

Overall Score:

60 - Weak

Legal Framework Score:

74 - Moderate

Actual Implementation Score:

46 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶⁹Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

Comments:

Besides the constitutional guarantee, there are plenty of other statutory provisions which grant citizens the right to form associations. The statutory provisions which provide for forming associations, as long as they are not antithetical to the constitution and other prevalent Nepalese laws, are: (1) Assembly or Union Act, 1949 (2) Citizens' Rights Act, 1955 (3) National Directives Act, 1961 (4) Institution Registration Act, 1977 (5) The Cooperatives Act, 1992 (6) Company Act, 2006 and (7) The Trade Union Act, 1992.

The Assembly or Union Act is particularly important as it was the first Act which specifically provided for the formation of CSOs in Nepal. Section 4 of the Act categorically states, peaceful assembly can be organized, and organization formed and operated for, among other things, criticizing and exerting pressure for a policy change and amending and repealing laws.....based on principle of integrity."

References:

House of Representatives (HoR) Declaration, 2006

Comprehensive Peace Accord (CPA), 2006

Article 12 (3) (A) of the Interim Constitution of Nepal, 2007 guarantees to the citizens the fundamental right of 'freedom of opinion and expression', whereas Article 12 (3) (D) specifically provides for 'freedom to form unions and associations' and Article 12 (3)

(F) speaks about 'freedom to practice any profession, or to carry on any occupation, industry, or trade'.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

However, this legal obligation may be flouted as transparency is not commonly practiced by many NGOs in Nepal so far to what the income is concerned. The SWC significantly lacks the monitoring and follow-up mechanism in this regard.

References:

CSOs are free to accept funding from any foreign source/donors but are required to seek pre-approval from the Social Welfare Council (SWC), a statutory body, before they utilize such funds. Similarly, the Donation Act also restricts donations without prior approval.

Section 16, Social Welfare Act 1992; Section 3, The Donation Act 1973

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

The monitoring authority is the Chief District Officer (CDO). CSOs are obliged to disclose their sources of income even at the time of registration itself. Similarly, they are required to produce the entire account, including the audit report, in an annual basis for the purpose of renewing the organization. The Act grants the CDO the ability to examine the income and expenditures of a CSO if it deems it fit. The renewal may be denied on the ground of irregularities.

References:

Disclosure of funding is a must under the law.

Sections 4, 9, and 10, Institution Registration Act 1977.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

The trend of forming CSOs was started in Nepal especially after the success of First Jana Andolan (People's Movement) in 1990. Thousands of CSOs emerged with the advent of newly reinstated democracy. The process continued as the country witnessed new negotiated political settlement in 2005-06. The situation further improved after the end of the king's direct rule in April 2006, as restrictions imposed during the king's regime were lifted by the new government. An anti-corruption/good governance CSO can easily be formed and operated in the changed political context.

References:

Based on data available in the District Administration Office, Kathmandu.

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

As the past developments show, many CSOs were instrumental in establishing the democratic regime in Nepal. Their role continues today, as they are significantly involved in the ongoing peace process as well. However, CSOs in Nepal have their own limitations, as they can act only as pressure groups. They have limited (little or no) access in decision making at both the policy making and political level.

References:

For CSO engagement as watchdogs and in the peace process, see basically the following homepages of different organizations:

- (1) www.propublic.org
- (2) www.advocacyforum.org
- (3) www.inseconline.org
- (4) www.fohrid.org
- (5) www.himrights.org

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | **NO**

Comments:

Since things have improved after the restoration of Loktantra in April 2006, there is no reported case of CSOs shut down by the government. However, the Madhes and other groups' uprising for various political demands may have obstructed the smooth functioning of CSOs in Terai region. Frequent strikes and bandhs called by different political outfits disrupted the work of CSOs.

References:

Newspaper(s) reports on different dates.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

No reported case of imprisonment is available in the past year.

However, there is an unconfirmed report that Mr. Thakur Parajuli, District Chairman (Kaski) of Good Governance Radio Program Listeners' Club, a club affiliated to a civil society called Pro-puplic, has been arrested and imprisoned for two days for exposing corruption of an organization.

References:

Based on the interview with Advocate Arjun Khanal of the Center for Legal Studies.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

There is no reported case available of the state arresting and physically harming the anti-corruption activists. However, there may have been abductions, confinement and torture by the several armed groups operating in the Terai region.

References:

Media reports on different dates.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

During the study period, there is no reported case that CSO workers have been killed for their anti-corruption work .

References:

Interview with Mr. Tirtha Chapagain, a Home Ministry official.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Trade unions are allowed under the provisions of the interim constitution of 2007 and other various laws.

Besides the provision of 'freedom to form unions and associations' under Article 12 (3) (D), the right regarding labor is categorically guaranteed under a separate article, for the first time in Nepalese constitutional history. Article 30 (2) provides, Every employee and worker shall have the right to form trade unions, to organize themselves and to perform collective bargaining for the protection of their interest in accordance with law". The other statutory provisions dealing with Trade Unions are: Section 3 of the National Directives Act, 1949 and Chapter 2 of the Trade Union Act 1992.

References:

The Interim Constitution of Nepal 2007;
The National Directives Act 1949;
The Trade Union Act 1992

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

In principle, the Federation and Confederation of trade unions, such as the General Federation of Nepalese Trade Unions (GEFONT) and the Democratic Confederation of Nepalese Trade Unions (DECONT) do exist in Nepal. However, in practice, these organizations are a part of the political discourse. Since they represent themselves as the sister organizations of major political parties, their orientation with regard to trade union rights are also politically motivated.

References:

See www.decont.org

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

Freedom of the press has been one of the important phenomena of freedom of expression under the interim constitution of Nepal. Besides, there are other laws which grant freedom of the media. They are: (1) Citizens' Rights Act 1955, (2) Press and Publication Act 1991, (3) National Broadcast Act 1993, (4) Working Journalists Act 1995, (5) Press Council Act 1991, (6) Defamation Act 1959, (7) National News Service Act 1962, (8) Radio Act 1958, and (9) Gorkhapatra Corporation Act 1963.

References:

Article 15 of the Interim Constitution specifically provides for Right regarding Publication, Broadcasting and Press".

The other relevant Articles are:

- (1) Article 12, Right to Freedom
- (2) Article 27, Right to Information
- (3) Article 23, Right to Religion
- (4) Article 28, Right to Privacy.

www.sambidhan.org

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

Freedom of speech is guaranteed as a fundamental right. As a result, Nepal has observed vibrant growth of media after the People's Movement in 1990. Since then Nepali media are contributing in three strategic components of anti-corruption drives preventing, analyzing and fighting. However, lack of training, poor professional standards, and the dearth of investment into investigative reporting make it difficult, and sometimes impossible, for journalists to access, impart or disseminate accurate information.

References:

Freedom of Opinion and Expression [Article 12 (3) (A)], The Interim Constitution of Nepal 2007;

Freedom of Thought and Speech [Section 6 (1)] and Personal Liberty [Section 12], Citizens' Right Act 1955

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

75

6a. In practice, the government does not create barriers to form a print media entity.

Comments:

Unlike in the past royal regime, Nepalese media have been enjoying a lot of freedom as free press has been the prime agenda for both the Seven Party Alliance and the Nepal Communist Party Nepal (Maoists). As a result, a number of new media entities have emerged, especially after the reinstatement of the Legislative Parliament and the formation of the new government.

References:

Based on the Interview with Mr. Uttam Niroula, a radio journalist working for Metro FM run by Kathmandu Metropolitan City.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The Appellate Court has the jurisdiction to hear such cases.

References:

- (1) Section 18, National Broadcast Act 1993
- (2) Section 32, Press and Publication Act 1991

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No fixed time and standards are prescribed. A license may be obtained within one to three months depending on the media type. Citizens may have to encounter delays due to traditional bureaucratic procedures.

References:

Media legislation

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

A print media license can be obtained upon paying prescribed government fees.

References:

Media legislation

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

A couple of new television stations have obtained their licenses recently. The new television channels, namely Sagarmatha Television and Avenues Television, have already started broadcasting. Similarly, a number of other new media, including Community FM radios have obtained licenses to operate. Furthermore, the government, with a view to facilitate the citizens' right to information, has exempted the hitherto imposed renewal fee of 500,000 rupees (US\$7,933) for the commercial FM stations.

References:

Media reports

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The Appellate Court hears the appeals.

References:

Section 18, National Broadcast Act 1993

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

There are no fixed terms and standards. Obtaining a license may take from one to three months.

References:

Media legislation

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The government grants the license after charging the fees.

References:

Media legislation

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

Comments:

No restriction as such is imposed so far on online content. However, only the urban population has access to the internet in Nepal.

References:

Media legislation;
Cyber Act 2006

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

Comments:

The government does not generally censor the online content. Any material can be created and posted. Since there is no established mechanism of monitoring, cyber squatters may enjoy freedom in this regard. However, the law requires that only the contents which do not violate the law of the land and other prevalent laws shall be published in the Web.

The recently enacted Cyber Act 2006 restricts and controls the unlawful contents on the Web.

References:

Based on the Interview with Advocate Anil Khanal, South-Asia Partnership (SAP) Nepal.

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

75

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

In Nepal, no radio, television, Web site or other types of digital and electronic means, press or any other communication media shall be censored, closed, seized or cancelled the registration for printing and publishing any news items, articles, editorial, writings or other reading materials.

References:

Article 15, The Interim Constitution of Nepal 2007
Section 4, Defamation Act 1959

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

Comments:

The government does not generally restrict the news items related to corruption. However, any corruption story which does not have a 'news value' or is related to the media owner herself/himself may not get aired/published. Hence a reporter may have to consider self-censorship just to avoid sanctions from the media houses.

References:

Based on the Interview with Mr. Bijaya Poudel, a TV Journalist working for Kantipur Television.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

Comments:

The government can't prevent controversial, corruption-related materials on any legal basis. However, the media bias is so high in Nepal that the political figures in the government may influence media houses under the political pretext.

References:

Based on the Interview with Mr. Kedar Subedi, senior journalist, reporting on anti-corruption and good governance.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing

favorable coverage.

10. Are the media credible sources of information?

70

10a. In law, print media companies are required to disclose their ownership.

YES | NO

Comments:

Because media organizations need mandatory registration, ownership should compulsorily be disclosed.

References:

Press and Publication Act 1991 (Chapter 2, Section 3)
Institution Registration Act, 1977

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

Comments:

The mandatory registration is the formal legal process.

References:

National Broadcast Act 1993

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

Comments:

The Press Council, which is mandated to monitor the code of conduct, is not independent because the chairperson is appointed by the executive. Many journalists in Nepal commonly profess the political ideology of one party or the other. Besides, remuneration and incentives being inadequate, many indulged in shady dealings against the code of conduct and their profession, thereby paving the way for yellow journalism.

A noted civil society activist in Nepal has this to say: When a news items gets published in a newspaper about an alleged act of corruption, it is sometimes difficult to differentiate (1) if it is a professional media at work, (2) a ploy to defame a political adversary, (3) a proxy shot at an honest person on behalf of the media groups, or (4) even a notice of extortion.”

References:

Dr. D.R. Pandey,
The Failed Development, p. 133
as cited in Narayan Manandhar's, Corruption and Anti-corruption: Further Readings”,
Transparency International Nepal, 2005, p. 96.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

Comments:

Major and popular media have persistent bias based upon their political ideology. Even the mainstream media are not free from bias, let alone the other weekly tabloids. Dristi, vernacular weekly, favors the NCP (UML) party, whereas Deshantar favors Nepali Congress. Others may support NCP (M) tomorrow. I think the two pillars of free media professionalism and impartiality still lack in Nepali media.

