties and the practices of general convention of parties also emphasize the legal dimension of accountability and point out the party concerned should present the true financial picture before party cadres and the public.

Accountability (practice)

Score: 25

TO WHAT EXTENT IS THERE EFFECTIVE FINANCIAL OVERSIGHT OF POLITICAL PARTIES IN PRACTICE?

The parties' submission of financial reports to a designated body during and between elections is not regular. The mechanism to ensure the accuracy of the parties' financial reports is not in place. Political parties claim the financial reports they present are accurate. Officials do not question it. People, however, have the impression that the submission of financial reports fulfills the legal formality. In all parties in the Legislature Parliament, there is a group which is demanding financial transparency in all party financial matters.⁶⁶² But they are not able to press the leadership to fulfill their demand. They voice their concern in a ritualistic manner. "This cycle of calling for financial transparency and not being heard has been going on for years together," say cadres of parties in private conversation. Party discipline or fear of party action does not allow them to go public on this.⁶⁶³

Leaders in their expression of commitment to the cause of party or in their acceptance speeches on election to high post mention, without fail, that they would make the party transparent particularly in financial matters.⁶⁶⁴

Integrity (law)

Score: 50

TO WHAT EXTENT ARE THERE ORGANIZATIONAL REGULATIONS REGARDING THE INTERNAL DEMOCRATIC GOVERNANCE OF THE MAIN POLITICAL PARTIES?

All political parties have comprehensive regulations on the election of the party leadership. Their statutes make provisions for ensuring democratic governance. The parties have rules and regulations for members and office-bearers of various committees.⁶⁶⁵ They are required to hold periodic election (within at least five years), of office bearers of all levels.⁶⁶⁶ The parties should be inclusive and its membership should reflect it.⁶⁶⁷ They must take seriously change and transformation. The parties are required to have special disciplinary rules and regulations.⁶⁶⁸

All have constitutions, hold general convention and elect leaders for a given period. Although they all claim their central committee or core committee takes final decisions, most follow a leader-centric approach making the core committee just a formality. All claim to be transparent and open but none of them provide information about the funds that parties receive and crucial policies that the parties follow at times.⁶⁶⁹

662. This point, according to media reports (2010-11), gets expressed as and when political parties hold high level discussion on serious party affairs. Some cadres have been found to be accusing top leaders of not handling finance with a sense of responsibility.

663. NICSA interview with party cadres on January 10, 2013

664. NICSA- literature review of speeches of eight elected high officials of political parties including the big four during 2009-11 A.D. and 2012-13 period

665. NICSA literature review of the statutes of 25 parties including the big four

666. Nepal Interim Constitution 2007 Article 142 -3 b

667. Nepal Interim Constitution 2007 Article 142 -3 c

668. Nepal Interim Constitution 2007 Article 142 -3 d

669. NICSA interview with one senior leader each of big four parties and those of 4 small parties on March 5-7 period, 2013

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THERE EFFECTIVE INTERNAL DEMOCRATIC GOVERNANCE OF POLITICAL PARTIES IN PRACTICE?

Most political parties in Nepal are in practice leader-centric, said a national daily political analyst. "Some times people get the impression that the top leader himself is the party," they observe. Selection of candidates for internal election is determined in most cases by leaders. There could be some exceptions in this practice. Analysts have however seen a change in the practice of the parties over the past few years. The demand of youths in the party has compelled leaders to adopt democratic governance.⁶⁷⁰

Almost all of the old generation of leaders of parties have been mobilizing the party through control while the new generations are pressing for democratic functioning of the party. Old leaders are facing this day in and day out. The youths are demanding more representation, more participation, more influence in decision making, and more democratic debate with a critical approach. Young Turks say they will ultimately witness democratic governance in their parties.⁶⁷¹ One of the reasons for the emergence of factions inside most parties is:- the pressure from youth for a more effective role in policy making under a mechanism of internal democratic governance.

The regulations are highly democratic in nature. The current leadership of all big four parties including that of UCPN-Maoist is the result of democratic elections inside the party: there was in-party competition and full-fledged voting for all posts including the top ones. (The UCPN-M was involved in a decade – long violent conflict from 1996, it had to choose a different mode of electing leadership. Yet it had organized various convention-type meetings of party cadres from time to time on a regular basis. It continued the practice even after the conflict but in February, 2013 it organized 7th General Convention and elected new leadership. Another Maoist party which broke away from UCPN-M also did the same in 2012 after the split.)⁶⁷²

Other parties have also held conventions as per the statutes. There is a democratic tradition in the selection of candidates for in-party election. The decision making process is also democratic. Almost all parties follow the party-statutes in this regard. Serious decisions such as supporting the extension of the tenure of the Constituent Assembly, supporting or opposing the budget, voting for or against a prime ministerial candidate, backing the party to join or not to join the government have been taken after completing the due process inside the party.⁶⁷³

Interest aggregation and representation

Score: 50

TO WHAT EXTENT DO POLITICAL PARTIES AGGREGATE AND REPRESENT RELEVANT SOCIAL INTERESTS IN THE POLITICAL SPHERE?

There are political parties which are stable and are pursuing distinct political ideologies. Among the big four, UCPN-Maoist is a leftist party following Maoism participating in multi-party parliamentary politics. Nepali Congress is a democratic socialist party committed to a multi-party parliamentary democracy. CPN UML is also a leftist party practicing multi-party parliamentary democracy. Among Madhesh Parties some are leftist and are more or less close to UCPN-M while others are democratic like the NC.⁶⁷⁴ Small parties: Rastriya Janashakti Party and Rastriya Prajatantra Party are democratic parties while Nepal Majdoor Kisan Party is a leftist party dedicated to the cause of farmers and labourers.⁶⁷⁵ Of the 32 parties represented in the dissolved Legislature Parliament some pursued democratic principles or leftist doctrine while many were in between.⁶⁷⁶

670. NICSA interview with media political commentators

671. TIN NIS Research Team's conversation with leaders and youths of some 15 parties on different dates of August and September, 2011

672. Publications of political parties (2012-13)

673. Media reports of 2010-11

674. NICSA literature review of the commitment-papers of big four political parties in August 2013

675. Interview with a political analyst of a vernacular weekly on August 10, 2013

676. NICSA literature review of the commitment –papers of political parties represented in the dissolved Constituent Assembly in March 2012

A senior political leader commented that no specific interest group dominates the political parties. There are, however, some leaders known for their links with special interest groups including traders and contractors. There are accusations that some parties have clientelistic relationships with mafias attached to land transactions, smuggling, drugs and human trafficking.⁶⁷⁷ But this has never been duly proved publicly.

People have faith in political parties. That is why they have backed their programmes. Twenty years ago they made the People's Movement I successful under the joint leadership of democratic and leftist parties; restored multi-party parliamentary democracy which was banned by the king for 30 years. People got an opportunity of participating in three parliamentary and two local level elections to elect governments at the central level and local levels in 1990s thanks to the parties. People once again expressed their trust in political parties as they contributed to the success of 2005-People's Movement II for doing away with Monarchy and reintroducing multi-party democracy. They participated in the Constituent Assembly poll under the leadership of political parties in 2008 and also in 2013.

Political parties have been able to aggregate and represent social interests in varying ways. Various reforms introduced over the past four years could be called the agenda of the political parties.⁶⁷⁸ Among them are: 33 % representation of women in all political bodies, changes in laws for guaranteeing gender equality, untouchability, discriminations, special stipend for senior citizens, special inclusive provision for the marginalized, women, Madheshis, members of indigenous communities, recognition of various ethnic communities, respect for their languages, provision for republic, federal, and secular state, etc.⁶⁷⁹

At present people's trust in political parties has touched rock-bottom because of their behaviour over the past four years. The Constituent Assembly has not been utilized by political parties as mandated. They have used it as playground for accessing power. They pledged a great deal, raised people's aspirations, brought about political changes in the state of affairs and in the public sphere. But they failed to make peace sustainable and write the constitution. Political parties particularly the largest single party UCPN-M and the other three NC, CPN UML and Madhesh parties have failed to preside over the changes they introduced over the past four years.⁶⁸⁰ Yet people are seen optimistic about the parties' delivery of sustainable peace and working constitution. Because of this optimism, they participated in the 2013-November – election enthusiastically (78% turn-out), and elected a new Constituent Assembly giving political parties one more opportunity to deliver.

Anti-corruption commitment

Score: 25

TO WHAT EXTENT DO POLITICAL PARTIES GIVE DUE ATTENTION TO PUBLIC ACCOUNTABILITY AND THE FIGHT AGAINST CORRUPTION?

Issues of public accountability and the fight against corruption constitute parts of the manifestos of political parties.⁶⁸¹ A general review of the manifestos of most parties during the Constituent Assembly election shows commitment in words to the issues.⁶⁸² They are the two dominant agenda in the political leaders' public speeches. All Nepali politicians, people say, talk accountability but evade it in practice. Similarly they present themselves against the corruption but fail to perform clean. The moment they join the opposition, they see corruption in the government but fail to control it while in power.⁶⁸³

677. Interview with a political leader on August 15, 2013

678. Interview with a former member of CA on August 15, 2013

679. A discussion paper presented at a seminar on achievements of CA held in Kathmandu on July 25, 2013

680. Expressions based on the interview with people assembled in front of the Constituent Assembly in mid-August, 2011 for pressing political parties to mind the people's mandate.

681. Reference to election manifestos of 14 political parties during the Constituent Assembly poll

682. NISCA – literature review of manifestoes of ten political parties in 2008, 2013 elections

683. NISCA interview with senior politicians in Kathmandu on January 2013

MEDIA

Summary

Nepal has progressive and liberal laws governing the establishment and operation of media entities. The diverse media and its various outlets make it possible for people to be informed about contemporary events and activities of government, and political parties. In practice, the media remains less transparent, accountable and independent. The degree of independence varies across different types of media as well as between those based in the capital Kathmandu and those in the districts. Print media, TVs, radio and online outlets are free to operate in accordance with the law. In practice, however, there is self-censorship enforced knowingly or unknowingly by loyalty or tilt of the owners towards power blocs – political or business.

The government does not practice censorship but it makes certain that the media does not harm its interest. Yet Nepali media with its historical legacy of fighting for freedom, free expression and democracy, displayed courage in standing against the government at times and exposed cases of corruption on several occasions. Because of these, Nepali media has compelled the government to change its policies. But it has not been able to resist and investigate for long because of various pressures. Neither has it been able to be proactive in pursuing public journalism on a sustainable basis. The media on the whole provides the public with a variety of views but its ability to provide unbiased coverage of developments – political, economic and social - is undermined by the deep polarization of the political landscape.

Transparency in Television ownership and of some other media entities remains a major area of concern. Lack of self-regulatory mechanism has produced problems in terms of accountability and integrity of the media. Media's negligence in following the journalists' code of conduct and its intrusion into privacy of citizens creates difficulties very often. Financial problems hamper Nepali media industry on a regular basis. Advertising revenue accrue to only those with connection to power or big business. Issues of protection of privacy of individuals, enforcement of high journalistic standards, freedom of the press, the right to investigate issues in the public interest emerge in public discussion from time to time but are not properly addressed by the media, or the government or the other stakeholders.

The Table below presents the indicator scores which summarize the assessment of the media in terms of its capacity, its internal governance, and its role in the Nepali integrity system.