References:

Based on the Interview with Mr. Kedar Subedi, senior journalist, who reports on good governance and corruption.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | **50** | 25 | 0

Comments:

Throughout the history, state-owned media have never been independent in Nepal. The ruling party in power has always misused the media so as to make them the government puppet. Since they are mostly monopolized, there is no question of having equitable access by the other political parties and independent candidates. Rather, it is a common practice that the state-owned media engage in discriminating and defaming the opposition.

References:

Based on the Interview with Mr. Kumar Chudal, a high ranking official within the Nepalese Government.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

Since the state atrocities against the press stopped after the establishment of Loktantra on April 24, 2006, there has been no reported case of imprisonment in the last year, particularly of journalists covering corruption. However, the problems that Nepalese journalists faced over the last year were different from the ones seen in the previous years. Atrocities were meted out to journalists and the press during the Terai movement which ensued immediately after the Janaandolan II. An example of Mahottari district (central Terai region) can be cited here. During the Terai movement, around 10 mass gatherings were held every day and at least 10 people addressed each gathering. Local radios were threatened if they did not give space to the speech of each speaker. Similarly, the press faced interference, attacks and threats during the movement of Janjati and other communities.

References:

See Shiva Gaunle

Nepali Press in Loktantra: New Situation, New Challenges in Press Freedom: One Year of Loktantra” published by Federation of Nepalese Journalists, 2007

www.fjnepal.org

“Media during Terai Uprising,”

a report (in Nepali) published by Freedom Forum

www.freedomforum.org.np

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist’s work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned” is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

There are no such reports available. Many other journalists, however, were intimidated, threatened and tortured by different agitating communities, especially in the Terai region.

References:

Press Freedom: One Year of Loktantra (Press Freedom Situation from Feb. 1, 2006 to April 24, 2006),

Federation of Nepalese Journalists, May 2007

www.fjnepal.org

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

There are no documented cases available.

References:

Press Freedom: One Year of Loktantra (Press Freedom Situation from Feb. 1, 2006 to April 24, 2006), Federation of Nepalese Journalists, May 2007
www.fjnepal.org

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

84
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

33

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

Because there was no separate law on the right to information, the Supreme Court had set out certain rules and procedures pertaining to obtaining public documents in Gopal Shivakoti vs. His Majesty's Government (Nepal Law Journal, 1994, Vol. 4. Decision No. 4895, p. 225). The other provisions of the Country Code provide for little guidance in obtaining some of the key information. However, a specific Bill in relation to Right to Information was tabled in the Legislative-Parliament in January 2007. The Bill, among other things, sought to ensure the access of the citizens to information relating to public importance, and to make the state proceedings transparent and accountable. (Preamble of the Bill) The Bill was passed recently on July 18, 2007 (obviously, not during the study period!), and the Right to Information Act, 2007 stands as enforced now with effect from (w.e.f.) Aug. 19, 2007.

References:

Article 27, Right to Information, The Interim Constitution of Nepal 2007;
No. 17 of the Chapter on Document Examination" of Muluki Ain (Country Code), 1963;
No. 211 of the Chapter on "Of Court Management" of Muluki Ain (Country Code), 1963;
The Right to Information Act 2007

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

Comments:

Because there was no specific legislation with regard to the right to information, no formal provision of appeal was available. The only recourse available was invoking the extra-ordinary jurisdiction of the Supreme Court. The recently introduced new Act, however, has the specific provision of appeal under Section 10.

References:

Article 88 (2) of the Constitution of the Kingdom of Nepal, 1990;
Section 10 of the Right to Information Act 2007

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

Comments:

There was no formal mechanism available. There were some legal arrangements, including the Supreme Court's ruling in Gopal Shivakoti vs. His Majesty's Government, which required government agencies to provide information to concerned person. However, the new Act provides for having an Information officer, and a separate Information Section as required in the public utilities to disseminate the information regularly (Section 6). The Act also has the comprehensive provision of Information Commission which has, inter alia, the right to give an order to the public utilities for making the information available to the citizens at large [Section 19 (C)]. Section 7 of the Act outlines the procedure to be followed in obtaining the information.

References:

Gopal Shivakoti vs. His Majesty's Government
(Nepal Law Journal, 1994, Vol. 4. Decision No. 4895, p. 225);

Sections 6, 7 and Chapter 3 of the Right to Information Act 2007

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

35

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

In the absence of specific laws, no set timeline and standard was in place. Only those people who have access to power centers and government machinery could obtain the information in time. The information, particularly the politically sensitive one, is often delayed and may even be withheld without assigning any reasons whatsoever. The latest example is the Report of the high level investigation committee, the Rayamajhi Commission, which probed the atrocities committed during the rule of People's Movement 2006. The government made the report public only after the Legislative-Parliament passed an order to that effect, and the report was produced before the Parliament. In a sense, that too was limiting citizens' right and easy access to information. The government should have made the report public before the Parliament obligated them to do so. Conversely, citizens are yet to have access to the report of other commissions constituted from time to time, including the Report of the Judicial Investigation Commission on Property".

However, the situation has now changed. The new Act relating to the right to information prescribes a clear timeline. According to the new Act, the information of certain nature is to be made available immediately, whereas the other information which can not be granted immediately shall have to be made available within 15 days of the formal request [Section 7 (2)]. Furthermore, the Act requires the information officer designated to assign proper reasoning in case the information could not be made available in time [Section 7 (3)]. The country looks forward to the Act being implemented in both spirit and content.

References:

Media Reports on different dates
www.nepalnews.com,
www.ekantipur.com;

Sections 7 (2) and 7 (3) of the Right to Information Act 2007

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

Comments:

Records are available at a reasonable cost. The new (Right to Information) Act too provides that the information cost shall have to be as per actual [Section 8 (2)]. However, there may be other financial constraints. For example, one has to physically appear at the department concerned in order to receive the information.

References:

Section 8 of the Right to Information Act 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

Comments:

Because there was no appeal mechanism available, the guidelines set forth by the Supreme Court provided appellate jurisdiction to the Supreme Court, which might not be accessible within a reasonable period of time. The new Act, however, has the specific provision for resolving the appeal. The case has to be resolved within 60 days from the formal registration of the appeal [Section 10 (4)].

References:

Section 10 of the Right to Information Act 2007

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There was no formal appeal mechanism in place. The guidelines set forth by the Supreme Court provided appellate jurisdiction to the Supreme Court, which might not be accessible at a reasonable cost. The new Act, however, requires specific procedures to be made for the appeal [Section 10 (5)].

References:

Section 10 of the Right to Information Act 2007

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

As there was no specific law, the government generally did not provide reasons for denial. Citizens who did not have access to the system, power and money, were generally denied information but without any reasons. However, the new Act now stipulates mandatory reasoning in case the information could not be granted under certain circumstances [Section 7 (3)].

References:

Section 7 of the Right to Information Act 2007

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁵³Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

50

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

The adult franchise was previously guaranteed by the constitution of the Kingdom of Nepal. The 1990 constitution had categorically stated the age of 18. The new constitution of 2007, however, does not specify the age.

References:

Preamble and Article 63 (5) of the Interim Constitution of Nepal 2007

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

Although some of the above cited laws required periodic elections in Nepal, legitimate election (except the municipal election staged by the Royal Government) could not be held for long in Nepal due to the ongoing armed conflict. However, in the changed political context, especially after the Comprehensive Peace Agreement of November 2006, the country is all set to hold the Constituent Assembly (CA) polls in November 2007 for the first time in Nepalese political history. After months of turmoil, political infighting and actual bloodshed following King Gyanendra's relinquishing of absolute power on April 21, 2006, the interim eight-

party coalition government (consisting of the Seven-Party Alliance and the Maoists-ed.) fixed Nov. 22 as the new date for the much-awaited and crucial CA elections. The general public, however, has grown skeptical about holding them under existing circumstances, especially as they've already been postponed. The government had agreed to hold the elections by mid-June and then postponed them to June 20, but the Election Commission (EC) failed to conduct the polls on both occasions, citing the absence of needed infrastructure and rules and regulations regarding the conduct of the EC itself in an increasingly volatile country-wide security situation.

References:

Constitution of the Kingdom of Nepal, 1990, Article 45 (3), Local Self-governance (Election Procedure) Act, 1991;
Member of House of Representatives (Election Procedure) Act, 1990;
Member of House of Representatives (Election Procedure) Regulation, 1990.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

42

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

In the past elections, no voters' identity cards were issued except in some pilot districts. The problem of citizenship might have restricted individuals from being listed as voters.

References:

Article 45 (6) of the Constitution of the Kingdom of Nepal had guaranteed to every adult citizen (above the age of 18) the right to vote.

www.sambidhan.org

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Although ballots are secret in most cases, absolute secrecy cannot be maintained until the electronic voting machines are introduced in all the constituencies. There are instances of a number of cases being filed in the election courts for poll rigging. The Election Commission, therefore, has to increase its capacity of proper vigilance so that it can order a re-poll in polling booths where malpractices have been detected.

References:

Based on the Interview with Mr. Hari Krishna Karkee, lawyer, who has worked in a number of election cases in the past.

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

No elections could be held in Nepal after 2002 because of the insurgency.

References:

Media reports

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

75

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Political parties can be formed in Nepal with some reasonable restrictions. The constitution empowers the Election Commission to deny registration of any political organization or party if any Nepalese citizen is discriminated against in becoming a member on the basis of religion, cast, tribe, language or sex or if the name, objectives, insignia or flag is of such a nature that it is religious, communal or tends to fragment the country [Article 142 (4)]. The large number of political parties registered with the Election Commission for the Constituent Assembly Polls is proof of the fact that citizens have exercised the right to form political parties.

[<http://www.election-commission.org.np/>]

References:

Article 142 of the Interim Constitution of Nepal, 2007

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

Citizens have a right to run for political office; some restrictions, however, do exist. The constitution bars the registration of any political organization or party if any Nepalese citizen is discriminated against in becoming a member on the basis of religion, cast, tribe, language or sex or if the name, objectives, insignia or flag is of such a nature that it is religious, communal or tends to fragment the country.

The same provisions were there previously in the 1990 constitution of the Kingdom of Nepal. It is noteworthy here that a party with an ethnic orientation, headed by Gore Bahadur Khapangi, a royal henchman, was denied registration under the constitutional restriction.

References:

Article 142 of the Interim Constitution of Nepal, 2007;
Article 113 of the Constitution of the Kingdom of Nepal, 1990

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Restriction and barriers do exist. Those minority groups having no access to powerhouses may be denied the registration under the legal or political pretext.

References:

Based on the Interview with Mr. Thama N. Ghimire, member of the Society for Humanism (SOCH) Nepal.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Some barriers may exist. The regular income of the political parties could be one of the reasons. Those who are able to run depend on political campaign contributions, which are not transparent. Money comes from business executives, parliamentarians or political appointees.

References:

Based on the Interview with Mr. Thama N. Ghimire, member of the Society for Humanism (SOCH) Nepal.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable

and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | **50** | 25 | 0

Comments:

Since the Seven-Party Alliance government that forged a loose alliance with rebel Maoists have come to power after the 2006 April uprising, virtually no opposition exists in the Nepalese Parliament now. However, the parties in the coalition government themselves, particularly the NCP (M) and Sadbhavana Party, do sometime disrupt the proceedings of the Parliament for their various political demands.

A media report on a Web site, quoting the editorial published in the one of the leading newspapers in Nepal states, the eight political parties have started showing a very dangerous attitude by ignoring other parties [such as the royalist Rastriya Prajatantra Party], professional organizations and even the judiciary." This, according to the editorial, could lead our "democracy" towards authoritarianism.

References:

Surendra Sharma, Nepal on 'Dangerous' Road to Constituent Assembly Polls", <http://www.americanchronicle.com/articles/viewArticle.asp?articleID=19333>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The interim constitution mandates the creation of an Election Commission for Nepal [Article 128 (1)] – a constitutional body having the right to conduct, supervise, direct and control the elections to the Constituent Assembly, referendum, and the local authorities (Article 129). The Election Commission currently has a chief election commissioner as head of the Institution, and four other election commissioners.

(For details please visit <http://www.election-commission.org.np/ec.php>). They are appointed by the prime minister on the recommendation of the Constitutional Council [Article 128 (2)].

Article 157 of the constitution vests the right on Constituent Assembly to hold referendum on any matters of national importance, provided its two-thirds majority of the total number of members present therein are in favor of and decides to that effect. The Election Commission has been mandated to conduct such referendum also.

So far as the local authorities are concerned, they are the decentralized statutory bodies instituted by the Local-Self Governance Act, 1999. The periodic election of such bodies too is the responsibility of the Election Commission.

References:

Article 128 and 129 of the Interim Constitution of Nepal 2007

www.sambidhan.org

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

65

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The Election Commission is an independent constitutional body. The constitution prescribes the precise criteria for the persons to be appointed in the Election Commission. Besides, the Legislative-Parliament Rules 2007, for the first time in Nepalese parliamentary history, provide for a parliamentary special committee on public hearing. A wider consultation, therefore, is exercised in the process of appointing the chief election commissioner and the other commissioners. This special parliamentary committee basically conducts the hearing for the persons to be appointed in constitutional posts. The special procedures for the hearing have also been prescribed.

References:

Chapter 14 (Article 128-130) of the Interim Constitution of Nepal 2007;
Section 212 and 213 of the Legislative-Parliament Rules, 2007

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The current chief election commissioner, Bhoj Raj Pokharel, and the other four commissioners were appointed only after the Parliamentary Special Hearing Committee had okayed the recommendation of the government.

References:

Media Reports:

www.nepalnews.com,

www.ekantipur.com,

www.election-commission.org.np

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Although the constitution requires the government to provide the necessary staff, the core and full-time staff are limited. The staff deployed by the government for the electoral process largely come from different sectors and have different expertise and orientation. They may not be professional enough to carry out the mandate of the Election Commission. All the staff serving in the office of the Election Commission, therefore, do not possess specific qualifications to fulfill the basic mandate.

References:

Media Reports:
www.nepalnews.com,
www.ekantipur.com,
www.election-commission.org.np

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission is mandated to submit reports periodically to the Parliament. The reports thus submitted are public documents. However, the scope and the content of the reports may sometimes be limited and might also lack the essential information. The information posted on the Web too does not appear as comprehensive.

References:

www.election-commission.org.np

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The performance of the Election Commission of Nepal with the new mandate of conducting Constituent Assembly polls is yet to be judged in the changed political context. However, the past experience shows that the Nepalese Election Commission was not very effective and was occasionally unable to enforce its judgment on political offenders. This was mainly due to the political influence on selecting staff for the electoral process. The staff significantly lacked the professional will power for imposing penalties on offenders. With the monitoring mechanism being weak and largely ineffective, the imposition of penalties was also very ineffectual.

References:

Media Reports:

www.nepalnews.com,

www.ekantipur.com,

www.election-commission.org.np

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

67

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

Although there was a formal process of preparing electoral rolls, in the past elections there always remained the widespread complaints of electoral rolls not being up-to-date in Nepal. Despite the efforts to ensure that all eligible voters are included, there may be reports of omission and addition. The legislation provides voters with sufficient time to check the accuracy of their registration. However, the practice of publishing names is largely centered in the district headquarters only, which may be inaccessible for those who live in remote areas. The publication of voter lists is confined to paper only. Due to the lack of effective voter education program, a large number of the population remains unaware about the publication of voter lists. Consequently, some voters realize that their names are not on the electoral roll on the particular election day only.

References:

Based on the Interview with Mr. Basanta Gautam, a rights advocate working in the Mid-western region Nepalgunj.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost^o voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

Previously this was guaranteed by the Election of House of Representatives Act, Election (Crime and Punishment) Act, Local Body (Election Procedures) Act. The situation has now been changed as the country is on a road to hold the historic Constituent Assembly polls. A few new legislations have been passed for that purpose.

References:

Election to Members of the Constituent Assembly Act, 2007;
Election (Offences and Punishment) Act, 2007

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | **50** | 25 | 0

Comments:

Special courts are there to hear the complaint. However, these courts lack efficient and trained staff. The process of effective appealing is yet to be ascertained in the changed political context.

References:

Interview with lawyer Hari Krishna Karkee.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | **50** | 25 | 0

Comments:

In the past elections, the security forces, particularly the police, were often misused by the government and the government-supported candidate. Their neutrality is yet to be ascertained in the changed political context.

References:

Interview with Mr. Mahesh Sigdel, a civil society activist.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

Domestic and international observers are allowed to monitor the electoral process.

References:

Election Observation Directives, 2007

<http://www.election-commission.org.np/observation.php>

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

A large number of polling sites may go unobserved because of the geographical constraints. Besides, the impartiality of the internal monitoring organizations has been doubtful many a times due to their political affiliation.

References:

Interview with lawyer Govinda Sharma.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

20. Are there regulations governing political financing?

57

20a. In law, there are regulations governing private contributions to political parties.

YES | **NO**

Comments:

There is no specific regulatory mechanism in existence. However, the Political Parties Act requires the political parties to declare donations exceeding 25,000 rupees (US\$397). The Election Commission makes such declaration public within six months from the time the returns are filed. This provision is woefully inadequate as no follow-up mechanisms exist. Realizing this inadequacy, a commission on recommending reform on corrupt practices, headed by Mahadev Yadav, had strongly recommended to introduce a regulation on political party financing.

References:

Article 142 of the Interim Constitution of Nepal 2007;
The Political Parties Act 2002

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | **NO**

Comments:

Because there is no law regulating political party financing, there are no limits on individual donations to candidates. However, political parties in Nepal are restricted to accept donations or grants from international agencies, foreign governments and individuals [Section 5 (G)].

References:

The Political Parties Act 2002

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | **NO**

Comments:

Because there are no laws regulating corporate donations, there are no statutory limits on corporate contributions to candidates or political parties. Political parties in Nepal cannot accept corporate donations or grants from international agencies or individuals. The Corporate Ethics of the Federation of Nepalese Chamber of Commerce and Industry (FNCCI) may impose some restrictions.

References:

The Political Parties Act 2002

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

Because the Act Relating to Political Parties contains no provision for total party expenditures, there are no specific statutory limits. However, limits are prescribed to total election expenditures. The Election Commission may impose limits for the candidates on total expenditure in election campaigning. The cap of the amount allowed to be expended by the candidate in the election shall be prescribed by the Commission upon a notification published in the Nepal Gazette.

References:

The Political Parties Act 2002;
Section 69 of Election to Members of the Constituent Assembly Act 2007;
Election (Offences and Punishment) Act 2007;
Section 30 of the Election Commission Act 2007

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

There is a law which requires mandatory disclosure of donations made to political parties. The Political Parties Act requires the political parties to declare donations exceeding 25,000 rupees (US\$397). The candidates are required to submit the expenditures of their election campaign after the election is over. These provisions, however, are yet to be materialized since no election has been held after the Act was promulgated in 2002.

References:

The Political Parties Act 2002

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

There is a legislative provision with regard to independent auditing of party finances [Section 11]. Besides, the constitution mandates the parties to declare their income sources [Article 142 (2) (C)].

References:

Article 142 of the Interim Constitution of Nepal 2007;
The Political Parties Act 2002

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

The Election Commission has been mandated to monitor political party financing. However, the Commission has not been able to effectively monitor the situation because of inadequate regulations and bylaws.

References:

The Political Parties Act 2002;
The Election Commission Act 2007

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

17

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

Because there is no limit prescribed as such, individual donations to parties are unaccounted for.

References:

Since no laws govern this area in Nepal, the prevalent practice is such that nobody knows about the individual donations given to parties.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

References:

There is no limit prescribed, hence it is not applicable in practice.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

The limit on party expenditure is yet to be materialized in practice since no election has been held after the Act was promulgated in 2002.

References:

Election Legislation

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission is mandated for carrying out investigations. However, no credible investigations have been made as yet.

References:

Election Legislation

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no reported case of imposing a penalty.

References:

There are no regulations governing political financing.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

Parties' accounts are audited; however, the audits thus conducted are more of a ritual. The provision remains largely ineffective as there is no follow-up mechanism. Besides, the audits cannot be considered as credible because of the political influence/domination of the mechanism responsible for auditing.

References:

Based on the Interview with lawyer Arjun Khanal.

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

8

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Despite the ruling of the Supreme Court of Nepal, political parties and candidates in Nepal have never been transparent in terms of disclosing their finances.

References:

Kamal Pokhrel,

On behalf of the Pro-public, Advocate Mihir Kumar Thakur vs. the Election Commission, Writ No. 2668 and 2669,
Aug. 31, 2005, Unpublished.

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As past experience suggests, political parties and candidates never published their sources of income or expenditures, except in cases of renewal and for election campaigning purposes. The audit reports and financial disclosures can legally be accessed, but there are no such documented cases.

References:

Election Legislation

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Recently, a political party, namely the Nepali Congress (Democratic), made its financial statement public; however, the extent to which these statements reflect the reality of expenditures is debatable.

References:

Since political parties do not generally publish their financial disclosures, it is very difficult to retrieve the records. Besides, records are not accessible to people who are not directly concerned. Concerned people, however, can access those records at a reasonable cost.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁵⁶Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES

NO

Comments:

Citizens have a constitutionally guaranteed right to defend their infringed fundamental and legal rights. The Supreme Court and the Appellate Courts of Nepal have a power to issue writs against the executive (Article 32 and 107). These constitutional remedies, however, may be suspended during the state of emergency. [Article 143 (7)].

References:

The Interim Constitution of Nepal 2007;

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

69

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | **50** | 25 | 0

Comments:

The chief executive generally has to give reasons for policy decisions. The reinstated House, through its historical Declaration of May 18, 2006, has made it binding upon the executive to give reasons for every action taken. In addition to this, there is a trend, especially after the negotiated political settlement, that the issue is discussed in the eight political parties before any policy decision is made.

However, no reasons are given especially for the politically-sensitive issues. The report of the Rayamajhi Commission, for instance, was delayed for long and the prime minister, who happens to be the head of the state also, did not give any reasons for not making the report public.

References:

House of Representatives (HoR) Declaration 2006

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The judiciary has the power to review the executive actions contravening the constitution and other statutory provisions.

References:

The Interim Constitution of Nepal 2007 [Article 1, 107 and 116]

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

Nepalese courts are generally pro-active in defending citizens' rights. The judicial activism demonstrated by the Supreme Court in some cases in the past is really commendable. However, political prejudice may influence the decisions. This was the case during the king's direct rule.

References:

Various decisions and verdicts of the Supreme Court;
Annual Reports of the Supreme Court
www.supremecourt.gov.np

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

The chief executive of Nepal is required to obey, respect, protect and maintain the constitution. The Council of Ministers has the right to formulate policy and regulations. The decisions made by the Council of Ministers have to be defended in the Parliament.

References:

The Interim Constitution of Nepal 2007
www.opmcm.gov.np

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

100

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

Due to the ongoing peace process in Nepal, the prime minister is both the head of state and the head of government in the current transitional period. No prevalent Nepalese laws bar the prosecution of the prime minister for criminal offences. In the past too, the prime minister could be investigated and prosecuted for criminal charges. However, there is no known case of any prime minister prosecuted when in power.