Overall Pillar Score: 58/100

Dimension	Indicator	Law	Practice
Capacity 63/100	Resources	75	50
	Independence	75	50
Governance 54/100	Transparency	50	50
	Accountability	50	50
	Integrity	75	50
Role 58/100	Investigate and expose cases of corruption practice	50	
	Inform public on corruption and its impact	50	
	Inform public on governance issues	75	

Structure and Organization

Nepali media is a composite of newspapers, Radio, TV, periodicals and online news entertainment outlets serving 75 districts of the country.⁶⁸⁴ Television is the most popular and influential media in Nepal. 15 television channels including two government owned Nepal TV and NTV-2 offer news and entertainment to the people round the clock. Radio, particularly the FMs (Frequency Modulation) reach a maximum number of the population in the country. Some 341 broadcasting companies offer radio services in the private sector. Radio Nepal, a government owned national broadcaster, offers Short Wave, Medium Wave and FM covering 86 % of the population and 70 % of the geographical areas.

The number of newspapers including the government owned daily, The Gorkhapatra, registered and published in the country stands at 6,181. Among them are: 494 dailies, 2,346 weeklies, 1,841 monthlies and others, fortnightlies, bi-weeklies, fortnightlies, quarterlies, etc.⁶⁸⁵ A few more are in the pipeline. Very few are regular in publication.⁶⁸⁶ The newspapers are published mostly in Nepali and English. There are also papers published in other languages: Newari, Maithili, Hindi, Bhojpuri, Sanskrit, Urdu, and Tibetan. The oldest newspaper The Gorkhapatra, a vernacular Nepali daily, publishes supplements in 30 different languages.

Online news outlets, online newspapers and broadcasts and extensive use of Internet services are new features of modern media in Nepal. The offset press, mobile phone and digital camera have brought new trends in the media. They have changed and facilitated media in Nepal in a very significant manner. They have introduced new ways of advertisement including scroll advertisement.⁶⁸⁷

Assessment

Resources (law)

Score: 75

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCIVE TO A DIVERSE INDEPENDENT MEDIA?

The legal framework has provided ample opportunity for the media to develop independently and in a diversified way over the past twenty years. There are no restrictions to broadcast media entities. There are, however, regulations to obtain a license for going on air. There is room to appeal against a negative decision on application for broadcast media. The broadcasting regulation has provided for government, private commercial and community media. The issue of converting government media into a public service has been under discussion for years. Broadcasters concur diversity has been developed in broadcasting in the last 15 years due to legislation friendly to private radio and television. This has created a climate of competition among the audio media broadcasters and audio-visual media broadcasters.⁶⁸⁸

Entry into the journalistic profession is free. There are no restrictions on starting / establishing print media entities. But there is regulation that it have a District Administration Office registration. Negative decision on application for print media registration can be appealed.⁶⁸⁹

The legal provisions and updated amendments of the past two decades for the media reveals how the Constitution guarantees press freedom and laws facilitate freedom of expression of all forms.⁶⁹⁰ The legislation provides ways to restrict offenses against state-sovereignty, check attempts to harm social fabric by spreading messages based on false facts, propaganda, misunderstanding and hate speech, penalize efforts of defamation and contempt of court, and discourage trends to commit indecency, crimes and corruption.⁶⁹¹ The country has a Right to Information Act and an independent Information Commission⁶⁹². The Right to Privacy law also guarantees any person his or her home, property, document,

684. Gokul Pokhrel, former Chairman of Nepal Press Institute

685. Economic Survey 2011-12, Ministry of Finance, Government of Nepal

686. NICA interview with officials of Information Ministry, GON

687. NICA interview with former Chairman of Nepal Press Council Narayan Sharma

688. Press and Publication Act 2048 B.S.

689. Nepal Government Press policy 2047 B.S.

690. Article 15 of the Interim Constitution of Nepal 2007

691. Article 15 -1 and Libel Defamation Act 2016 B.S.

692. Right to Information Act 2064 B.S.

data, correspondence or matters relating to his/ her character” as inviolable.⁶⁹³ There are also laws for press⁶⁹⁴ and publications and broadcasting⁶⁹⁵. The privilege of parliament has also been guaranteed by law. Journalists’ interests particularly remuneration, work modality and facilities for their work have been protected by the Working Journalists Act 2051 B.S. and Working Journalists Rules and Regulations 2053 B.S.

Resources (practice)

Score: 50

TO WHAT EXTENT IS THERE A DIVERSE INDEPENDENT MEDIA PROVIDING A VARIETY OF PERSPECTIVES?

There are diverse media organizations (print, broadcast and internet) operating in varying degrees of accessibility in 75 districts of Nepal. They are “capable of representing the entire political spectrum in the country. However, they do not reflect the broad spectrum of most social interests and groups.”⁶⁹⁶ Radio is more affordable than print media for people in remote villages while Television has to be termed financially “unaffordable” for most Nepalis.⁶⁹⁷ Only a few media houses have adequate financial resources to be profitable and effective. Majority of media are in a financially vulnerable position.⁶⁹⁸ A few qualified journalists are able to offer variety of perspectives on issues – national and international. Others through experience have acquired expertise and present important perspectives on various issues facing society.⁶⁹⁹

Independence (law)

Score: 75

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF THE MEDIA?

The freedom of expression has been enshrined in the Constitution Article 12-3-a and other laws. There is, however, no clear cut provision for editorial independence in laws. Editorial independence is derived from institutional freedom that media owners enjoy legally. That is why journalists, at times, complain vehemently “press freedom in Nepal is for media owners not media workers including editors.”⁷⁰⁰ There is a distinct law that guarantees access to information. (Right to Information Act 2064 B.S.). A comprehensive libel law is in place.⁷⁰¹ Both private and community media are in operation. Censorship is illegal (Article 15-1). There is no specific legal provision to enable journalists to withhold sources, but they can withhold information through their universal rights under press freedom. Licensing broadcast media is motivated by political interest. It cannot, therefore, be termed “apolitical” in nature.⁷⁰² Licensing focuses on technical aspects of broadcasting, broadcast contents are considered secondary. Because of this, the majority of radio and Television go on air without adequate content preparation for broadcast. Since there is no censorship, the government cannot control information disseminated by the media at any time.⁷⁰³

693. Article 28 of the Interim Constitution of Nepal and codes of conduct

694. Press and Publication Act 2045 B.S.

695. National Broadcasting Act 2049 B.S.

696. NIOSA interview with Gokul Pokhrel, former Chairman of Nepal Press Council

697. NIOSA interview with media analysts

698. Interview with media analysts

699. NIOSA interview with media educators

700. Focus Group discussion with editors in July, 2011

701. Libel Defamation Act 2016 B.S.

702. NIOSA interview with officials of Nepal Press Council on July 22, 2013

703. NIOSA interview with radio owners on July 22, 2013

Independence (practice)

Score: 50

TO WHAT EXTENT IS THE MEDIA FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN ITS WORK IN PRACTICE?

In practice government regulators do not operate independently as oversight units. Some professional bodies: Nepal Press Council and Federation of Nepali Journalists' Associations try to be independent. There is no censorship in practice.⁷⁰⁴ But journalists exercise self-censorship, because of compulsions of personal life and safety. They are not in a position to assert their right to freedom of expression without fear. Previously they were apprehensive of the state's intervention. These days they are under threat from various non-state actors particularly armed groups, mafia, smugglers, traffickers and criminals.⁷⁰⁵

Assaults on journalists under various excuses is a problem threatening the profession. Media persons have been attacked for disseminating information not palatable to them. The law and order officials often fail to protect journalists. This keeps media persons always in fear in the work place. Intimidation and harassment of journalists cannot be termed "common." But media persons are facing assaults from time to time from various quarters and the government does not have the capacity to assure journalists professional safety. The crimes that threaten media freedom are not always duly prosecuted. Usually the government does not set journalists' agendas and editorial stances but there are some that toe the official line. The access to official or unofficial sources is not controlled. The state attempts to control the media through allocation of advertising or subsidies. In many instances, political parties have manipulated media for their programme or goal. Media licenses in paper are issued in a transparent manner. In practice there is pressure from the political sector.⁷⁰⁶

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS TO ENSURE TRANSPARENCY IN THE ACTIVITIES OF THE MEDIA?

The print and broadcast media are legally bound to show ownership and structural organogram.⁷⁰⁷

Both the print media and broadcast companies are required to disclose ownership.⁷⁰⁸ The media have rules on disclosure of information on staff, reporting and editorial policies.⁷⁰⁹ But they do not cover all aspects on transparency of the media and some provisions contain gaps.⁷¹⁰

Transparency (practice)

Score: 50

TO WHAT EXTENT IS THE TRANSPARENCY IN MEDIA IN PRACTICE?

According to research, even when media disclose ownership and staff, their institutional structure and policies are not transparent.⁷¹¹ Information on their finances is non-transparent. So is information on salary scales, investment, advertisement revenue, profit or loss, audience and circulation figures.⁷¹² Because of this lack of transparency, the actual state of the media industry is not known. Whatever figures the public have could be termed just estimates.⁷¹³

704. Interview with an office bearer of the Federation of Nepali Journalists on July 20, 2013

705. NICSA interview with office bearers of the Federation of Nepali Journalists on July 20, 2013

706. Expressions made by journalists at a Kathmandu seminar on media situation on January 3, 2013

707. Press and Publication Act 2048 B.S. (1992 A.D.); National Broadcasting Act 2049 B.S. (1993 A.D.)

708. Press Council Act 2048 B.S. (1992 A.D.)

709. Working Journalists' Act 2051 B.S. (1994 A.D.)

710. Interview with an editor of a national daily on September 25, 2013

711. Media Research on Trends of Nepali Press 2012, Kantipur City College, 2012

712. NICSA interview with officials of media houses

713. Interview with Gokul Pokhrel, former Chairman of Nepal Press Institute

The big media particularly corporate-type provide a comprehensive plan for structuring the institution and organize it in a professional way. In the process they disclose their staff, marketing, reporting and editorial policies.⁷¹⁴ But the medium and small size media do not do so. Their structure and policies are determined by owners or publishers or editors or broadcasters in individualized or team manner. The best transparency of the media is the output it prints or broadcasts, say media analysts.

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE LEGAL PROVISIONS TO ENSURE THAT MEDIA OUTLETS ARE ANSWERABLE FOR THEIR ACTIVITIES?

There are government regulators under the Department of Information and Ministry of Information and Communication. There are also professional oversight bodies such as Nepal Press Council, Federation of Nepali Journalists' Associations and various media institutions. There is, however, no specific Nepal Press Council-type Broadcasting Council. Their mandate has been described in the laws related to them. As for example, the role and functions of Nepal Press Council have been explained in the Nepal Press Council Act 2048 B.S. The mandate outlines the scope of NPC thus: it has to create an environment for professional journalism; it has to codify and implement the code of conduct for journalists not to abuse press freedom; it has to develop amicable relationship between the press and the government; it has to promote public morality and honour of citizens; it has to make efforts not to allow external factors affect press freedom and dignity of journalists. The FNJ is also the apex body of journalists dedicated to the cause of journalism and journalists. It is an elected body of journalists and looks after, among other things, the associational matters of media sector.⁷¹⁵

There are mechanisms under Nepal Press Council for an individual or an agency subject to media criticism to reply and inform the public of his/its opinion on the issue. Media are legally required and ethically obliged to correct erroneous information in a timely manner. Moreover, it should be done in a manner that is easily noticeable by the public.⁷¹⁶

Accountability (practice)

Score: 50

TO WHAT EXTENT CAN MEDIA OUTLETS BE HELD ACCOUNTABLE IN PRACTICE?

The governmental regulators or professional oversight boards such as Nepal Press Council have in practice not been able to make the media accountable. Media are generally negligent about the right of reply. They become responsive only after outside agents press them to be accountable for what they printed or broadcast. Although media interactions of various sorts take place in the country, the media do not have platform to exchange views between reporters and the public. Media have, however, started being conscious and responsive to the audience in recent years. Yet they have not yet developed a full fledged audience-centric approach. Nepal's media is dominated by suppliers of information.⁷¹⁷

The concept of ombudsmen in the media is non-existent. Media users always complain that the media shows indifference towards correction of erroneous information as necessary and in a timely manner. Most users – readers, viewers, and listeners - say “we have to depend on other media to correct falsehood printed or broadcast by one media.

The media which are politically or commercially motivated do not simply care for the complaint of those who do not figure in their political/commercial network connection.” Some readers and viewers say “Nepali media are quite free but not responsible as per the democratic values of nonpartisan media.” Media people do not appreciate the view and dismiss it as the expression of those who are simply frustrated.

714. Nepal Press Council Act 2048 B.S.

715. NICSA interview with media analysts

716. Press Council Act 2048 B.S. (1992 A.D.)

717. NICSA interview with newspaper editors

A media-victim of Kathmandu who suffered from what the media erroneously printed and broadcast in their outlets said: "Media as the watch dog of the society should self-introspect regularly and evaluate their responsibility to inform the Nepalese society or admit culpability to society for disseminating wrong information, awareness and vulgar entertainment." Another victim of the media in Janakpur shared a similar story. Likewise a media-victim of Bharatpur complained against inaccurate press reporting about her and there was reluctance of the press to rectify it. A media-victim of Bajhang complained against biased reporting about him by the press.⁷¹⁸ They underlined the need for all media to listen to grievances of audience and respond appropriately in time. "Unless this is done press freedom would only benefit the media, not the public in the society."⁷¹⁹

Integrity mechanisms (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF MEDIA EMPLOYEES?

There are provisions for terms of references, codes of conduct and rules and regulations developed by individual media institutions. They are comprehensive but require updating as per the demands of time and information technology. There are sector wide code-of ethics for different types of media. The codes of conduct are voluntary while the rules and regulations are mandatory for a particular media. The concept or practice of monitoring committees as a mechanism is nonexistent in Nepal. But ethical perspectives are generally defined by those who own the media. One senior media employee said: "If the working journalists' Act is implemented, the integrity of media employees will be strengthened."⁷²⁰

Integrity mechanisms (practice)

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF MEDIA EMPLOYEES ENSURED IN PRACTICE?

Journalists particularly working journalists generally follow the codes of conduct. But they deviate from it as the media owners begin instructing them directly or indirectly to function in a prescribed partisan manner. There are some professional organizations which aim at defending journalists and media ethics. But they simply lack teeth to be effective in what they intend to do, complain media workers. Journalists say "they do not accept gifts or hospitality in return for news coverage." In practice in the name of promoting media cooperation, the use of gifts or hospitality is increasing in various forms. People also have the impression that it is encouraging the trend of media bias towards those who give gifts or offer hospitality as against those who simply disseminate information. It has adversely affected the cause of impartial reporting. "It has promoted the culture of sponsored reporting."

The tendency to use multiple sources of information is found among working journalists. They are also conscious of the need to report both or all sides of the news, events or ideas, etc. There is however much to do in the field of using sources while collecting information and reporting the same through media-outlets.⁷²¹

718. Interaction with media victims in Kathmandu, Janakpur, Bharatpur, Bajhang, Mahendranagar, and Dhangadhi in August, 2011.

719. NICSA interview with Gokul Pokhrel, former Chairman of Nepal Press Institute

720. Interview with four employees of two national dailies and four employees of one TV Channel and one FM Radio on August 15, 2013

721. Media Research on Trends of Nepali Press 2012, Kantipur City College, 2012

Investigate and expose cases of corruption practice

Score: 50

TO WHAT EXTENT IS THE MEDIA ACTIVE AND SUCCESSFUL IN INVESTIGATING AND EXPOSING CASES OF CORRUPTION PRACTICE?

Investigative journalism, in theory, is considered to be a key part of media-functions in a country. In practice, however, reporting sections of media do not provide specific provision for this. Most expect investigative journalism is undertaken by journalists. There are times when the media brings out investigative reports exposing corruption and other irregularities. But it is not a regular feature because of an absence of a focus on investigative journalism by the news/production rooms of mass media institutions. There are journalists who practice investigative journalism and have done well over the years. Some belong to dailies while others are attached to weeklies. There are some radio and TV journalists who also present investigative stories from time to time. However, no media can afford a separate investigative section in the country at present.⁷²²

As for investigative journalism in Nepal, there is a paradox: As there are many instances of corruption, irregularities, and abuse of authority in various sectors of society, so there is wide scope for investigative journalism. But since there is a culture of impunity and weak law and order, the corrupt are powerful and protected and they do not allow investigative journalism to grow.⁷²³ This reflects in the trend of the media of publishing first corruption reports with a big bang and great enthusiasm. Very often their initial corruption - reports rock the whole society. Then the spirit fades as time passes by. Media is unable even to mention a word as a follow-up on the story because of threats or retaliatory actions against the journalist or media.⁷²⁴ Media, on occasion, has reported on different types of corruption: smuggling of sandalwood, gold, body-parts or horns of rhinos and skin and body parts of tigers and other precious wild animals, irregularities in banks, abuse of authority by law enforcement officials, government offices and courts etc.⁷²⁵ Most turned out to be no more than one time reportage. Journalists (12 in 2010 and 14 in 2011 in various parts of the country) reported corruption have been attacked, threatened, displaced or penalized in an indirect manner.⁷²⁶

The trend to discourage journalists from investigation of corruption cases has grown especially over the past four years when, people say, corruption has risen under the protection of politicians or political groups of one party or the other. Absence of an elected leadership in local government and frequent change of government at the centre have contributed to this, say media analysts adding "the prevailing environment of fear from the corrupt has compelled journalists to pursue self-censorship in matters of corruption, irregularities, and abuse of authority. Or they are compelled to report corruption only on the basis of the information fed or press release that anti-corruption bodies or law enforcement institutions provide from time to time as per their convenience." ⁷²⁷

Inform public on corruption and its impact

Score: 50

TO WHAT EXTENT IS THE MEDIA ACTIVE AND SUCCESSFUL IN INFORMING THE PUBLIC ON CORRUPTION AND ITS IMPACT ON THE COUNTRY?

Media has regarded corruption as an issue for coverage. As and when an opportunity arises, they launch a campaign against it through news programmes, interviews, editorials, op-ed pages, follow-ups, anchor-news on the front page and various columns.⁷²⁸ In the process they become instrumental in building public opinion on ways to curb corruption. As for media programmes, they are organized in a professional manner and have been instrumental in creating a climate for anti-corruption thinking and behaviour.⁷²⁹ For

722. Paradarshi, Paush 2069 B.S. (2012 A.D.)

723. A discussion paper on Investigative Reporting presented at a programme organized in Nagdhunga, Kathmandu by National Media Development Center on September 26, 2013

724. Interview with an editor of a vernacular weekly on September 26, 2013

725. NICSA literature review of news reports in three national dailies on smuggling during February-May, 2013

726. Media reports during 2010, 2011

727. NICSA interview with journalists covering corruption

728. Interview with a senior producer of a TV Channel on September 2, 2013

729. Interview with a national daily columnist on September 2, 2013

example, the 2011 September-publicity programme of a Nepali language slogan LET THE CORRUPT ROT (Bhrashtacharilai Keera Paros) printed on T-shirts got wide publicity and drew the attention of many. Media-openness for anti-corruption programmes is a reality in the country.⁷³⁰ Yet much remains to be done for media's anti-corruption drive to have an impact on reducing corruption, said a media analyst.

Inform public on governance issues

Score: 75

TO WHAT EXTENT IS THE MEDIA ACTIVE AND SUCCESSFUL IN INFORMING THE PUBLIC ON THE ACTIVITIES OF THE GOVERNMENT AND OTHER GOVERNANCE ACTORS?

The media – government or private – report government activities regularly. Each ministry's performance over the fiscal year gets wide publicity. The Prime Minister, Ministers and Ministers of State and their speeches, or interviews or visits or observations or meetings dominate the front pages of the print media and prime time news of radio and TV. The plans or strategies of the government also get publicity the moment they are announced. As they proceed through the process of being worked out, implemented and reviewed, they get sufficient press publicity. Media have dutifully reported every cabinet meeting over the past four years. Because of media's interest, the cabinet has assigned a spokesman minister for briefing the media on decisions of cabinet meetings. They are usually informative but not detailed or critical. They basically represent government's version. Media seeks to balance information on government activities through the viewpoints of the opposition and the people in most cases. This according to media analysts is a good practice.⁷³¹

However, media's coverage of governance – issues has not been comprehensive. Many issues on governance have not been addressed by the media. The deteriorating situation of governance in the country has not been reported, say people. Failure of the government in maintaining law and order, delivery of essential services to the public, and negligence in public offices are some of the key problems not addressed by the media for coverage.⁷³²

730. Interview with a publisher of three newspapers on September 2, 2013

731. NICSA interview with four Nepali language Weekly editors on July 26, 2013

732. NICSA interview with a media analyst on July 4 2013

CIVIL SOCIETY

Summary

There is a legal framework which ensures fair registration and operation of Civil Society Organizations (CSO) in Nepal. But civil society is not strong and thriving. It is dependent for financial resources. CSOs rely on foreign donors, local sponsors or businesses. Moreover, CSOs are perceived to have links—open or hidden - with political parties. Although public expectations of civil society are high, civil society organizations have not been able to meet these expectations. The rules to ensure accountability and transparency of CSOs are weak. The integrity mechanisms are also too feeble to ensure compliance with the code of conduct.

Although a few CSOs have emerged active and vocal in holding the government to account and in putting pressure, CSOs have limited capacity to influence the formulation of policies. Various factors: internal weaknesses, lack of capable professionals, absence of a broad social base and links with political parties hinder the performance of CSOs. On the positive side, some CSOs have been instrumental in raising awareness about rights, health, education, advocating changes in beliefs and behavior from the perspective of gender equality, human rights, freedom and as advocates for modernization. There is, however, a challenge to give continuity to their programmes after funding ceases for the project.

The Table below presents the indicator scores which summarize the assessment of civil society in terms of its capacity, its internal governance, and its role within the Nepali integrity system. The remainder of this section presents the qualitative assessment for each indicator.

Overall Pillar Score: 54/100

Dimension	Indicator	Law	Practice
Capacity 69/100	Resources	75	50
	Independence	75	75
Governance 42/100	Transparency		25
	Accountability		50
	Integrity Mechanism		50
Role 50/100	Holding Government Accountable	25	
	Policy Reform	75	

Structure and Organization

The Social Welfare Council and the District Administration Office are the apex bodies that oversee civil societies including NGOs and INGOs in Nepal.⁷³³ Other line Ministries of Nepal Government are also engaged with CSOs in accordance with specific projects they undertake.⁷³⁴ The CSOs operate under a legal framework and a number of policy documents: The Interim Constitution 2007-Section 35, international treaties and covenants, Association Registration Act 1976, the National Directorate Act, the Association Registration Act, the Social Welfare Act 1992, the Good Governance Act, the Civil Rights Act, the Local Self-Governance Act, and various government plans - Interim Three Year Plans - and other policy documents.⁷³⁵

733. Social Welfare Council Act 1992

734. Association Registration Act 1976 and amendments- Section 22

735. NICSA interview in January 2013 with lawyers dealing with CSO cases

Nepali civil societies are found in a number of sectors: the economic sector (Dhikuries, cooperatives, business organizations, commerce associations, users' group, consumers' group, etc.), social cultural areas (Guthi, Manka Khala, Nepal Tamang Ghedung, Mithila Samaj, Kirant Yakthung Chumlung, Thakali welfare committee; etc) and educational informational sector (Nepal South Asia Center, Nepal Foundation for Advanced Studies, Center for the Consolidation of Democracy, Institute for Integrated Development Studies, Federation of Nepali journalists, Nepal Press Institute, Media Point, Sancharika Samooaha, Teachers' Associations, etc.⁷³⁶

Efforts are underway to develop civil society under the umbrella of promotional and protective sector (Trade Unions, Nepal Medical Association, Lawyers' Association, Village Development Committees, District Development Committees, etc.), relief and development areas (Maiti Nepal, Nepal Red Cross, SOS, Family Planning Association, Nepal Netra Jyoti Sangh, etc. Others advocacy groups (Nepal Federation of Ethnic Groups and Nationalities, Nepal Dalit Association, Women's Pressure Group, Indigenous societies, Legal Aid and Consultancy Center, Paribartan Nepal, etc.), civic groups (Human Rights Organization, INSEC, Amnesty, etc), public trusts (Pashupati Area Development Trust, Lumbini Development Trust, Ganeshman Foundation, B.P. Koirala Foundation, Madan, Madan Ashrit Memorial Trust, Manamohan Memorial Foundation, Tanka Prasad Acharya Memorial Trust, etc) are also encouraging the culture of civil society. There are many other civil societies operating under private philanthropic associations.⁷³⁷

The number of NGOs in Nepal is growing rapidly. There are approximately 6,000 NGOs recognized by the Government.⁷³⁸ It is estimated that more than 15, 000 NGO's are working in various sectors in Nepal.⁷³⁹ Both numbers vary at different times.