So far as the then king is concerned, he, as a head of state and a constitutional monarch, did enjoy the absolute immunity in this regard.

References:

The Interim Constitution of Nepal 2007 and other prevalent Nepalese laws;
The Constitution of the Kingdom of Nepal 1990

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

Ministers can be prosecuted. There are cases (not during the study period, of course) of ministers being prosecuted when in power. Padma Sunder Lawoti, a cabinet minister, was investigated and prosecuted for a corruption charge. The then secretary in the Ministry of Agriculture, Dan Bahadur Shahi, was prosecuted along with the minister Lawoti.

References:

The Interim Constitution of Nepal 2007;
other prevalent Nepalese laws

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

38

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

From peon to prime minister, all are obliged to disclose their income and assets in Nepal. Earlier the king, as a head of the state, was immune from disclosing the assets, as no questions could be raised in relation to his property.

However, this provision is largely ineffective as the monitoring authority, the National Vigilance Center, has not been able to effectively monitor these disclosures due to the inadequate governing rules and regulations.

References:

Corruption Control Act 2002, Section 50;
Article 30 of the Constitution of the Kingdom of Nepal 1990;

Kamal Pokhrel,
Legal Framework on Income and Asset Disclosure in Nepal,"
Research and Media Center against Corruption (ReMAC) Nepal, 2007.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

All who hold the public office shall have to compulsorily disclose their assets.

References:

Corruption Control Act 2002

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

A national servant," who holds public office, is subject to restrictions on the gifts. S/he may, however, accept gifts on prior approval by the government.

References:

Corruption Control Act 2002, Section 5

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

Comments:

Under the existing law, there is no room for independent auditing of disclosure forms. Instead, the law requires that all the disclosures filed by the public officials be kept confidential [Section 50 (4)].

References:

Corruption Control Act 2002

Kamal Pokhrel,
Legal Framework on Income and Asset Disclosure in Nepal,”
Research and Media Center against Corruption (ReMAC) Nepal, 2007.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

There are no legal restrictions.

References:

Civil Service Act 1992;
Civil Service Regulation, 1993

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

Comments:

Because there is no legal restriction for post-government private sector employment, this is not applicable in the Nepalese context.

There are quite a few examples of ex-government-servicemen/constitutional heads taking up the private profession. For instance Hari Pandey, the former minister for Industry and Commerce, ran a private company, Gandaki Noodles, as a director of the board. Likewise, Surya N. Upadhyaya, the former chief commissioner of Commission for the Investigation of Abuse of Authority (CIAA), is currently the president of an NGO called Better Nepal. Similarly, former attorneys general Badri Bahadur Karkee, Shshil Panta, Moti Kaji Sthapit and Sarbagya R. Tuladhar all are practicing law as private lawyers.

References:

Self-Observation, Civil Service Act 1992;
Civil Service Regulation, 1993

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

Comments:

Civil servants may be tempted by certain interest groups. The institutional support mechanism for implementing laws governing gifts and hospitality is either weak or ineffective.

References:

Based on the deliberations of a Discussion Forum organized by Research and Media Center against Corruption (ReMAC) Nepal.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

A big NO", because no Nepalese law provides for the independent auditing of asset disclosures.

References:

Corruption Control Act 2002

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

0

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

Section 50 (4) of the Act requires that all the disclosures filed by the public officials be kept confidential, hence no access is granted.

References:

Corruption Control Act 2002

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Because the disclosures are kept confidential, citizens are deprived of the information.

References:

Corruption Control Act 2002

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable because the access is restricted.

References:

Corruption Control Act 2002

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

25

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | **25** | 0

Comments:

Since the political understanding between the government and the former rebels categorically stresses mutually agreed governance (which is reflected even in the interim constitution and all other agreements), there is no clear demarcation as to separation of official government functions. The issues agreed in the eight-party coalition become the government agenda. Besides, the Maoist agenda gets much attention in the government. One such example is the issue of monthly remuneration for the insurgents in cantonments. The government had to give in to the demands of the Maoist party, as they had disrupted parliamentary proceedings over this issue.

References:

The Political Agreement between the Government of Nepal and NCP (M) on Nov. 8,2006; Comprehensive Peace Accord 2006; The Interim Constitution of Nepal 2007

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

83

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

Nepalese judiciary can check the actions of the legislature and executive to ensure that they do not violate constitutional prerogatives and limits. Besides this original jurisdiction, the Supreme Court of Nepal has the Appellate and Advisory jurisdiction also. The Supreme Court may entertain writ petitions to interpret laws passed by the legislature.

References:

The Interim Constitution of Nepal 2007, Article 107

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

In principle, the judiciary in Nepal is independent. The judicial activism demonstrated in few cases is, no doubt, praiseworthy. However, the image of the judiciary remained tainted even after the Loktantra, due to famous CD scandal (it was all about the court personnel openly bargaining for the bribe from a party in a case) and other indifference shown to some important issues raised under the petition.

References:

Media Reports

Nepal: Human Rights Yearbook, 2007,
published by Informal Sector Service Center (Insec),
www.inseconline.org

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

The members of the national legislature are subject to criminal proceedings like any other layman, according to the Nepalese laws. The only requirement in this regard is that the Parliament be informed about the arrest if the parliamentary session is in progress.

References:

Criminal Legislation;
Article 56 (5) of the Interim Constitution of Nepal 2007;
Legislative-Parliament Rules 2007

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

29

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

The national legislators of Nepal are the public officials” and are required to submit asset disclosure forms at regular intervals. Besides, the election legislation requires the candidates to submit the disclosures after they are elected to the post.

References:

Corruption Control Act 2002, Section 2(D)(1) and 50;
Election Legislation

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

There are no such restrictions.

References:

Election Legislation;
Other prevalent Nepalese Laws

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

Because the national legislators are public officials in the eye of laws, the restriction with regard to gifts and hospitality is equally applicable to them.

References:

Corruption Control Act 2002, Section 5

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

No mechanism of audit exists because the law requires that all disclosure records be kept confidential.

References:

Corruption Control Act 2002, Section 50 (4)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

Comments:

Because there is no law which restricts national legislators from taking-up post government private sector employment, this is not applicable in the Nepalese context.

References:

Legislative-Parliament Rules

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Even though they exist in law, the regulations governing gifts and hospitality are not enforced effectively. The monitoring agency, the National Vigilance Center, is incapacitated due to the lack of strong political will and inadequate governing rules and regulations.

References:

Corruption Control Act 2002, Section 5

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

No such system exists in Nepal.

References:

Legislation relating to Corruption Control and Laws governing Parliamentary Affairs

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

0

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

The Act explicitly restricts the public access to the asset disclosure records. Besides, the law requires that all the disclosures filed by the members of the national legislatures be kept confidential. They are made available only to the investigating agency, if requested, hence no access is granted to the citizens.

References:

Corruption Control Act 2002, Section 50(1) (3) and Section 50 (4)

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Because the disclosure records are kept confidential, citizens are deprived of the information.

References:

Legislation relating to Corruption Control

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | **0**

Comments:

This is not applicable because the access is restricted.

References:

Legislation relating to Corruption Control

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

75

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Earlier, it was governed by the Supreme Court guidelines. However, in the changed context, the new Act relating to the right to information has a comprehensive provision for obtaining information.

References:

Gopal Krishna Shivakoti vs. His Majesty's Government;
The Right to Information Act 2007

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Earlier, records were accessible within one or two weeks or even more, subject to and depending on the nature of the document. But after the promulgation of the Right to Information Act, the set timeline is prescribed. According to the new Act, information of certain nature is to be made available immediately, whereas other information shall have to be made available within 15 days of the time a formal request is made. However, Nepal is yet to witness the effective implementation of the said Act, because it came into force very recently.

References:

The Right to Information Act 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | **75** | 50 | 25 | 0

Comments:

Records can be obtained by paying official charges, such as nominal fees and the cost of photocopying, etc. The new Act strictly prescribes for charging a fee as-per-actual-cost basis.

References:

The Right to Information Act 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47
III-3. Judicial Accountability

33. Are judges appointed fairly?

100

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

The law prescribes the specific selection procedure for national-level judges. The chief justice of the Supreme Court is appointed by the prime minister (of course, in the capacity of the head of state, as he now enjoys this particular right as well) on the recommendation of the Constitutional Council, whereas other judges of the Supreme Court are appointed by the chief justice on the recommendation of the Judicial Council. Similarly, the chief justice appoints the Appellate Court judges per the recommendation of Judicial Council.

References:

The Interim Constitution of Nepal 2007, Articles 103 and 109

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

The law prescribes precise criteria.

References:

The Interim Constitution of Nepal 2007, Article 103 (2) and (3), and Article 109 (2) and (3);
www.sambidhan.org

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

For the first time in Nepalese political history, the confirmation process has been prescribed for the constitutional posts. The parliamentary special committee on public hearing is entrusted with the responsibility of confirming the nominees.

References:

Legislative-Parliament Rules 2007, Section 212

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

83

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

Judges are required to give reasons for their decisions. Various case laws direct judges to maintain rationality in their decisions by giving proper reasons for the conclusions they arrive to.

References:

Country Code 1963, No. 202 of the chapter Of Court Management";
Supreme Court Regulation 1992 ; Sections 67, 68, 72 and Annex 6;

Thakur Gaire vs. Ministry of Home Affairs,
Nepal Law Journal, Decision No. 7672, 2006, No. 3, page 388.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Court of Nepal is a record court also, hence it is required to give reasons for the decisions it makes.

References:

The Interim Constitution of Nepal 2007, Article 102 (3)

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

There is an entity called Judicial Council, which is mandated to investigate breaches of procedure and abuse of power within the judiciary. The Council deals with all the matters relating to judicial administration, including the appointment, transfer, disciplinary action, and even the dismissal of judges.

References:

The Interim Constitution of Nepal 2007, Article 113

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

Because the members of the judicial branch (including the representative from the Bar) have a predominant presence in the Judicial Council, this automatically limits the political interference. The chief justice is the presiding officer of the Judicial Council. Membership is comprised of the senior-most judge from the Supreme Court, a senior advocate (having at least 20 years of experience) nominated by the Nepal Bar Association, a jurist nominated by the prime minister, and the minister of Justice.

References:

The Interim Constitution of Nepal 2007, Article 113 (1)

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

An independent review of this system suggests numerous problems over the functioning so far as the prevalent judicial culture is concerned. Regarding initiation of investigations, the Council does crumble to both internal and external pressure from different interest groups. Besides, a passive enforcement mechanism adds woes to the problem. The Council acts on formal complaints only, hence the effectiveness is limited.

References:

Based on the Interview with lawyer Hari Phuyal working for the International Commission of Jurists (ICJ) Nepal

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The vested interests of different influential groups and even of the members within the judiciary may prevent the Council from taking action against the defaulters. For instance, despite media reports on open bargaining over a bribe from a court client, the Council did not intervene in a timely manner (taking up the case of the alleged court official in the famous CD scandal), which raised serious questions.

References:

Media Reports

Corruption in Supreme Court",
A cover story by Shiva Gaunle, Himal Khabarpatrika,
March 15-29, 2007, www.nepalihimal.com;

The Kathmandu Post too had reported the case
www.ekantipur.com.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

29

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

The Judicial Council is the collecting and monitoring authority.

References:

Corruption Control Act 2002;
The Judicial Council Act 1991;
Judges' Code of Conduct 1998

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

Judges too are required to be transparent in this matter.

References:

Corruption Control Act 2002;
The Judicial Council Act 1991;
Judges' Code of Conduct 1998

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

Comments:

All asset disclosure records submitted by judges are confidential, hence nobody, except the investigating officer, will have the access to them. The whole confusion is created by the ambiguity with regard to the right to privacy. No auditing is carried out in the name of ensuring secrecy.

References:

Corruption Control Act 2002;
Other Legislation related to Judicial Administration

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

Comments:

Ex-judges have employment restrictions for the government service only, except as to serve as chairperson in the National Human Rights Commission. As far as the private profession is concerned, the only restriction is that they cannot practice law as the defense lawyer.

References:

The Interim Constitution of Nepal 2007, Articles 106 (2) and 131 (1) (A)

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

This is not applicable because there is no restriction in relation to private sector employment, except for private law practice. There are no known cases of ex-judges practicing law as defense lawyers.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Even though they exist in law, the regulations governing gifts and hospitality are not enforced effectively.

References:

Judicial Council Legislation

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable because auditing is not done.

References:

Legislation relating to Corruption Control and Judicial Administration

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

This is not applicable because access is restricted.

References:

Legislation relating to Corruption Control and Judicial Administration

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

This is not applicable. There are no such requirements.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

This is not applicable. There are no such disclosure requirements.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

83

37a. In law, the legislature can amend the budget.

YES | NO

Comments:

In a country like Nepal, where a parliamentary system of government is practiced, the passage of annual national budget is under the jurisdiction of the legislature. The legislative wing, which comprises the opposition and the treasury benches, can suggest adding or removing items or altering the allocated budget to certain sectors during a general debate. The rules formulated by the Legislative-Parliament provide the comprehensive provisions in relation to procedure. It is, however, pertinent to mention here that the government generally ensures the safe passage of the bill relating to government expenditure, as it normally enjoys the majority in the Lower House of the Parliament, wherein the budget is presented for the debate.

References:

The Interim Constitution of Nepal 2007, Article 93;
Legislative-Parliament Rules 2007, Chapters 19 & 20

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

No public expenditures can be made without legislative approval. The post-facto approval is also possible. The government, however, has to regularize the expenditures incurred from the state coffer. The government spending is scrutinized by the Comptroller and Auditor General of Nepal respectively.

References:

The Constitution and the Prevalent Nepalese Laws

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | **50** | 25 | 0

Comments:

The government normally enjoys the majority in the Parliament. The ruling members generally abide by the party decisions regarding the budget. However, opposition may suggest certain changes during the debate or in the parliamentary committee which discusses the proposed budget before it is passed or finalized; these proposals from the opposition might be less significant, as the Bill is endorsed by the majority. For instance, the latest budget proposed by the Nepalese government (presented with the so called political consensus" among the Eight-Party Coalition) was endorsed by the overwhelming majority of the parliamentarians.

So far as the working is concerned, the law provides MPs with the facility of appointing personal assistant (PA) to assist them in their day to day affairs. However, the section officers to be appointed as personal assistants to MPs may not have the adequate expertise or capacity to provide the necessary help, as they come from the civil service and have various backgrounds. Furthermore, legislators mostly prefer family members or close relatives as their personal assistants, which does not necessarily ensure their competence.

References:

The Act relating to Remuneration and Amenities of Parliamentary Office Bearers and Member of Parliaments(MPs) 1996

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

33

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

The law prescribes the elaborate procedure. The process too is transparent. The practice, however, is such that the scrutiny is carried out and discussions organized just because the law requires it, and the process is simply a ritual. Plus, there always remains the time constraint! This type of budget-making process, therefore, does not necessarily ensure the public participation at large.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

The public cannot participate in budget hearings in the Parliament. Only the citizens' elected representatives may provide the input. There is no mechanism available through which citizens could contribute in the debate. It is a general phenomenon that common citizens usually react to the budget afterward. However, in the recent years Nepalese media and other civil society organizations concerned have started organizing pre-budget debates involving experts and citizens alike. Citizens, thus, get the opportunity to express their views in these indirect forums only.

References:

Legislative-Parliament Rules 2007

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | **50** | 25 | 0

Comments:

In Nepal, a government booklet called RATO KITAB contains itemized allocations of the budget. However, this is known to very few people only, hence it is largely ineffective.

References:

Based on the Interview with lawyer Surendra Kunwar

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

The Public Accounts Committee (PAC) is the parliamentary special committee which provides the oversight of public funds.

References:

The Interim Constitution 2007, Articles 57 and 58;
Legislative-Parliament Rules 2007, Chapter 26, Sections 181 and 187

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

63

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Public Accounts Committee (PAC) scrutinizes the reports submitted periodically by the government wings. The report submitted by the constitutional body, i.e. the Auditor General, also goes to this committee for inspection. Besides, oral testimony is also sometimes sought from the government departments. However, the practice is such that the government often ignores the Committee directives and seldom implements reform measures suggested.

References:

Legislation relating to Legislative-Parliament

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

A member from the opposition party generally heads the Public Accounts Committee (PAC). The other members come from the major political parties in the Parliament.

References:

Based on the parliamentary practice in Nepal

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in

the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

The Public Accounts Committee (PAC) is usually independent. However, the existing political culture shows that it may be influenced by negative or positive incentives, and the vested interest of the major political parties.

References:

Based on the deliberations of a discussion forum organized by the ReMAC Nepal

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | **50** | 25 | 0

Comments:

The Public Accounts Committee (PAC) conducts an independent investigation of audit objections and is required to submit its report also. However, due to a lack of efficient staff and political will, its functioning is largely ineffective.

References:

Legislation relating to Legislative-Parliament:
www.parliament.gov.np

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ⁵⁵Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES

NO

Comments:

The constitution assumes a fairly competent civil service to run the administration of the country. For this, the constitution mandates the Public Service Commission (PSC) to select the competent human resource and ensure impartiality in civil service administration through appropriately managing the civil service. The Civil Service Act and the Civil Service Regulation provide the necessary impetus to the civil service administration in Nepal.

References:

The Interim Constitution of Nepal 2007, Articles 153 and 126;
The Civil Service Act 1992 and the Civil Service Rules 1993

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

The laws clearly outline the norms and procedures for recruiting civil servants in Nepal. The laws prescribe the precise criteria for eligibility and an examination held to test the competency of the candidates aspiring to be recruited as civil servants. The Corruption Control Act categorically delineates what constitutes an act of nepotism and corruption.

References:

The Public Service Commission (Procedure) Act 1991;
The Corruption Control Act 2002;
The Civil Service Act 1992 and the Civil Service Regulation 1993

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

There is an Administrative Court to redress the grievances of civil servants. Civil servants can approach the regular courts as well.

References:

The Civil Service Act 1992
Administrative Court Regulation 1994

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

The law prohibits future employment of government servants dismissed on charges of corruption. A civil servant accused of corruption is often suspended during the trial. The dismissal is made only after the court convicts the accused in its final judgment.

References:

Civil Service Act 1992, Section 61 (B)

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

53

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In principle, civil service in Nepal is independent. However, in practice, civil servants are mostly influenced. Civil servants succumb to political pressure and are also its victims. In recent years, there has been increasing evidence to show that the civil service is getting increasingly politicized. Those civil servants who are neutral are bound to be marginalized, hence are often marginalized. There are civil servants' organizations established to protect and promote civil servants' professional rights, however, they openly profess the political ideologies of major political parties in Nepal. These organizations often act per the directives of the affiliated political parties. Consequently, a number of reasons militate against the accountability of Nepalese bureaucracy. First, despite considerable growth in size and professionalism, civil servants are finding it difficult to hold their job in high esteem. Second, symptoms of institutional decay have occurred, in which public officials subordinate their dharma (institutional duty and authority) to self-interest. Third, there has been an increase in the atrophy of their morale and civic responsibility to serve the citizens. And, finally, de-motivation of civil servants in both *karya dachhata* (ability) and *karya chhamata* (capacity) has consequently led to a breakdown in governmental performance. The culture of confidentiality has further eroded the trust between the government and the governed and bred the source of corruption.

References:

Based on the Interview with Mr. Achyut Neupane, a public prosecutor in the District Public Prosecutor's Office, Kathmandu

See also: Dev Raj Dahal, FES, Nepal Office, Critical Challenges for Governance, <http://democraciaparticipativa.net/documentos/ViewFromNepal.htm>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

Appointments to the civil service are generally based on the criteria provided by law. The majority of civil servants are hired on the basis of merit. However, the political interest often supersedes professionalism. For instance, most of the secretaries in different ministries, including the principal secretary, are transferred per the interest of the power center or the concerned minister. Whenever there is a change in command at the political level, the civil service becomes shaky.

The latest example of political influence over the bureaucracy is the long-awaited appointment of the secretaries in different ministries. Despite the availability of professionally competent civil servants, the eight-party government of Nepal has not yet recruited secretaries for non-other reason than politics.

References:

Media Reports on different dates:
www.nepalnews.com,
www.kantipuronline.com

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | **50** | 25 | 0

Comments:

Nepotism, cronyism or patronage cannot be ruled out because the service management falls under the purview of the Ministry of General Administration. The ministry may not be immune from the political influence. There is a provision of performance evaluation; however the process is not transparent.

However, the recently amended Civil Service Act categorically states that the performance evaluation shall have to be made transparent. Civil servants in Nepal are yet to witness the effective implementation of this provision in practice.

References:

Based on the Interview with Mr. Chomendra Neupane, an official in the Nepalese Government

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | **25** | 0

Comments:

Senior level civil servants have job descriptions, but others have no clear job descriptions. They are assigned tasks without consistency that have nothing to do with the responsibility, authority or pay of the position. Consequently, civil servants often neglect their job descriptions because of the lack of accountability. Moreover, civil servants also enjoy the existing culture of widespread impunity.

References:

Civil Service Legislation

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

There is no system of bonuses within the civil service in Nepal. Bonus is paid to industry employees only.

References:

Civil Service Legislation;
The Bonus Act 1973

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The government writes in to Public Service Commission (PSC) describing the number of actual positions required whenever the posts fall vacant within its wings. The PSC, then, advertises the positions in the national-level newspapers, mostly in the state-owned media. The recruitment is done as per the set procedure. The government publishes the names of gazetted level positions (Section Officer level and above) once the position is filled by the PSC. However, there is no system of regular updates.

References:

www.psc.gov.np;
www.moga.gov.np

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

Comments:

The Administrative Court, which is the redress mechanism for civil servants' grievances, is not adequately resourced (in terms of both economic and professional human resources). Besides, it has very limited jurisdiction and is not very effective.

References:

Civil Service Legislation

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants are normally paid on time. There have been no reports of delayed employee disbursements over the past year.

References:

Self-observation

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

Although civil servants convicted of corruption are strictly prohibited from future government employment, there is however no system of blacklisting or of cooling-off periods. The prohibition, therefore, may not be effective.

Nevertheless, there are no reported cases of civil servants being employed again after they were convicted.

References:

Legislation relating to Corruption Control;
Civil Service Legislation

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

42

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

Judges are strictly restricted from hearing cases that involve their personal interest. So far as the civil servants are concerned, the Civil Service Rules has the guiding powers, but they are not entirely specific. In the previous year, civil servants' potential conflict of interest was explicitly restricted by the Good Governance (Operation and Management) Ordinance 2005, as the Ordinance required the civil servants to abstain from making a particular decision if their personal interest was involved in it. However, the Bill relating to Good Governance is with the special committee in the Legislative-Parliament and awaits approval.

References:

Country Code,
Civil Service Rules

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

Comments:

No such restrictions exist. This may tempt civil servants to look for a private sector job. As government salaries are quite low in Nepal in comparison to wages in the private sector, many may seek pre-mature voluntary retirement. There are cases where even the in-service civil servants have taken leave and joined the private sector in a legitimate fashion by obtaining permission from the government.