Most of the NGOs in Nepal are foreign aided while some have been established and supported by the local community. There are a large number of International Non Governmental Organizations that are making a difference in the lives of the people. The NGOs are established with a set of goals and they are working in various sectors: destitute and orphan children, women empowerment, welfare of senior citizens, etc. There are many NGOs registered as women only NGOs. These NGOs work exclusively for their betterment.⁷⁴⁰

There are over 270 INGOs registered and serving the public.⁷⁴¹ They are operating in various parts of the country under various projects. The Association of International NGOs (AIN), formed by INGOs working in Nepal in September 1996, is an important network in the development sector as its members have been implementing various people-centered development programmes throughout the hills, mountains and Terai areas.⁷⁴²

Assessment

Resources (law)

Score: 75

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCIVE TO CIVIL SOCIETY?

The foundation of civil society is the legal framework of the freedom to associate. The Interim Constitution of Nepal 2007 has guaranteed such freedom. Various other laws including Social Welfare Council Act 1992 codified over time are compatible with this freedom.⁷⁴³ The Act makes the Council an oversight body of NGOs.⁷⁴⁴ There are some other Acts which are instrumental in creating an environment conducive to civil society.⁷⁴⁵ The Act related to District Administration Office is another key regulator of NGOs. Registering a Civil Society Organization (CSO), particularly its procedure, is not that difficult, say officials attached

736. NISCA interview with office bearers of CSOs in January 2013

737. NISCA interview with experts of CSO in January 2013

738. Home Ministry Statistics

739. NISCA interview with NGO activists

740. NISCA interview with NGO office bearers

741. Interview with official of Social Welfare Council on September 10, 2013

742. Information collected from the publications on INGO in 2013

743. Nepal Interim Constitution 2063, Part 3 -3 b makes provision for freedom to assemble peaceably and without arms while 3-3 d provides to form unions and associations.

744. Social Welfare Council Act 1992

745. The Association and Organization Act 1977

to CSO. There are options for those who fail to get their CSOs registered: deregistration and rejection can be challenged in the office of registration and in courts. There are some laws that prohibit CSOs to operate without registration.⁷⁴⁶ However, some CSOs are operating without registration. CSOs are free to do advocacy work, and are also free to criticize the government. There are special provisions for taxing the CSO: significant exemptions have been made for them.⁷⁴⁷

Resources (practice)

Score: 50

TO WHAT EXTENT DO CSOS HAVE ADEQUATE FINANCIAL AND HUMAN RESOURCES TO FUNCTION AND OPERATE EFFECTIVELY?

It is common for CSOs to rely on a single donor. However, the trend is to mobilize several donors for projects is increasing.⁷⁴⁸ Since Nepal does not have adequate financial resources at the central and local level, prospects for CSOs to mobilize local funds are limited. Although the concept and practice of volunteerism developed several decades ago, the volunteer base of CSOs in Nepal is not promising. The number of private philanthropic donors is also not promising. CSOs have been able to attract skilled professional staff. Revenues from services, products or rent of assets nominally supplement the income of CSOs; that is why, most CSOs are dependent on donors – bilateral or multilateral.⁷⁴⁹

Independence (law)

Score: 75

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF CSOS?

Citizens are allowed to form and associate in groups regardless of political ideology, religion or objectives.⁷⁵⁰ The bodies that legally oversee NGOs are Social Welfare Council and the District Administration Office; both are legally bound to ensure that the activities of CSOs are not against national security, public order, public health/morals and protection of rights of others.⁷⁵¹ It is mandatory for CSOs to submit an annual report with all financial details and records of activities undertaken to the two bodies. It is also essential for renewing the registration of CSOs as well.⁷⁵² CSOs cannot avoid these legal formalities under the Right to Privacy. The Right applies to the CSOs only to the extent that it does not contravene with the provisions of SWC and DAO. It is not mandatory to have attendance by the state in CSO meetings or membership by the government in their Board.⁷⁵³

Independence (practice)

Score: 75

TO WHAT EXTENT CAN CIVIL SOCIETY EXIST AND FUNCTION WITHOUT UNDUE EXTERNAL INTERFERENCE?

The CSOs are free to operate without undue government interference. There are no cases of government manipulating CSOs to advance its interests. The moment they experience manipulation they discontinue working, say CSO officials. Critics, however, publicly complain that it is not the government but the CSOs that manipulate the government by imposing their policies. One of the arguments is: all 250 INGOs

746. Assembly or Union Act 1949 B.S. – Section-4

747. Social Welfare Act 1992

748. Interview with a senior civil society leader on September 24, 2013

749. Social Welfare Act 1992 – Clause 19

750. Citizens' Rights Act 1955

751. Good Governance Act 2007; Social Welfare Act 1992

752. Social Welfare Act 1992 – Clause 26

753. Interview with a lawyer with expertise on civil society cases on September 3, 2013

operating are employing foreign nationals without fulfilling legal requirements mandatory under Labour Ministry particularly Labour Act 2048 B.S. ; 190 have appointed foreigners as national directors.⁷⁵⁴

During the insurgency of 1996-2006, some civil society actors were intimidated, harassed and attacked by those engaged in conflict and some state officials. They have not received threats over the past five years.⁷⁵⁵ The detention or arrest of civil society actors is rare. In case of arrest, the government has pursued the due process of law through the courts which guarantee impartial investigation.⁷⁵⁶

Transparency (practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN CSOS?

The issue of transparency of CSOs has been discussed publicly in a contradictory manner. People in general do not find them to be transparent. Officials attached to the DAO and SWC also question their transparency. They are displeased in the way CSOs report: "Most of them do not follow the law," one official in DAO said adding helplessly "no action has yet been taken against them."⁷⁵⁷ CSOs claim they have maintained transparency in their reports. They also point out "in every contract we conclude for undertaking projects we follow the standard norm. We even deduct income tax from each remuneration-amount at the source as per the law and hand it over to the government. There should, therefore, be no room for criticizing our transparency and openness in finance."⁷⁵⁸

Researchers also feel there is no transparency in CSOs. "It is difficult to find statistical information particularly on financial details, the amount of money given by donors and the way it has been spent in Nepal."⁷⁵⁹

Associate Professor Tek Nath Dhakal of Administrative Science at Tribhuvan University, Nepal, had written in his 2007-study *Challenges of Civil society Governance in Nepal* JOAAG Vol 2 No1: "various factors such as lack of effective coordination, weak financial base, lack of professionalism, lack of monitoring and evaluation, lack of transparency, lack of commitment among the NGO activists, and also the absence of public surveillance are the key issues for affecting NGO governance in Nepal." Those who discussed CSO in 2011-12 seminars in Kathmandu have been reiterating the same points. Actually the same views were repeated at various symposiums on CSOs in Kathmandu in February 2013.⁷⁶⁰

CSOs provide information on their activities to the general public from time to time. They also feed the media information as and when they organize events particularly their inaugural/concluding functions, certificate distribution etc. Most do through their website and various promotional tools. Some also produce annual reports. As for financial statements, they are not publicly available. Most CSOs' make composition of boards publicly open while some do not.⁷⁶¹

Accountability (practice)

Score: 25

TO WHAT EXTENT ARE CSOS ANSWERABLE TO THEIR CONSTITUENCIES?

The Boards or apex bodies of CSOs provide oversight of organizational activities. Most have provisions for monitoring and evaluation. The projects that CSOs initiate have to fulfill criteria from planning to

754. Nepali Language weekly Nepal dated October 2, 2011 page 26

755. NICSA interview with CSO office bearers in January 2013

756. NICSA interview in January 2013 with lawyers dealing with CSO cases

757. NICSA interview in January 2013 with officials of district office

758. NICSA interview in January 2013 with officials of CSO

759. Interview with a national daily reporter covering CSOs on September 5, 2013

760. Symposium on CSO's contribution to development in Kathmandu on February 5, 2013

761. NICSA interview with CSO officials in January 2013

post-implementation phase. Experts find good practice in framing of the project, its operational plan and evaluation: the provision sketches the road map in a professional manner. A few poorly-resourced CSOs cannot do so.⁷⁶² However, people feel the CSOs undertake projects to either promote themselves or to fulfill their interest.⁷⁶³ Most projects, grass-root people observe, do well as long as the donors are there; the moment they quit the project cannot be continued. Experts point out that a responsible way would be to enable the locals to carry on what the projects intended to do for them. CSO-Boards have not been able to resolve the above gap.⁷⁶⁴

Critics also point out that Nepal government loses nearly half a billion rupees per annum because of its failure to make INGOs operate in accordance with the Labour Act.⁷⁶⁵

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF CSOS ENSURED IN PRACTICE?

Most CSOs are conscious of self –regulation. They have developed codes of conducts to this effect. Researchers have found even sector wide code of conduct for officials and staff, grass root workers, desk workers, and also Board members.⁷⁶⁶ Self regulatory mechanisms are not effective and enforceable, as stakeholders state but those supervised by high officials at the central level are effective and enforceable. The codes of conduct are not monitored.⁷⁶⁷ They are assessed as a formality when staff seek promotion, transfer or complaint about something under the project or against some personnel. One CSO official said “if some-one compels, by complaining, a case – positive or negative, the assessment of whether codes of conduct have been followed or not is not undertaken.”⁷⁶⁸

Hold government accountable

Score: 25

TO WHAT EXTENT IS CIVIL SOCIETY ACTIVE AND SUCCESSFUL IN HOLDING GOVERNMENT ACCOUNTABLE?

Civil Society is not mature in Nepal. Because of this its role as a watchdog has not been successful in making the government accountable. Yet there are some high profile activities of Nepali CSOs which could be termed “historic”. The CSOs role during the People’s Movement II (2062-63 B.S) had been very effective in compelling the dictatorship to yield to restore the parliament dissolved earlier. The restoration was instrumental in introducing the Interim Constitution of Nepal 2007, pave the way for Constituent Assembly elections and thereafter to a republic. Their role in raising issues of human rights, advocating for gender equality and initiating changes in laws unfriendly to gender equality, pressing for more representation of women, marginalized and the deprived in parliament and other spheres of public life has been specially lauded by experts.⁷⁶⁹ Similarly the CSOs have played a significant role in ending discrimination, and in development: agriculture, health, sanitation, poverty reduction, income generation, etc. Nepali Civil Society played a key role in ending the indefinite strike launched by UCPN-Maoists in May 2010. Because of its intervention, the Maoists were compelled not to continue the strike. The CSO, however, could not create an environment for ensuring separation of powers in a democracy and not allowing the Chief Justice to take over the responsibilities of Head of Executive in March 2013.⁷⁷⁰

762. Views expressed by CSO experts at Worldview Nepal seminar on February 2, 2013

763. Participants of a seminar on effectiveness of CSOs in the context of Nepal in Kathmandu on December 2012

764. NICSIA interview with Local Development Officers in Banke, Bardia districts of Nepal

765. A media write-up published in a weekly paper on October 2, 2011

766. NICSIA literature review of terms of reference given to 10 different employees –workers and officials - of five different CSOs

767. Interview with a senior CSO official

768. NICSIA interview with CSO office bearers and CSO experts

769. Reports published in National Dailies during December 2006 –February 2007

770. Nepal Bar Association office bearers

According to anti-corruption agencies, the CSOs have contributed to advocacy campaigns, public education, public engagements on anti-corruption. However, it is not uncommon for the government to devise a plan and implement it for positive action following CSO advocacy.⁷⁷¹

Policy reform

Score: 50

TO WHAT EXTENT IS CIVIL SOCIETY ACTIVELY ENGAGED IN POLICY REFORM INITIATIVES ON ANTI-CORRUPTION?