References:

Civil Service Legislation

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

The law clearly states that civil servants should not accept gifts or hospitality that are not in consonance with their duties and responsibilities.

References:

Corruption Control Act 2002, Section 5

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Because the law does not restrict post-government private sector employment, this is not applicable in Nepal.

References:

Self-observation

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The National Vigilance Center (NVC), a statutory body established under the Prime Minister's Office (PMO), is responsible for the monitoring. However, this unit of the government has not been effective in this regard. This is partly because the NVC has not been endowed with adequate rules and procedures, and mainly because the government lacks a strong political will.

References:

Good Governance Yearbook 2006,
published by the Research and Media Center against Corruption (ReMAC) Nepal, 2007

<http://www.icac.org.hk/news/issue22eng/button4.htm>

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

This branch of legal regulation is not yet implemented in Nepal.

References:

Country Code;
Civil Service Rules

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

0

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

Public access to asset disclosure records is restricted in Nepal.

References:

Legislation relating to Corruption Control;
Civil Service Legislation

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable in Nepal.

References:

Legislation relating to Corruption Control;
Civil Service Legislation

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable because citizens are not allowed to access the disclosure records.

References:

Legislation relating to Corruption Control;
Civil Service Legislation

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES

NO

Comments:

The law has a provision for the protection of informers (Section 56). This provision, however, is largely confined only to the breach of secrecy. There is no specific law that protects whistleblowers in Nepal.

The existing Act makes some provision for information disclosure, but the provisions in the Act are meant more to discourage false reporting rather than encourage and protect accurate reporting. Section 49 of the Act makes provision for imposing a fine not exceeding 5,000 rupees (US\$79) for anyone filing false or wrong complaints with an intention to cause losses, damage or harassment. Section 58 makes provisions for distributing rewards but it is not specific in terms of amounts to be awarded to the whistleblower. The investigating authority can reward anybody for assisting in the process of investigation.

Over the years, an NGO called Pro-Public is advocating for whistleblower protection in Nepal. A Bill has been drafted for lobbying purpose. However, the Bill is yet to see the light of the day. The proposed Bill speaks of rewarding the whistleblower with up to 100,000 rupees (US\$1,587) for accurate information, and punishing a whistleblower with up to 50,000 rupees (US\$793) for fake reporting. Apart from the rewards and punishments, the Bill also contains a number of provisions related to the process of making complaints and providing due protection to whistleblowers.

References:

Corruption Control Act 2002

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable in tNepal because the existing legal measures don't offer real protection. As the nexus between political players and government officials is deeply entrenched in Nepal, whistleblower protection becomes much more difficult in the absence of a specific law.

References:

Corruption Control Act 2002

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

There is no specific law on whistleblower protection in Nepal.

References:

Corruption Control Act 2002

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Had this been the case, the majority of complaints registered with the CIAA would not have been anonymous.

References:

Commission for the Investigation of Abuse of Authority (CIAA) Reports

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

The Commission for the Investigation of Abuse of Authority (CIAA), a constitutional body, has been monitoring corruption complaints for public sector corruption.

References:

The Interim Constitution of Nepal 2007, Chapter 11 (Article 119-121)

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

44

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Commission for the Investigation of Abuse of Authority (CIAA) is mandated to investigate matters relating to corruption. However, its ability to fulfill the basic mandate is largely limited because it is centralized in the capital and lacks offices and adequate staff at local levels. Besides, major chunks of staff are taken from the government machinery. As these personnel possess different backgrounds, they may not have the adequate professional capacity to discharge the obligation.

References:

www.akhtiyar.org.np

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Commission for the Investigation of Abuse of Authority (CIAA) receives yearly funding from the government. However, the government's budget is largely dependent on foreign aid, which may not be consistent. Besides, the state's priorities have changed in recent times, especially after the peace agreement, hence the momentum gained in the previous years appears as slacked so far as the anti-corruption drive in Nepal is concerned. One such pertinent example is that the government has not yet appointed the new chief commissioner in the CIAA even though a long time has elapsed since the post became vacant.

References:

News reports

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Although the Offices of the Chief District Officer (CDO) are mandated to collect the complaints, it takes more than one month for the complaints to officially be registered with the Commission for the Investigation of Abuse of Authority (CIAA). Because of the centralized system, the investigation also takes time.

References:

www.akhtiyar.org.np

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

Upon receiving complaints, the Commission for the Investigation of Abuse of Authority (CIAA) usually starts investigating. However, the investigation may be slow and limited due to a number of reasons, including resource constraints. Moreover, as the past trend suggests, CIAA may be reluctant to initiate an investigation against a senior politician or an influential member in the cabinet.

References:

Commission for the Investigation of Abuse of Authority (CIAA) Act 1991

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

48 IV-3. Procurement

48. Is the public procurement process effective?

70

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

There was no specific law on public procurement till last year. There were other provisions though, which guided the public procurement in Nepal. However, the government has recently introduced the new Act, which explicitly restricts the conflict of interest for public procurement officials. According to the new Act, the public official concerned shall have to abstain from making a decision, and report to the superior authority or the immediate boss, in case closest relatives are involved in prospective procurements[Section 61 (F)].

References:

Public Procurement Act 2007

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

The new Act envisages establishing a public procurement monitoring office under the PMO and the Office of the Council of Ministers for effectively managing the procurement task (Section 65). The functions, duties and powers of such an office are very elaborate and well laid-out. This monitoring office will have, inter alia, a duty to provide regular trainings for the procurement officers [Section 65 (I)].

References:

Public Procurement Act 2007

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

The effective enforcement of the new Act is still to be witnessed. The other general provisions hitherto in practice were consistently ineffective in the absence of a specific law.

References:

Procurement Legislation

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

Procurement officials are civil servants” in the eye of law (the Commission for the Investigation of Abuse of Authority (CIAA) Act has defined the “Civil” or “National” servant very explicitly). Hence they too need to submit income and asset disclosure records every year. A statutory body called NVC has the mandate to monitor the assets, incomes and spending habits of the civil servants.

References:

CIAA Act 1991;
Corruption Control Act 2002

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

Comments:

Generally the Public Utilities” must, unless the context otherwise requires in the Act, invite the competitive bidding for the procurement purpose, and the opportunity to participate in such competitive bidding shall have to be made available to the competent bidder without any discrimination (Section 9). The new Act provisions the comprehensive procedure for competitive bidding under Chapter 3 (Section 11-28).

References:

Public Procurement Act 2007

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Public Procurement Act 2007

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

A comprehensive redresses mechanism is clearly laid-out under Chapter 6 (Section 48-51) of the Act.

References:

Public Procurement Act 2007

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

The Act is not specific in this regard. However, an unsuccessful bidder holds the fundamental right to invoke the extra-ordinary jurisdiction of the Supreme Court. The formulation of the Act is such that the Procurement Review Committee has been vested with the broad rights to resolve the disputes in the bidding phase. The Act requires that such committee shall have to be preferably chaired by the Appellate court judge (Section 48). Furthermore, the Act puts emphasis on alternative dispute resolution, so far as the dispute arising during the implementation of procurement contract is concerned (Section 58).

References:

Public Procurement Act 2007

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

The Act has the provision of blacklisting. The cooling-off period is one to three years (Section 63).

References:

Public Procurement Act 2007

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | **0**

Comments:

This is yet to be observed.

References:

Procurement Legislation

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

71

49a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

The Act requires that the entire process of procurement be transparent.

References:

Public Procurement Act 2007, Sections 68, 69 and 70

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

Section 60 of the Act has the mandatory provision of public notice.

References:

Public Procurement Act 2007

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Information shall have to be made available within a reasonable time period. However, both Acts were introduced recently, hence it is still to be observed how they will be implemented in Nepal.

References:

Procurement Legislation;
Right to Information Act 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Because the regulations are published, and the Procurement Act requires that all related information be posted on the Web site of the Procurement Monitoring Office, citizens are supposed to access it at a reasonable cost. However, the Committee has not yet been formed and its functioning is yet to be observed.

References:

Procurement Legislation;
Right to Information Act 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Major procurements are advertised in the national dailies. The new Act has the comprehensive provision in relation to tendering and procurement.

References:

Procurement Legislation

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Earlier, the access was granted to the concerned parties only. The new Act, however, requires results to be published on the Internet also, hence they are supposedly accessible to all in the days to come.

References:

Procurement Legislation and Practice

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

33

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

No particular businesses are restricted from competing for privatized state assets.

References:

The Privatization Act 1993

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

The Act has no specific provision in this regard.

References:

The Privatization Act 1993

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

There are no such regulations or requirements.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

75

51a. In law, citizens can access privatization regulations.

YES | NO

Comments:

The public notice for the bid is published.

References:

Privatization Act 1993, Section 6

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The agency publishes the notice just because the law demands that. The advertisement published are not much accessible to many. There are, however, no other mechanisms available, which could really guide the public in through the privatization process.

References:

Privatization Rules and Practice

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

The Act does not provide guidance in this regard. There are no other laws which govern this area.

References:

The Privatization Act 1993

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Because it is mandatory to publish the public notice in a national newspaper, in keeping with international practice, privatization regulations are accessible in a reasonable period of time, but only to the few people who are actually concerned.

References:

Privatization Act 1993, Section 9

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Because it is published in a newspaper, it can be accessed at a reasonable cost. The Right to Information Act permits greater scope not only for transparency but also for the costs involved.

References:

Privatization Act 1993, Section 9;
Right of Information Act 2007

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-1. National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

The Commission for the Investigation of Abuse of Authority (CIAA) investigates corrupt behaviors and documents abuses of authority. However, the CIAA is a constitutional body which performs the duty of an ombudsman also, but it is not purely an ombudsman". It is basically an investigating and prosecuting agency.

References:

The Interim Constitution of Nepal 2007, Article 119;
The Commission for the Investigation of Abuse of Authority (CIAA) Act 1991

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

66

53a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

Because all office-bearers are appointed under the recommendation of a constitutional council, Commission for the Investigation of Abuse of Authority (CIAA) is generally protected from political interference. It is a constitutional body, therefore it acts as an autonomous organization.

References:

The Interim Constitution of Nepal 2007, Article 119

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Traditionally, there was no system of hearing and confirmation process. Political influence over the appointment was bound to exist. However, in the changed political and legal context, it is mandatory for all constitutional posts to be confirmed by the Parliamentary Special Committee on Hearing. This kind of parliamentary scrutiny reduces the chance of political interference because the parliamentary committee is comprised of mostly opposition party members. However, so far as the current transition in Nepal is concerned, there is virtually no opposition in the picture, as the eight-party coalition government is ruling the country now.

References:

Legislative-Parliament Rules 2007

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The chief commissioner can be removed only through the impeachment process in the Parliament.

References:

The Interim Constitution of Nepal 2007, Articles 119 (3) (B) and 105 (2);
www.sambidhan.org

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Because it is centralized, the Commission for the Investigation of Abuse of Authority (CIAA) has difficulty in handling cases of corruption or abuse of authority that are reported at the local level. Besides, the staff are taken from the government also, hence they may have different backgrounds. Therefore not all of them may be competent enough to discharge the duties the CIAA has to perform.

References:

www.akhtiyar.org.np

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The chief commissioner and other commissioners are appointed per the recommendation of the Constitutional Council, hence the appointments are considered to be supportive of functional independence. In addition to this, these office-bearers now have to undergo a mandatory parliamentary hearing process for the confirmation. It therefore requires a '.75' rating here, especially in the changed political context in Nepal. However, the present irony is that the eight-party government has not yet appointed the chief commissioner in the Commission for the Investigation of Abuse of Authority (CIAA) despite the fact that the post became vacant a long time ago. They are yet to find a suitable 'consensus' candidate acceptable to all. If this trend of current Nepalese politics is taken into account, one has to consider scoring '.25' here instead of '.75' above.

References:

The Interim Constitution of Nepal 2007;
Legislative-Parliament Rules 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Commission for the Investigation of Abuse of Authority (CIAA) generally receives regular funding (on an annual basis) from the government. However, the government budget is largely dependent on foreign aid that may not be consistent. Besides, corruption control is not the state's prioritized agenda in the changed political context. This might be perhaps the reason why the CIAA has lost its momentum now. I think that leadership is another crucial factor to keep an institution intact and lively. The country has recently witnessed slackness in the vigilance of the anti-graft body, especially in the absence of a leader.

References:

News reports

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Reports are published and posted online. They are easily available to the urban population. However, people living in remote places may not have access to them.

References:

CIAA Web site:
www.akhtiyar.org.np

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The pace of the Commission for the Investigation of Abuse of Authority (CIAA) is slowed down for a number of reasons, including the state's indifference towards the anti-corruption drive.

References:

News reports

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The Commission for the Investigation of Abuse of Authority (CIAA) has no authority to impose penalties, except in very few cases, including the refusal to submit asset disclosures. The corruption cases are heard in the Special Court. The CIAA is only an investigating and prosecuting agency.

References:

CIAA Act 1991, various Sections, including section 31(A) (2)

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

References:

The report of the Commission for the Investigation of Abuse of Authority (CIAA) may be ignored at times as there is no stringent follow-up mechanism.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Because the complaints are dealt with secretly, not all the complaints lodged may be acknowledged. It may take quite some time to resolve the cases. In addition, there are other constraints, such as geography and resources.

References:

Commission for the Investigation of Abuse of Authority (CIAA) Act;
Working Procedure

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

67

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

The Commission for the Investigation of Abuse of Authority (CIAA) is required to submit its annual report to the prime minister (The current PM of Nepal also performs the duty of the head of state), and it is the duty of the prime minister to produce it before the Legislative-Parliament.

References:

The Interim Constitution of Nepal 2007, Article 121

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Citizens can access the published reports. However, the majority of people living in remote areas do not have timely access to them. It may take weeks for some to access them, because Internet is easily accessible only in the capital and other urban areas.

References:

www.akhtiyar.org.np

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Citizens can access the reports at a reasonable cost. However, it may be difficult to obtain the reports at times, because of a lack of adequate distribution. Citizens must go in person to collect the reports, which may involve the costs of travel, food and other logistics.

References:
Self-observation

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

The agency is the Auditor General of Nepal. The Office is an independent, nonpartisan, constitutional body which reports to the prime minister (The current PM of Nepal also performs the duty of head of state until the next arrangement is made in the new constitution to be formulated by the Constituent Assembly).

References:

The Interim Constitution of Nepal 2007, Article 122

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

72

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

Because the Auditor General is a constitutional body, it has organizational independence. The Auditor General is appointed on the recommendation of a constitutional council.

References:

The Interim Constitution of Nepal 2007

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The Auditor General can be removed only through the impeachment process in the Parliament.

References:

The Interim Constitution of Nepal 2007, Articles 122 (3) (B) and 105 (2)

www.sambidhan.org

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Auditor General is assisted by a relatively professional, technical staff, yet some of them may lack professional competence.

References:

www.oagnep.gov.np,
infoag@most.gov.np

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The Auditor General is appointed per the recommendation of the Constitutional Council. The nomination is confirmed through a parliamentary process. Although this kind of hearing has the objective of grilling the political interference, this is still questionable in the present context, especially when there is virtually no opposition in the parliament.

References:

The Interim Constitution of Nepal 2007;
Legislative-Parliament Rules 2007

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Auditor General receives regular annual funding from the government. However, the government budget is largely dependent on foreign aid, which may not be consistent.

References:

www.oagnep.gov.np

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The report is published on an annual basis and is submitted to the prime minister (in his capacity of head of state) who then passes it the legislature. The Public Accounts Committee may scrutinize and further examine this report in the Parliament. The report is also made available to the public (whoever is interested and requests it) in a printed form.

References:

The Interim Constitution of Nepal, Article 121;
www.oagnep.gov.np

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | **25** | 0

Comments:

Although the audit report creates pressure for the government, the government often ignores it for political or other reasons. After all, the action must be taken by the government – the competent authority to act on recommendations of the reports of the Auditor General.

References:

News Reports;
Reports of the Auditor General

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | **50** | 25 | 0

Comments:

The Auditor General initiates investigations, however, its functioning sometimes may be affected by political or other reasons.

References:

Media reports;
www.oagnep.gov.np

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

67

57a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

The reports are generally available to the public. The recently introduced Right to Information Act provides a greater scope.

References:

The Interim Constitution of Nepal 2007;
The Right to Information Act 2007

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

After the report is presented in the Parliament, the Parliament Secretariat places the report in its library for public reference. However, laymen may have difficulty in entering the Secretariat premise, as it is located inside the Singha Durbar, a place where common citizens do not have easy access.

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

Although the report is made public, the number of copies issued are limited and the general public is required to visit the Auditor General's office in Katmandu to obtain the report, hence the access is difficult for people living outside the Kathmandu valley.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

80
V-3. Taxes and Customs

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES | NO

Comments:

The Internal Revenue Department is the specialized government agency that deals with the collection of taxes.

References:

The Income Tax Act 2002, Section 72

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

100

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency has full-time, professional staff.

References:

www.ird.gov.np

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

It receives fairly consistent funding from the government, as the government must rely heavily on the revenue it collects.

References:
www.mof.gov.np

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

75

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

There is no discrimination in tax policies. Laws are generally enforced consistently. The tax officer, however, exercises discretionary power in the absence of clear rules and procedures in determining gross income on tax returns.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

Comments:

The Customs Department is the specialized government agency for customs purposes, whereas the Excise Offices deal with the excise matters.

References:

Customs Act 1962

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

75

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

These agencies do have adequate, full-time staff. However, their image is tainted as they allegedly often indulge in corrupt behavior, hence their professionalism may be questioned.

References:

Media reports

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

These agencies receive fairly consistent funding from the government.

References:

www.mof.gov.np

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Generally, laws relating to customs and excise are enforced. However, due to inadequate rules, procedures and inconsistent practices, the uniform enforcement of law is significantly affected. Again, discretion is the culprit. There have been reports of favoritism, misapplication of law and procedures, nepotism and corruption with regard to the collection of customs and excise revenues.

References:

Media reports

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

There is no separate agency. The government itself controls the state-owned enterprises. However, the Office of the Company Registrar is vested with the power to oversee the state-owned enterprises if they are registered as public limited companies in which the government has a major share. The Company Act 2006 envisions a Company Board to regulate the activities of public companies. However, the board is temporary in nature and will be functioning until the commercial courts are instituted.

References:

Interview with lawyer Govinda Sharma;
Company Act 2006

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

50

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

The government itself controls state-owned enterprises in Nepal through decentralized system of oversight. As stated in foregoing

indicators, the government machinery may not be completely immuned from the political interference because no law clearly prohibits political interference in decision-making.

References:

Different legislations and Company Act 2006

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

There are staffs but not necessarily be the professional ones. There have been media reports that there is rampant corruption in oversight mechanism in Nepal.

References:

Media Reports
Company Act 2006

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Because the government itself controls state-owned enterprises through a decentralized system, sufficient funds are allocated to the oversight mechanisms as well.

References:

Different legislations and Company Act 2006

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

Investigations are initiated but there have been media reports that political interference and corruption often hinder the process.

References:

Media Reports
Company Act 2006

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

Penalties are generally imposed however they are limited in their effectiveness.

References:

Company Act 2006

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

20

66a. In law, citizens can access the financial records of state-owned companies.

YES | **NO**

Comments:

Generally, the financial records of state-owned enterprises are kept confidential. However, the newly enacted Right to Information Act provides a greater scope in this regard.

References:

The Corruption Control Act, 2002;
Right to Information Act 2007

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

The financial records of state-owned enterprises are generally updated; however, they may not necessarily portray the actual data.

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Although, the audit is done regularly based on the established standards, the third party auditor relies heavily on the information provided by the companies. This information may be flawed, however, as there is no mechanism available for its scrutiny. Businesses are inspected by the government, however, the government significantly lacks a uniform procedure. It largely depends upon the discretion of the inspector, whose approach may be inconsistent and arbitrary at times. Bribes are often offered for favorable treatment.

References:

Based on the interview with auditor Hom Nath Sedhain.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Because the financial records are made available to the government and the concerned department only, this is not applicable in the Nepal.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Because the financial records are made available to the government only, this is not applicable in the Nepal.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Are business licenses available to all citizens?

75

67a. In law, anyone may apply for a business license.

YES | NO

Comments:

Freedom to practice any profession or to carry on any occupation, industry or trade is protected as a citizens' fundamental right in Nepal. No law categorically excludes any citizen or group from practicing a profession of their choice.

References:

The Interim Constitution of Nepal, Article 12 (2) (F)

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

So far as the companies are concerned, the Company Board hears the appeal if the Office of the Company Registrar refuses to register a company. Similarly, there are provisions in the prevalent Nepalese laws for other businesses also. Furthermore, citizens may invoke the extra-ordinary jurisdiction of the Supreme Court or the Appellate Courts if no formal mechanism is available.

References:

Company Act 2006

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The laws prescribe the set timeline. A license can be obtained within a reasonable period of time normally. However, some licenses may be delayed depending upon the case.

References:

Laws relating to Trade and Industry

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

A formal application, a recommendation from the local authority and prescribed fees, etc. are required in order to obtain the license. The applicant must appear before the concerned office, which may involve extra bit of financial burden.

References:

Laws relating to Trade and Industry

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

0

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | **NO**

References:

A person seeking a license is required to obtain a recommendation from a local authority, an assessment, feasibility reports and, in some cases, meet certain regulatory requirements, such as health, safety and environmental standards. However, these documents may not be available to the public, or otherwise transparent. A person seeking the license may have to knock on many doors. Most people come to know about the whole process only after they have successfully registered the business.

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | **NO**

Comments:

0

References:

A person seeking a license is required to obtain a recommendation from a local authority, an assessment, feasibility reports and, in some cases, meet certain regulatory requirements, such as health, safety and environmental standards. However, these documents may not be available to the public, or otherwise transparent. A person seeking the license may have to knock on many doors. Most people come to know about the whole process only after they have successfully registered the business.

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

A person seeking a license is required to obtain a recommendation from a local authority, an assessment, feasibility reports and, in some cases, meet certain regulatory requirements, such as health, safety and environmental standards. However, these documents may not be available to the public, or otherwise transparent. A person seeking the license may have to knock on many doors. Most people come to know about the whole process only after they have successfully registered the business.

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

0

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Businesses are inspected by the government, however, the government significantly lacks a uniform procedure. It largely depends upon the discretion of the inspector, whose approach may be inconsistent and arbitrary at times. Bribes are often offered for favorable treatment.

References:

Business regulations;
Media reports

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

The process is not at all transparent in Nepal.

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

The process is not at all transparent in Nepal.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

VI-1. ⁶²Anti-Corruption Law

70. Is there legislation criminalizing corruption?

56

70a. In law, attempted corruption is illegal.

YES | NO

Comments:

The law provides for punishments for attempts to commit offences.

References:

Corruption Control Act 2002, Section 21

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

Comments:

There is no specific anti-extortion law prevalent. The Corruption Control Act sets out broad categories of actions amounting to corruption. However, no section can be found that specifically deals with extortion. A revision to national law was indeed made in December 2007 to address exhortion but this falls outside of the study period.

References:

Corruption Control Act 2002, Chapter 2

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

The law criminalizes the offering of a bribe as a punishable offence.