The CSOs are active in Nepal in preparing a climate for policy reform initiatives on anti-corruption. Most of the tools of transparency used by the government, parliament, courts and other governmental bodies have precedent with the activities of CSOs. The issue of accountability of public officers and tools to monitor it could also be dubbed as one area to which the CSOs have contributed.⁷⁷² Senior lawyer Krishna Prasad Bhandari said “nearly 95 % of public discussions held on anti-corruption over the past five years are the works of CSOs. Similarly all anti-corruption research undertaken during the period are the initiatives of CSOs. “The data base on corruption and anti-corruption measures are all prepared through the initiatives of CSOs.”⁷⁷³ Critics, however, suggest that despite contributions made by CSOs, the main problem of corruption has not yet been addressed appropriately. As a result, corruption is increasing day by day in the country.

771. A working paper presented at Nepalgunj seminar on mid-May 2013

772. Anti-corruption activist's statement presented at a seminar held by Transparency International Nepal in March 2013

773. *Review of Anti-Corruption*, Transparency International, Nepal, 2012

BUSINESS SECTOR (PRIVATE SECTOR)

Summary

Nepal's legal framework is favourable for businesses. Efforts have been made to make registration simple and quick. The government regulations are simplified from time to time. Independence of private companies is ensured in law. The country values the role of the private sector in the economy. Business and industrial community is encouraged in all sectors in accordance with the spirit of the Interim Constitution 2007 in which the freedom to practice any profession, carry out any occupation, industry and trade has been guaranteed as one of the fundamental rights. Other rights: right to property, employment, etc. mentioned in the Constitution also highlight the role of business industrial community. The Industrial Enterprises Act 1992, Industrial Policy 2010 have institutionalized the role of the sector in the country's liberal economic landscape. The investment policy, industrial policy and policies related to business, industry, infrastructure, etc. also stress the importance of the private sector.

The private sector has played an important role in various enterprises and businesses: manufacturing industries, energy based industries, agro-forest industries, construction industries, service industries, tourism, cottage, small, medium and large industries.

Despite the stress on the private sector in the economy in policies, the private sector doubts the government's commitment. The latest plans for a tri-polar pillar economy: public sector, cooperative sector and private sector – has further intensified their doubt. Experts contend that the importance of the private sector has been curtailed because of the importance given to the cooperative sector. There can be no competition between the two, they contend. They highlight the contribution that the private sector made to the economy in early 1990s. Particularly notable were the achievements in private airlines, health, transport, education, and telecommunication.

On the issue of corruption, the private sector is not immune. Despite many regulations, laws and policies, the sector has been both a source of corruption and victim of corruption, experts opine. They underline the need for the private sector to address the issue of corruption in its premises and not indulge in corrupt practices in areas with which it is interlinked.

In practice, however, there is a lack of protection against unwarranted government interference and infringements on property rights. Moreover, political instability and unpredictability in changes of policies undermine the independence of the private sector particularly investments. Integrity of the business sector is not sufficiently ensured either in law or in practice. The business sector is rarely actively involved in the government's anti-corruption policies. Its link with civil society is weak.

The table below presents the indicator scores which summarize the assessment of business in terms of its capacity, its internal governance and its role within the Nepal's integrity system. The remainder of this section presents the qualitative assessment for each indicator.

Overall Pillar Score: 46/100

Dimension	Indicator	Law	Practice
Capacity 63/100	Resources	75	50
	Independence	75	50
Governance 50/100	Transparency	75	25
	Accountability	75	25
	Integrity Mechanism	50	50
Role 25/100	Anti-corruption policy engagement	25	
	Support for/ engagement with civil society	25	

Structure and Organization

Nepal's private sector is a composite of entrepreneurs, investors, business persons, and the service sector. It ranges from small shops with little investment and transaction to large enterprises with big investment and transactions.

The Federation of Nepalese Chambers of Commerce and Industry (FNCCI) is an umbrella organization of the Nepalese private sector. It was established in 1965 with the aim of promoting business and industry while protecting the rights and interests of business and industrial communities, FNCCI has been playing a key role in promoting business and industry in the country.⁷⁷⁴

Its multi-dimensional composition represents its national character and all-segments of the country's economy. It has units in all 75 districts and in some municipalities, 76 commodity/sectoral associations, over 439 public private sector undertakings and 10 bi-cameral chambers.⁷⁷⁵

Another association of the business community is: Nepal Chamber of Commerce (NCC), established in 1952 (2009 BS) as the first Chamber of Commerce in Nepal. At present, it has more than 1,600 ordinary members and more than 8,000 registered firms. The prime objective of NCC is to assist in the development of the national economy through the promotion and protection of commerce and industries, both in the private and public sector.⁷⁷⁶

Another body of the private sector is Confederation of Nepali Industries CNI, established on April 17, 2000 to answer the need for a modern professional body with well-trained and experienced staff that would be supported by the latest technological advancements.⁷⁷⁷ CNI has been raising issues like the persistent economic imbroglio, need for reforms in the financial sector, strengthening of private sector's capabilities, streamlining of the private sector's initiation on development agenda, double digit growth issues and industrialization based on trade competitiveness. It works in coordination with other organizations and is increasingly involved in areas where the existing system has failed to deliver. It is working along the lines of several organizations in various developing countries: India, Japan, Thailand, Malaysia, etc. and hopes to hire expertise as well as bilateral support in development of the Confederation, the theme of which is, "Talking Business, Talking Change".⁷⁷⁸

There is a provision for Cooperatives, a collective venture by individual entrepreneurs, in the country's business sector.⁷⁷⁹ Some 27,000 Cooperatives are operating in the country in various business activities: banking, agricultural production, tea production, consumers' services, etc. Some 3 hundred thousand people are employed by Cooperatives.⁷⁸⁰

Assessment

Resources (law)

Score: 75

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK OFFER AN ENABLING ENVIRONMENT FOR THE FORMATION AND OPERATIONS OF INDIVIDUAL BUSINESSES?

The laws governing the formation and operation of businesses are friendly. They are, however, not adequate to address problems of business insolvency and closing of businesses.⁷⁸¹

Small business can be started as soon as the entrepreneur is ready, while a few steps have to be undertaken for opening firms with substantial investment. Among the steps are: applying for registration, getting forms filled for registration in government offices (for example: in the Departments of Commerce

774. FNCCI publication 2012

775. NISCA interview with FNCCI office bearers on January 5, 2013

776. NISCA interview with a NCC official in January 5, 2013

777. CNI information brochure 2013

778. CNI website www.cnind.org accessed on April 4, 2013

779. Cooperative Act 1992

780. NISCA interview with Keshav Badal, President of National Cooperative Association, on March 25, 2013 in connection with 56th annual anniversary of Cooperatives

781. NISCA interview with a private entrepreneur on January 6, 2013

or Industry, or Chief District Officer's Office or municipalities.) The entrepreneur has to answer questions if the concerned authority decides to ask questions before giving clearance or rejection. The firms are expected to have provisionson income tax or Value Added Tax, or other rates, price list of goods or services, management and accounting mechanism etc.⁷⁸²

As regards intellectual property rights, they are nominally protected by law. Since the concept and practice of intellectual property right is new to Nepal – to the public, lawyers, and law makers - it has not been able to get full justice in discussions, identification and protection of the rights.⁷⁸³ The Constitution guarantees right to property under Article 19 providing details about compensation if the property is claimed by the government. But it does not mention intellectual property.

The laws on contracts are, however, considered appropriate. "They take into consideration all dimensions of contract," say entrepreneurs and contractors.⁷⁸⁴ "Of course, there is room for improvement in contract laws as per the demand of time and technology," they add answering the question whether the existing contract laws can cover new types of contracts.

Resources (practice)

Score: 50

TO WHAT EXTENT ARE INDIVIDUAL BUSINESSES ABLE IN PRACTICE TO FORM AND OPERATE EFFECTIVELY?

In practice it is not easy to register a business. The bureaucratic hurdles particularly discretion of each official concerned in the process of registering a business makes the task difficult.

Private entrepreneurs complain against this difficulty but usually pass through the hurdles by either influence or speed money. Those who use influence to get registration get it soon while others have to wait long for months. The cost of registering a business is not high but the unseen cost depends on how big the business is. The laws on formation, operation, insolvency and closing of businesses are not effectively enforced. A number of instances indicate the non-enforcement of laws: all actions taken against firms show one or the other lapse in operation of laws.⁷⁸⁵ The complaint procedure is not popular because it is not user-friendly, and user responsive, say consumers adding "people in general, therefore, tolerate in their own way and not complain against businesses."⁷⁸⁶ The property rights are not protected effectively in practice. Designers, software producers, singers, artists, advertisers, copy writers, photographers and others have been calling for effective protection of their intellectual properties.⁷⁸⁷

Independence (law)

Score: 75

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN ACTIVITIES OF PRIVATE BUSINESSES?

There is a sound legal framework for safeguarding businesses and preventing external interferences. However, discretion exercised by officials in implementing the laws troubles businesses.

As the legal system gives a key role to discretion of public officials in matters of registration, licensing, trademark registration and protection and trade practices, the entrepreneurs have to please them. This has created an environment where entrepreneurs cannot simply start a business following the legal requirements.

782. CDO rules and regulations on business entities

783. NICSA interview with a business on January 6, 2013

784. Nepal Contract Act 2056 B.S. (2000 A.D.)

785. Interview with a firm official on January 10, 2013

786. Interview with an official of Nepal Consumers' Association on January 10, 2013

787. NICSA interview with entrepreneurs in January 2013

The laws, for example, the Company Act 2063 B.S. (with amendments) with its provisions for registration-forms to be submitted to the Office of the Company Registrar's Office, matters on share capital, loan, general assembly, account, audit, certificate of incorporation of company, certificate of conversion of company, for profit, not for profit establishments, private company, public limited company (rates for registration and other formalities) etc. are highly specific and could be termed sufficient to guarantee independence for private business.

A number of other laws seek to prevent unwarranted external interference in activities of private businesses. Private investment in Infrastructure construction and operation Act 2063 B.S. has provisions for making private sector investment in infrastructure works secure. Similarly the Electronics Transactions Act 2063 B.S. has a legal framework for protecting the investment in electronics transactions. In the financial sector the Acts such as Banks and Financial Institutions Act 2063, Loan and surety Act 2063, Secure Transactions Act 2063 B.S., Local Administration Act 2062 B.S., Income Tax 2058 B.S., Industrial Enterprises Act 2049 B.S., Contract Act 2056 B.S., House land tax Act 2019 B.S., Value Added Tax 2052 B.S., Audit Act 2048 B.S., Town Development Act 2045 B.S., Patent Design and Trademark Act 2022 B.S., Copyright Act 2059 B.S. Bonus Act 2030 B.S. etc. provide broad legal provisions for the business to function professionally.⁷⁸⁸

Independence (practice)

Score: 50

TO WHAT EXTENT IS THE BUSINESS SECTOR FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN ITS WORK IN PRACTICE?

There are instances (unwritten but perceived) that indicate officials abuse office to exploit the private sector. They do so by creating a number of hurdles in formalities and implementation of laws. It is common for state officials to solicit unofficial payments in their dealings with private businesses. It is for this reason that most state officials (at higher or lower level) seek to be assigned to areas where they have to deal with private businesses. Critics say "the assignments are bought at a price." Media also refers to it from time to time. Privately, all entrepreneurs complain against this abuse. There are many instances which suggest abuse of state power over the assets of the private sector including resources and land. Ministers and secretaries are said to exercise undue authority over the economy, even go beyond the rule of law. Several cases related to Sudan scam⁷⁸⁹, printing of machine readable passport⁷⁹⁰, import of fertilizer⁷⁹¹, Nepal Airlines Corporation's purchase of aircrafts,⁷⁹² transport syndicate, contract for food distribution to remote areas,⁷⁹³ contract flood reconstruction⁷⁹⁴, etc. suggest how ministers and high officials ignore the law while awarding licenses to business.

The business persons, in practice, are hesitant to initiate a law suit against public officials. They fear, this will have an adverse impact on future prospects. Therefore, when in trouble – in need of compensation or encountering abuse of authority– business persons generally do not resort to law suit or complaint procedures.⁷⁹⁵ During interview one senior official of Nepal Chamber of Commerce said: "the ultimate cost of seeing a complaint redressed is too high; so would be the cost of finding justice in a law suit. That is why the psyche of business persons has so developed as it does not motivate them to follow the complaint procedure. They also reject the option of filing a law suit against officials."⁷⁹⁶

"We have to earn the favour of officials to start, do, and continue business in the country," a business person said.⁷⁹⁷ Officials, however, do not buy that argument. They defend themselves saying "what we do is just follow the law. Sometimes adherence to law might be time consuming for various reasons including clarification of some points in the process of registration, licensing, or other matters, and this might irritate the entrepreneurs." ⁷⁹⁸

788. NICSA interview with entrepreneurs in January 2013

789. Sudan Scam, Special Court Verdict February 13, 2012

790. Official announcement of scrapping of deal on April 11, 2010

791. Media Report, January 19, 2010

792. Special Court Verdict, March 1, 2011

793. English language Nepal Weekly, August 12, 2012

794. Interview with an official of Nepal Contractors Association on July 10, 2013

795. Interview with a former President of FNCCI on August 10, 2013

796. Interview with a senior official of NCC on August 10, 2013

797. Interview with an entrepreneur engaged in hotel business on January 12, 2013

798. NICSA interview undertaken separately with business entrepreneurs and officials in January 2013

The implementation of laws particularly the Company Act 2063 B.S. is done in a way that opens opportunities for interference. Entrepreneurs attached to FNCCI, CNI and NCC say this is true with the implementation of other laws.⁷⁹⁹

Transparency (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS TO ENSURE TRANSPARENCY IN THE ACTIVITIES OF THE BUSINESS SECTOR?

There are special provisions for ensuring transparency in the activities of the business sector. The Company Act, rules and regulations to auditing and Right to Information, if followed, would make all transactions transparent.⁸⁰⁰

The Company Act requires all companies to publish their audit reports, balance sheet, profit loss, asset structure, financial position, bonus provision, tax payment, etc. Most of the provisions, according to practicing auditors, in the standard that Nepali auditors follow match with the fundamentals of international audit standard.⁸⁰¹ Financial reporting, however, varies, one practicing auditor said. The Acts related to income tax, VAT, inventory of goods (sold and unsold), goods in stock and local taxes require that the transactions of all types in business are transparent, recorded and verifiable. The financial auditing and reporting standards are specified in law. They could be termed sound. The Stock Exchange, like any other company, has its account audited by external auditor on an annual basis and report it to the stakeholders at the yearly general assembly.⁸⁰²

The Company Registrar Office has provisions for procedural reforms and online services for facilitating the business sector.⁸⁰³

Transparency (practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE BUSINESS SECTOR IN PRACTICE?

Transparency is practiced by business sector as per their convenience and promotional need.

The data on registered companies: names of directors, contact details, annual reports are made available to the public. The financial auditing and reporting standards are also applied. But people perceive that they constitute more a formality than an accurate picture of business. Tax officials also complain that various sorts of manipulations take place in reports. The third –party verification of financial records is rare, say experts.⁸⁰⁴ Information on ownership of businesses reaches people mostly through mass media and general body meeting of the enterprises.⁸⁰⁵ The concept of corporate responsibility and sustainability, although not new to Nepal, is not practiced in the real sense of the term. Some large corporations claim they practice it but people do not perceive it. The companies have to follow guidelines provided by the Federation of Nepali Chambers of Commerce and Industries to counter corruption. But they are not serious about it. Corporations do not use measures to assure people about the anti-corruption activities they undertake.⁸⁰⁶

Small businesses do not follow the legal requirement of making their transactions transparent.⁸⁰⁷ Most of their actions are not transparent, complain tax officials and VAT collectors.⁸⁰⁸

799. Interview with a senior official of FNCCI on January 12, 2013

800. Business lawyers

801. Interview with an office bearer of Auditors' Association of Nepal (AUDAN) on July 25, 2013

802. Company Act and VAT Act

803. NICSA interview with a senior official of CRO, on July 20, 2013

804. Interview with a senior auditor on July 25, 2013

805. NICSA interview tax officials

806. NICSA interview with business stakeholders in January 2013

807. Interview with a small business owner in Kathmandu on October 3, 2013

808. Interview with VAT collectors on October 3, 2013

Accountability (law)

Accountability: 75

TO WHAT EXTENT ARE THERE RULES AND LAWS GOVERNING OVERSIGHT OF THE BUSINESS SECTOR AND GOVERNING CORPORATE GOVERNANCE OF INDIVIDUAL COMPANIES?

There are provisions for monitoring business in public and private sector organizations.⁸⁰⁹

The Company Act 1991 and the Industrial Enterprises Act 1992 constitute the basic legal framework for business in Nepal. They, however, do not have appropriate provisions for corporate governance. They prescribe the body or persons the managers have to report to. Some have to report to partners, or shareholders while others report to a Board. They work out financial regulations on their own in accordance with various Acts: Secure Transactions Act 2063 B.S., Audit Act 2048 B.S. and Value Added Tax 2052 B.S. and other Acts that apply to them. There is no provision for an Auditor General type of financial regulator for businesses. There is the need for a well funded and professionally staffed financial regulator for the private sector. There is one body – Securities Board of Nepal SEBON - in Nepal Stock Exchange that reads the pulse of the financial state of companies from time to time. It serves as an oversight body in accordance with law.⁸¹⁰

Accountability (practice)

Score: 25

TO WHAT EXTENT IS THERE EFFECTIVE CORPORATE GOVERNANCE IN COMPANIES IN PRACTICE?

The private sector does not have effective corporate governance in practice. Those who practice corporate governance appear to do so in a partial nominal manner.

The main challenge for corporate governance comes from the age old concept prevailing in Nepal that corporate governance weakens owners of their hold or say in the company. Owners appear to be in conflict between the corporate way and individualized business way as and when their businesses grow in size and character. The growth cannot be handled without corporatization but this is unpalatable to those who have faith in individual hold on companies. Many growing companies particularly in the airlines, banking and financial sector, education, medicine, hotels, travel, etc., experts opine, are facing difficulties because of owners' reluctance to go corporate. The government also has not allowed full corporatization in companies owned by it. Corporatization, thus, is an issue in Nepal for academicians to discuss in seminars. It is not something to practice in companies, observed one expert in an interview. The government calls upon companies to follow the practice of accountability, transparency, integrity without fail but it has not yet undertaken initiative to incentivise companies to disclose anti-corruption relevant information.⁸¹¹

But the laws are not implemented sincerely and systematically.

Integrity mechanisms (law)

Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF ALL THOSE ACTING IN THE BUSINESS SECTOR?

The provision for codes of conduct including adherence to the rules of business has been made for various private sectors. The regulations to oversee implementation is either non-existent or weak to take action against businesses particularly the big ones.⁸¹²

809. Business Monitoring Units of government

810. Securities Act 2006

811. NICSA interview with business owners in January 2013

812. NICSA interview with quality control units of government and private sector, July 27, 2013

The private sectors' code of conduct has provisions for safeguarding institutional neutrality from political parties.⁸¹³ Some sectors of business have sector-wise codes of conduct while others have a general code of conduct followed by the Federation of Nepali Chambers of Commerce and Industries FNCCI. All have to follow the anti-corruption guidelines developed by the FNCCI. The codes are comprehensive and cover all business including the Board. There is provision for conflict of interest, anti-bribery, anti-corruption, good commercial practices, gifts and entertainment policies. They, however, do not have room for whistle-blowing. Moreover, there are regulations for businesses by their oversight bodies. The laws against bribery and the Acts on foreign investment, remittance, investment abroad prohibit, by implication, bribery when doing business abroad according to experts.⁸¹⁴ There is no specific law to prevent bribery when doing business abroad.⁸¹⁵

Bringing the private sector in the anti-corruption map is a new concept and practice in Nepal. It was only recently that people found the importance of engaging the private sector in anti-corruption campaigns. That is why there are no focused Acts against corruption in the private sector. As far as requirements for bidders to be ethical in public contracts, they have to abide by the Contract Act and it implies they are bound to be ethical because the Act seeks to preserve the public interest. There is a clear need for legislation on anti-corruption agreements that bidders sign prior to finalizing the deal on bid. Similarly there is a need for a law making compliance officers mandatory for businesses. The present practice of having a law consultant is not sufficient to ensure integrity.

Integrity mechanisms (practice)

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF THOSE WORKING IN THE BUSINESS SECTOR ENSURED IN PRACTICE?

The codes are applied when they are convenient for business. The provisions of codes not helpful for profit or business interest are bypassed. Entrepreneurs' aim is profit not ethics.⁸¹⁶

Members of FNCCI, however, do not accept the view. They claim they follow business ethics honestly. "Otherwise we lose business ultimately," they point out. Bribery by businesses is common in the country and abroad. "Unless you pay you cannot feel sure about getting business or sustaining it," said one business person attached to FNCCI. Compliance is very weak and whistle-blowing is not practiced.⁸¹⁷ The FNCCI guidelines for anti-corruption constitute an internal mechanism to prevent bribery. Since the guidelines are mandatory, they have to be followed. But practitioners simply ignore it.

The practice of blacklisting companies for corrupt practices and money laundering attract major media headlines and the government also resorts to it for some time, usually at the beginning of a new government, but the practice is not sustained because of pressures from powerful business groups. There is no practice of signing an integrity pact by companies. There is concern for integrity from within and outside the private sector but it does not match with the will to follow the path of integrity. There is a general impression among the public and in the government that "businesses make profit by squeezing the consumers and evading government revenue."⁸¹⁸ Businesses counter it by saying that they do business to "serve the consumers by fulfilling their need; profit is no more than a service charge (similar to rent) for them."⁸¹⁹

There is a need for appropriate legislation on foreign bribery, say experts.⁸²⁰ They opine the status of foreign bribery in Nepal is not clear. People perceive that bribes are given in large amounts and it should be legally regulated. Ultimately the impact of foreign bribery is borne by Nepali consumers, experts point out.

But the same is ignored in practice.

813. Code of conduct, unveiled by National Business Initiatives NBI, on July 28, 2013

814. Prevention of Corruption Act 2002 ; Foreign Investment and Technology Transfer Act 1992

815. Interview with a lawyer dealing with business cases on July 28, 2013

816. NICSIA interview with business columnists on July 28, 2013

817. A Study of Codes of Conduct, Transparency International Nepal, 2013, p. 62

818. Interview with business persons

819. Interview with an office bearer of FNCCI on September 25, 2013

820. Focus group discussion with lawyers handling Nepali traders engaged in transactions abroad

Anti –corruption policy engagement

Score: 25

TO WHAT EXTENT IS THE BUSINESS SECTOR ACTIVE IN ENGAGING THE DOMESTIC GOVERNMENT ON ANTI-CORRUPTION?

The theme of anti-corruption is one agenda which crops up without fail in discussions each time the office bearers or members of FNCCI and Nepali Chambers of Commerce meet the government.⁸²¹ Both associations have called upon the government to fight corruption. They have done so while issuing their commitment to anti-corruption both in spirit and practice. FNCCI has committed itself to transparency, de-regulation, de-centralization and de-licensing.⁸²²

In 2004, the Federation of Nepali Chambers of Commerce and Industries ran a major initiative to target business corruption in Nepal, implemented a range of anti-corruption measures, including a business code of conduct, and the Corporate Ethics Forum (CEF). The project involved all FNCCI members, government, civil society and stakeholders. The Project, FNCCI entrepreneurs claim, laid the foundations for building the capacity of the FNCCI to take up activities that help reduce corruption, including support for the CEF's anti-corruption awareness campaign, developing a Business Code of Conduct, establishing a Complaints Hearing Unit, disseminating information on combating corruption and facilitating dialogue amongst government officials, business persons, and civil society representatives to add momentum to the anti-corruption movement.⁸²³

Similarly Nepal Chambers of Commerce has undertaken various measures for business and the market to fight corruption. They have developed codes for shopkeepers and other business establishments.⁸²⁴

Efforts were undertaken to check corruption in the foreign employment sector which witnessed cheating amounting to Rs. 1.17 billion rupees (USD 12.13 million) by manpower companies and individuals in 2012-13 when 2,305 workers were swindled.⁸²⁵

Support for / engagement with civil society

Score: 25

TO WHAT EXTENT DOES THE BUSINESS SECTOR ENGAGE WITH / PROVIDE SUPPORT TO CIVIL SOCIETY ON ITS TASK OF COMBATING CORRUPTION?

Although both the business sector and civil society understand the importance of working together to fight corruption, the former has not made efforts to involve the latter in the task.⁸²⁶

At times they talk of entering into a partnership for the purpose in a specified programme. But they have not yet been able to generate a programme of long-term sustainable partnership. A few anti-corruption forums or programmes sometimes bring together the business community and civil society in their fight against corruption. Some corporate business or industry sponsors anti-corruption programmes as part of their social responsibility. Experts are of the view that Nepali society has huge scope of bringing together civil society and the business sector in their fight against corruption.⁸²⁷

821. NISCA literature review of 10 meetings or seminars of business community in Kathmandu in 2013

822. FNCCI website <http://www.fncci.org>, accessed October 2, 2013

823. FNCCI publication December 2012

824. NISCA interview with Chamber officials

825. Information published in Kathmandu -media quoting senior official of Department of Foreign Employment on July 26, 2013

826. NISCA interview with entrepreneurs

827. Former Finance Minister Dr. Ram Sharan Mahat

VIII. CONCLUSION AND RECOMMENDATIONS

The preceding chapters and the graphic presentations reveal strengths and weaknesses within each NIS institution. They also shed light on imbalances in Nepal's overall National Integrity System besides indicating the importance of the linkages between different pillars.

All 11 pillars of NIS, the assessment shows, are moderate in rank. Six of them are placed in upper level of the graph (moderate) while five are located in the lower. None scored the minimum required for the category of strong. The low scores of public sector (40) and executive (45) indicate poor delivery of services to the public and weak governance. Similarly the scores of law enforcement agencies (47) and political parties (46) suggest problems in implementation of the rule of law besides suggesting the weak performance of leadership in the whole NIS.

The scores for business (46), and anti-corruption agencies (51), could be indicators of poor public service, impunity and indifference in generating pressure on the government. The supreme audit institution (54), the electoral management body (54), the judiciary (53), civil society (54) and the media (58) appear comparatively better performing in the NIS particularly in routine-auditing, preparedness for administering elections, availability of court, and expressing public voice.

NIS Pillars: Key Strengths and Weaknesses

The table below summarizes the important strengths and weaknesses of Nepal's NIS pillars, as identified by the assessment.

PILLAR : LEGISLATURE

The 601-member-Constituent Assembly-2 (Legislature Parliament) was elected on November 19, 2013. Its first session, which convened on January 20, 2014, was continuing at the time of writing the report.

PILLAR: EXECUTIVE

Key strengths

- Well structured with adequate resources
- Sound legal framework
- Capacity to command all components of governance

Key weaknesses

- Too much dependence on political parties
- Failure to check politicians' interference
- No clear-cut role for Regional Administrators

PILLAR: JUDICIARY

Key strengths

- Sound legal framework
- Competent to scrutinize government
- Established procedures

Key weaknesses

- Delays in justice
- Failure to win public trust in delivery of justice
- Lack of resources to modernize

PILLAR: PUBLIC SECTOR

Key strengths

- Commitment to public service
- Good legal provisions
- Checks and balances in procurement policies

Key weaknesses

- Inability to resist political interference
- Lack resources for delivery of services
- Lack of modern management techniques and IT

PILLAR: LAW ENFORCEMENT AGENCIES

Key strengths

- Good legal provisions to ensure capacity
- Commitment to maintain law and order
- Structured approach to ensure law and order

Key weaknesses

- Low transparency
- Inability of officers to resist political pressure
- Ineffective laws for controlling abuse of authority for partisan interest

PILLAR: ELECTORAL MANAGEMENT BODY

Key strengths

- Adequately resourced and structured
- Sound legal framework
- Legacy of experience

Key weaknesses

- Ineffective in regulating campaign finance
- Weak in implementing norms

PILLAR: ANTI-CORRUPTION AGENCIES

Key strengths

- Sound in diverse structural presence
- Legally institutionalized
- Capable in law, in pursuing corruption

Key weaknesses

- Unable to move against corruption without political patronage in practice
- Failure to win public trust
- Weak in quality of investigations

PILLAR: SUPREME AUDIT INSTITUTION

Key strengths

- Pursues traditional routine auditing
- Transparency of findings
- Regular in publishing annual reports

Key weaknesses

- Inadequate capacity to use modern tools of auditing
- Failure to enforce internal audit mechanisms in public offices
- Inability to draw government's attention in detected flaws in financial transactions

PILLAR: POLITICAL PARTIES

Key strengths

- Constitutional provisions for adequate space, capacity, registration, and independence
- Ability to negotiate for power
- Capacity to mobilize for partisan interest

Key weaknesses

- Absence of internal democracy and democratic rules of politics
- Oppose disclosure of party-finance
- Inability to adhere to multi-party democratic norms

PILLAR: CIVIL SOCIETY

Key strengths

- Legal provisions for registration, role and independence
- Present in diverse sectors
- Innovative approaches

Key weaknesses

- Lacks transparency in resources
- Ineffective in holding government accountable and contributing to policy reform
- Affiliated to political parties

PILLAR: MEDIA

Key strengths

- Constitutional provisions for establishing, registration, and freedom of media entities
- Legal frame work for media operations
- Diversity in media-landscape

Key weaknesses

- Lacks financial and editorial independence
- Lacks transparency in ownership
- Unable so far to expose corruption and inform public on governance
- Unable to hold government accountable as a watchdog

PILLAR: BUSINESS (PRIVATE SECTOR)

Key strengths

- Legal provisions for resources, registration and independence
- Diverse businesses in the market
- Legal provisions for trade organizations

Key weaknesses

- Lacks accountability in practice
- Inadequate protection from interference from political sector and others
- Inability to participate in anti-corruption policy and initiative for partnership with civil society

Interconnections between Pillars

The concept of a National Integrity System is based on the inter-dependence among components of the integrity system. NIS is the whole and the pillars are parts. Any weakness in one pillar has the potential to affect adversely other pillars or the entire system.

The interplay between pillars is, therefore, considered to be important in assessing the system's strengths. The NIS assessment in the preceding chapters has shed light on the status of various pillars from the parameters of capacity, governance, role and the differences between law and practice. This section concentrates on the weaknesses found in the NIS and its pillars.

Absence of a legislature at the centre and prolonged vacuum of elected bodies at the local level are weaknesses of Nepal's NIS. Intervention by political parties directly or indirectly in all pillars by various means is another major flaw. Both –weaknesses- trigger a chain of circular effects resulting in disability of the NIS. Moreover, they create conditions in which existing laws cannot be implemented. Partisan interests of political parties play a key role in implementing laws or sidelining them.

The absence of a legislature means that the foundations of democratic legitimacy of governance and representation are in question. Various political parties voice conflicting claims for the right to govern and represent the people. They do so even after their poor performance in the Constituent Assembly election.

The four big political parties with numerical strength in the dissolved legislature-parliament were unable to work out a political consensus for forming a government to hold election to fill the void. They agreed on a non-party government of former bureaucrats under the chairmanship of a sitting Chief Justice through an amendment to a clause in the Interim Constitution. They also constituted a High Level Political Mechanism (HLPM) to assist the government.

Other parties challenged both the formation of the government and the November 19-election. They oppose the government's connection of power – executive, legislature and judiciary - and non-adherence to democratic principles of separation of powers. They denounced the HLPM as an unconstitutional syndicate designed to monopolize politics and stifle healthy political competition.

This has impaired the democratic norms of checks and balances and oversight essential for the pillars to play their role, implement laws and be accountable. The absence of legislature in essence means: there is no formal body to make laws and question the government on accountability. This has made the executive's authority excessive at the cost of independence of other pillars. The successful election of November 19, 2013 resulting in formation of a new Constituent Assembly is expected to produce positive outcome in the future.

The public administration which should resist authority cannot do so and it has affected its independence due to political parties' interference. In other words, the public administration serves partisan interest, and not the public interest.

A number of political parties expressed doubts over a free and fair election under the Election Commission because of the possibility of the government, with the law and order mechanism favouring the four parties which played key role in the formation of the government. They were concerned over some parties' access to public resources and the government might create an uneven field during elections.

The legislative vacuum has affected the independence of the judiciary particularly its role in appointing judges. The appointment of justices to the Supreme Court and judges in the district and appeal courts has been controversial because of HLPM's interference in the name of power sharing. Many including the Nepal Bar Association objected. Political parties' interference in the judiciary has affected the ability of the court to scrutinize the government, anti-corruption bodies, other constitutional organs and law enforcement agencies.

The non-state pillars of civil society and the business sector are also affected by political interference and loss of independence of the judiciary. Nepali civil society's ability to influence the government through advocacy has been affected by political interference. Their serious objection to the CJ-led government was ignored. This is an indicator of their ineffectiveness. Business sector needing protection and remedy from courts has already felt that it would not have both because political interference has affected independence of courts.

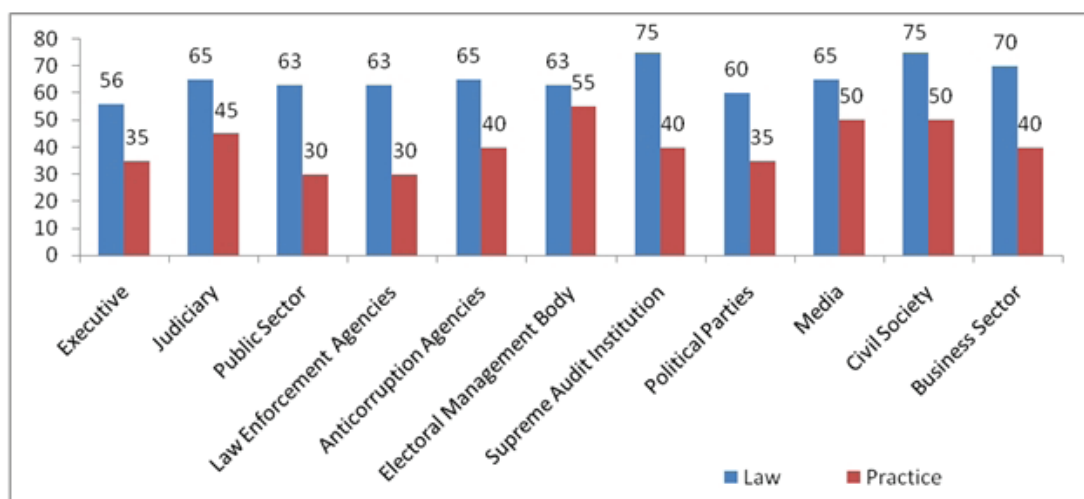
The weakness of the NIS is also reflected in the media, which is free but not financially secure. It has been unable to properly inform the public about governance issues particularly the need for legislature.

Its inability to generate public opinion to press for the need of a democratic platform for governance and representation is a matter of public concern. The media has not been able to exert pressure on political parties not to evade the election under one excuse or the other.

Discrepancies between Law and Practice

The assessment of NIS in Nepal reveals significant variances between law and practice. The legal framework is sound but it is not implemented consistently.

Differences between Law and Practice of NISCA Pillars in Bar



The laws on Good Governance Act 2064, the Right to Information Act 2064 and the 2048- law on Commission for the Investigation of Abuse of Authority, for example, are considered to be sound and relevant but are not implemented thoroughly and consistently.

The legislature's independence is protected by law but it is undermined in practice by weakness of political parties to face the people in the general election. The result is: prolonged absence of the legislature, the pillar of democratic governance. The legal framework of the judiciary appears adequate. But in practice the judiciary has not been able to build public trust and scrutinize the government. Legal provisions are robust to keep the executive under oversight of legislature and scrutiny by the court but cannot function properly in the absence of the legislature.

Anti-corruption agencies, supreme audit institution, electoral management body, law enforcement agencies, public sector, civil society and business also show serious discrepancies between law and practice. Political parties have been granted adequate protection by the Constitution and laws. But they fail to translate that into practice. As a result, they have failed to preserve the legitimate platform for governance and representation besides being unable to encourage democratic practices such as electoral process, parliamentary culture and ensure fair political competition.

A significant gap between law and practice is seen in the media as well. The legal framework adequately ensures its freedom. In practice it has been unable to use this freedom to inform the public fairly and consistently. Lack of financial security has resulted in loss of editorial independence. Lack of transparency in media ownership has also made the media not able to utilize the freedom properly and gain public confidence over the flow of information.

Challenges in the Coming Years

To invigorate the core governance pillars: legislature, executive and judiciary - their democratic powers and functions to play their role with respect to the principles of separation of powers and checks and balances is the key challenge which Nepal's NIS faces. Not allowing the concentration of power in one pillar to adversely affect other pillars is a major problem the country has to address with a sense of urgency and seriousness.

The assessment strongly suggests that the pillars have failed to play their role because of confusion and instability in the core governance pillars. To protect integrity throughout the governance system, all pillars should be strengthened to resist any interference: political, bureaucratic or otherwise to their independence.

A number of steps could be suggested for this: Energizing the monitoring and accountability mechanism; Enabling the civil service and public sector to follow laws, rules, and legal provisions in practice should be emphasized; Narrowing the differences between law and practice would help to strengthen the pillars. Sharing of best practices from one pillar with other pillars would be beneficial to the whole NIS.

Recommendations

PILLAR: LEGISLATURE

Problems

- Absence of a democratically elected frame-work for representing the people and administering governance (the non-existence of a legislature since May 27, 2012) is the problem. The vacuum has adversely affected governance, and the mechanisms of checks and balance.
- Political parties' failure to develop consensus for the election held on November 19, 2013 complicates the problem.

Recommendations

- Political parties must work out an understanding for not disrupting the elected legislature to make the democratic, legitimate framework functional for representation and governance.
- Differences between the political parties must be solved in accordance with the spirit of people's mandate expressed through elections. Their verdict must be the representative base for governance.

PILLAR: EXECUTIVE

Problems

- The executive is not accountable due to the absence of a legislature, a weak judiciary and oversight bodies.
- Corruption in government establishments: customs (at international airport, border-points), works and transport, defense-related offices, land revenue, citizenship certificate/passport offices and forest.

Recommendations

- The newly elected legislature must make the executive accountable and legally activate the oversight-bodies to supervise government-decisions, policies, and actions.
- Anti-corruption measures such as constant monitoring of officials' performance in handling cases, and files and promptness in response to the issues of public interest must be implemented in offices where a culture of bribery is prevalent.

PILLAR: JUDICIARY

Problems

- Undue influence from political parties.
- Lacks financial autonomy.
- The mechanism of appointing judges has resulted in a politicized judiciary.

Recommendations

- Political parties must honour the principle of an independent judiciary and not pursue a policy of power-sharing in appointment of judges.
- The mechanism to appoint judges must be framed as to guarantee the independence of the judiciary; the judicial council must be given powers to resist political pressure and pursue judicial fairness in appointment of judges
- Provisions for the judiciary should not be dependent on executive-discretion for financial resources
- Posting judicial decisions, and updating them on court websites should be made mandatory.

PILLAR: PUBLIC SECTOR

Problems

- The independence of civil servants has been undermined by political interference at the ministerial level. This limits the possibility to practice transparency and integrity in the civil service.

Recommendations

- Uniformity of rules and practice throughout the public administration must be ensured; legal provisions on appointments, promotions, transfers and dismissals of civil servants must be followed to avoid abuse; provisions should be made for civil servants to practice transparency and integrity rules.
- Measures must be taken against the practice of transferring officials frequently at the convenience of the political leadership and under the pressure of trade unions.
- Civil servants should be made capable of performing their duty to inform the public in accordance with the Right to Information Act; minimum common standards should be established to enable public agencies to release information proactively.
- Civil servants must be made capable to implement provisions in the Good Governance Act at the central and local level through programmes of capacity building.

PILLAR: LAW ENFORCEMENT AGENCIES

Problems

- Law enforcement agencies are not independent; they are under pressure from the political leadership to prosecute selectively and apply laws with the convenience and preference of political interests.
- Law enforcement agencies are not held accountable in a consistent manner.
- Law enforcement agencies have inadequacies in resources, expertise and technical tools.

Recommendations

- Measures like resisting political interference should be visibly undertaken to ensure independence, transparency and accountability of law enforcement agencies. Provisions should be made for capacity building of officials to cope with new challenges in law enforcements.
- Provisions must be made against impunity by bringing into legal course the people who are accused of crimes and making the public know about them, their illegal acts, the due process of law and punishment.
- Alleged offences by law enforcement agencies, their officials must be properly investigated.
- Special legal provisions such as questioning the police authority about their non-response and response to the public complaint and examining files to explore evasion and suppression of cases must be made for oversight bodies of law enforcement agencies.

PILLAR: SUPREME AUDIT INSTITUTION

Problems

- The audit-reports are a formality only; their recommendations carry no value in reform policies and programmes.
- Institutionalizing internal auditing mechanism in public offices needs implementation.
- The Office of Auditor General is not independent.

Recommendations

- Measures must be urgently undertaken for strong internal auditing mechanism in public offices.
- Legal provisions should be implemented to compel public offices to correct flaws in financial transactions indicated by the annual audit report.
- Timely changes should be undertaken in auditing methods, structures and systems.

PILLAR: ANTI-CORRUPTION AGENCIES

Problems

- Lack of public trust
- Confusion between role of investigator and law enforcer

Recommendations

- Pursue quality investigation
- Follow cases to the end
- Keep out political patronage
- Disseminate information on ways to prevent
- Corruption
- Undertake measures to improve integrity standard in public offices

PILLAR: ELECTORAL MANAGEMENT BODY

Problems

- The electoral administration's inability to regulate party campaign/finance because of lack of appropriate laws.
- The electoral administration is not independent in practice, its commissioners are appointed through nomination by political parties.
- The electoral administration is weak in management of some electoral process : misuse of administrative resources, monitoring electoral code of conduct by political parties, government and campaigners and in handling complaints.

Recommendations

- The provision for appointing Commissioners should be reviewed to ensure political impartiality and professionalism.
- The election cycle should introduced be consolidated and human resources be trained under a comprehensive capacity building programme.
- Strong legal measures must be put in place to make it competent to strictly regulate party finance and monitoring.
- Sufficient measures such as checking the practice of diverting the fund meant for one purpose for another, discouraging the use of budget under miscellaneous expenses to justify any expense should be undertaken to prevent misuse of administrative resources.

PILLAR: POLITICAL PARTIES

Problems

- The links between people and political parties is weak with poor representation; pluralism of society is not reflected in political parties.
- The domination by the four big parties has resulted in ineffective political competition in the political system.
- Leader-centric tendency has not allowed the political parties to practice internal democratic governance.
- Financial transparency and accountability of political parties is not ensured in law or practice.

Recommendations

- Political parties should engage intensively with electorate to ensure representation of a broad interest of society and be connected with the people.
- The political parties should be open for elections and not create hurdles to go to the people from time to time.
- Strict legal measures should be undertaken to ensure practice of internal democratic governance, financial transparency and accountability.
- The political parties must endeavor to consolidate norms of democracy, election, multi-party system, elected legislature, and legitimate ways of gaining power.

PILLAR: MEDIA

Problems

- Lack of financial independence has made media unable to practice freedom in journalistic profession.
- Media ownership is not transparent; ownership is tilted towards business than public (information flow) service.
- Media products lack quality contents on governance issues; coverage of corruption is limited.

Recommendations

- Editorial independence of media should be ensured through appropriate legal measures; a code of conduct for media owners should be formulated and implemented.
- Legal provisions should be made to ensure appropriate space and time for information flow and due place for advertisements in media products.
- Measures should be undertaken to ensure career development in media and capacity building of media workers including journalists.
- Investigative journalism should be given priority –space in media institutions; governance should be pursued as a beat in news and productions rooms.

PILLAR: CIVIL SOCIETY

Problems

- Financial dependence of civil society on donors and political parties does not allow it to function independently.
- The oversight mechanism to check integrity and accountability of civil society is weak.
- The civil society is not effective to hold government accountable and contribute to policy reforms.

Recommendations

- Measures should be undertaken by the government to involve civil society in policy formulation.
- Policies should be devised to promote individual and corporate philanthropy.
- Civil society organizations must follow internal governance procedures and be transparent to their constituencies, stakeholders and target groups.
- Special measures like civic hearing, door to door consultation with people and organizing local forums for discussion on public issues should be taken by civil society organizations to connect with the people; this would help them to represent societal interests and make participation in society more effective.

PILLAR: BUSINESS

Problems

- Business suffers from interferences including political parties, bureaucratic rules and regulations and vested interest groups.
- Insufficient opportunities for business to involve in anti-corruption policies.
- The link between business and civil society is weak.

Recommendations

- An environment to promote confidence of business in the judiciary should be created by holding seminars on using court to settle disputes and sensitizing business persons about various prospects of court-remedy for business problems; this will enable business to seek justice and remedy from court through legal measures when business is threatened by interference.
- Legal provisions to protect business from frequent change of policies, strikes organized by political parties, law and order problems and unpredictable government directives should be strictly implemented.
- Government should engage business in all anti-corruption policies.
- Partnership between civil society and business should be promoted; appropriate laws should be formulated and implemented.

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