References:

Corruption Control Act 2002, Chapter 2

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

The law criminalizes passive corruption also.

References:

Corruption Control Act 2002, Chapter 2

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | **NO**

Comments:

The Act does not have an explicit provision with regard to bribing a foreign official.

References:

Corruption Control Act 2002

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

There is a clear proscription in this regard.

References:

Corruption Control Act 2002, Section 17

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | **NO**

Comments:

There is no explicit provision on breaching state secrecy under the laws relating to corruption. The Copyright Act does not deal with this action either.

References:

Corruption Control Act 2002;
The Copyright Act 2002

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | **NO**

Comments:

No anti-money laundering legislation has been enacted yet in Nepal.

References:

Own observation

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

Conspiracy to commit a crime is illegal under the criminal laws.

References:

Country Code 1963

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The Commission for Investigation of Abuse of Authority (CIAA) has a legal mandate to address corruption in the public sector. There are other statutory agencies also. The Special Court (judicial body), Revenue Tribunal (quasi-judicial body) etc. are the agencies in Nepal that deal with corruption. The National Vigilance Centre (government agency established under the Prime Minister's Office) is entrusted with the role of prevention.

References:

The Interim Constitution of Nepal 2007;
CIAA Act 1991;
Special Court Act 2002;
Revenue Tribunal Act 1974;
Corruption Control Act 2002

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

81

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

Because the agencies are either constitutional, or statutory bodies, they are considered independent; professional competence, among other things, is a must for the appointments of office-bearers and staff in these institutions. Besides, a parliamentary hearing is conducted for the constitutional posts.

References:

The Interim Constitution of Nepal 2007;
CIAA Act 1991;
Special Court Act 2002;
Revenue Tribunal Act 1974;
Legislative-Parliament Rules 2007

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

There have been complaints that these institutions are subject to political pressures. The capacity of these institutions to resist those pressures is associated with the individuals who head the institutions. The state's priority in curbing corruption has been weak in recent times. The latest example is that the Special Court, on technical ground (not on merit), has acquitted the two politicians (former Ministers Khum Bahadur Khadka and Govinda Raj Joshi) affiliated with a major political party in the government. Interestingly, this has happened after the Loktantra and at a time when the rule of law was the big promise of senior politicians in Nepal. What is even more interesting is that the all powerful Legislative-Parliament, which demonstrated the courage to suspend the 237-year old monarchy of Nepal, did not however dare to intervene in this matter as well as other matters relating to reports of corruption in the judiciary.

References:

Media reports

www.akhtiyar.org.np

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Because the Commission for Investigation of Abuse of Authority (CIAA) is a constitutional body, and the members of the Special Court come from the independent judiciary (judges of the Appellate Court), they are protected from unjustified removal. The heads of these agencies can be removed from their positions if they are found guilty of gross misconduct or abuse of powers. There has been no reported case of such removal in the past year.

References:

The Interim Constitution of Nepal 2007;
Special Court Act 2002

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Because the law requires professional competence as a must criterion, the appointments are considered relatively fair. A parliamentary hearing for the confirmation has made the process transparent.

References:

Constitution;
Other relevant Acts

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

These agencies have full-time staff. However, they may not necessarily be professional enough to carry out the specific

mandates. These agencies must rely on the staff provided by the executive branch.

References:

The Constitution;
Other relevant Acts and Rules

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

These agencies receive regular annual funding from the government. However, the government budget is largely dependent on foreign aid, which may not be consistent.

References:

Budget 2006-07:
www.mof.gov.np

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

These agencies publish reports on an annual basis, and submit them to the authority concerned. The report of the Commission for Investigation of Abuse of Authority (CIAA) is submitted to the prime minister (acting as in the capacity of head of state), who then passes them to the legislature. The concerned parliamentary special committees may scrutinize and further examine these reports in the Parliament. The reports are also made available to the public (whoever is interested and requests them) in a printed form. The reports are available on the CIAA Web site also.

References:

www.akhtiyar.org.np

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

These agencies are empowered with wide-ranging powers to carry out their mandate, which includes the gathering of information, the questioning of suspects, issuing arrest orders, bringing suspects to trial and imposing penalties. The investigation and enforcement of the judgments, however, are weak in Nepal.

References:

The Constitution;
The CIAA Act;
Other relevant Acts and Rules

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The pace of the Commission for Investigation of Abuse of Authority (CIAA) has slowed down in recent times for a number of reasons, including the state's indifference towards the anti-corruption drive. The image of the Special Court too has been tainted, especially after the acquittal of two politicians, namely Govinda Raj Joshi and Khum Bahadur Khadka.

References:

Media reports

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

50

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Because of the lack of resources (including human resources) and geographical constraints, the agencies cannot act on complaints quickly.

References:

www.akhtiyar.org.np

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | **50** | 25 | 0

Comments:

There are no laws relating to whistleblower protection and witness protection. The complaints are made openly, yet complainants prefer to protect their identity as they often have a fear of facing substantial negative consequences later.

References:

Corruption Control Act 2002

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

77
VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

58

74a. In law, there is a general right of appeal.

YES | NO

Comments:

Both the constitution and prevalent Nepalese laws guarantee the right to appeal. The Supreme Court and the Appellate Courts have precise appellate jurisdiction under the criminal law.

References:

The Interim Constitution of Nepal 2007;
The Country Code (Muluki Ain) 1963

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although law mandates an expedited appeal in a stipulated time-frame, the appeal may take time to be resolved depending on the case. There are excruciatingly long delays in the judicial process. Normally it takes more than one year to decide on an appeal because of the lengthy court procedures. According to media reports, thousands of cases are pending, with the numbers increasing each year.

References:

Annual Reports of the Supreme Court:
www.supremecourt.gov.np;
Media reports

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The appeal mechanism is generally affordable to citizens. However, due to geographical constraints, people have to bear the expenses of travel, food and accommodation. Besides, the costs could be quite high given the need for professional support, which is compounded by long delays. The costs, therefore, may be too prohibitive for middle-class citizens.

References:

Nepal Bar Publications:
www.nepalbar.org

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

50

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

The judicial system in Nepal usually follows the established legal code of conduct. However, bribery and corruption have affected the judicial process.

References:

Court Proceedings

Corruption in Supreme Court",
A cover story by Shiva Gaunle, Himal Khabarpatrika,
March 15-29, 2007,
www.nepalihimal.com;

See also www.ekantipur.com

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

50

76. In practice, are judicial decisions enforced by the state?

100 | 75 | **50** | 25 | 0

Comments:

Judicial decisions are generally enforced in criminal cases. However, the state lacks the capacity to execute court decisions relating to the recovery of imposed fines. There have also been cases of the state flouting decisions and also circumventing them. The police often do not cooperate in executing judicial decisions. Delays are inevitable, and there is a need to bribe the police to enforce judgments. Judges, public prosecutors and defense lawyers have been raising this issue frequently in their respective national conferences over the years.

References:

Court judgments;
Media reports

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

69

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

The preamble of the constitution stipulates to express full commitments towards democratic norms and values including competitive multiparty democratic rule, system, civil liberty, fundamental rights, human rights, adult franchise, periodic election, freedom of press, independence of judiciary and concept of rule of law.” Furthermore, Part 10 of the constitution guarantees the basic component of independent judiciary.

References:

The Interim Constitution of Nepal 2007:
www.sambidhan.org

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

National-level judges normally operate independently. The remuneration and terms and conditions of judges’ service have been determined by separate laws. National judges can only be removed through impeachment in Parliament. However, judicial decisions on politically sensitive issues have been widely criticized due to the loyalty of the judges towards a particular political ideology (for example, the House Dissolution cases). Similarly, politics has been one of the influential factors dominating the functioning of the judiciary.

The Nepalese judiciary in the past year faced a crucial blow, as the question regarding its independence was openly challenged in the court of law. For the first time in the history of Nepal, the public prosecutor had filed writ raising constitutional question against the chairperson of the judicial council and judicial service commission, chief justice and senior judges. Besides, views were also expressed on re-appointing the judges to make them more accountable to the citizens. The Supreme Court Bar was of the view that the judiciary failed to protect its independence during the Royal Regime, except in the case of Royal Commission for Corruption Control (RCCC) and habeas corpus and that it was necessary to re-appoint the judges to protect democratic norms and values, rule of law, independent judiciary and civic rights.

References:

Media report
Rajdhani, a national daily published in Nepali language,
Sept. 16, 2006;

www.kantipuronline.com/kolnepalinews.php?nid=81087
visited on July 29, 2006

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

The chief justice has the power to distribute cases to the national-level judges. For this reason, the distribution system is subjective, and no objective transparent criteria are in place.

References:

Supreme Court Rules 1992, Section 9

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

The judges of the national-level judiciary are protected from removal without valid reasons. They can only be removed through impeachment in the Parliament.

References:

The Interim Constitution of Nepal 2007, Article 105 (2)

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There have been no reported cases.

References:

Media reports

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

There have been no reported cases.

References:

Self-Observation

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work

on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

61

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

The Nepalese judiciary is regarded as a relatively pro-active judiciary in terms of translating citizens' fundamental human rights into practice, including the right to equality. The Nepalese judiciary to date is free from racial and ethnic bias.

References:

Based on court records

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Women enjoy full and equal access to courts. Women are privileged in some cases. For instance, women can directly file a divorce case in the district court, whereas a man has to exhaust other remedies provided by the law before filing the case into the court. Besides, judges have become more sensitive on gender issues in recent times. However, women have generally approached the courts less frequently than men have. It may be linked to the social system and the continued male-dominated nature of power relationships within the family and society.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that

confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

The state-provided legal aid scheme restricts providing legal aid to those accused of a number of offenses, including a corruption crime. However, there is a provision for paid, court-appointed lawyers, but it is largely ineffective. People have little trust in them, as most of them are not very professional.

References:

Legal Aid Act 1997;
Legal Aid Regulation 1998

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | **50** | 25 | 0

References:

There are a number of NGOs working to provide legal aid, yet people in need do not often make use of such service, as agencies working for their rights do not have a network established as yet.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | **25** | 0

References:

Generally, middle-class citizens can afford court expenses. However, other legitimate expenses (i.e. lawyer's fees) and corrupt expenses (i.e. speed money for court personnel) are neither consistent nor reasonable, which sometimes may create hindrances. Besides, the judicial process is costly and painstakingly slow. It is often not the preferred means of seeking justice.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

References:

The costs of a legal suit may be quite high and the delays in decision-making may discourage people from filing a lawsuit.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

The court of first instance (district court) is located in the district headquarters. Because of geographical constraints, people are required to travel on foot two to three days to reach the court. Appellate courts are also divided by geographical regions. There are a total of 16 appellate courts in different regions. The access to the appellate courts is also difficult due to the expenses associated with traveling. Hence, citizens living in rural areas do have more limited access as compared to those living in the cities or urban areas.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

50

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Appointment to the judiciary and Office of the Public Prosecutor are based on professional qualifications. It is mandatory to pass the exams given by the Public Service Commission. Favoritism may occur during the interview process though. However, the

recruitment of police personnel is largely influenced by the members of the government or certain interest groups. Thus, law enforcement agencies in Nepal are not absolutely immune from nepotism, spoilage, patronage, and cronyism.

References:

Government regulation of Public Service

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | **50** | 25 | 0

Comments:

These agencies receive regular annual funding from the government. However, the government's budget is largely dependent on foreign aid, which may not be consistent. Besides, no agency is ever satisfied with its budgetary allocation and there are reports that the budget is often mismanaged.

References:

Budget 2006-07

www.mof.gov.np

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

References:

These agencies, particularly the judiciary, operate independently. The police and other investigating authorities usually act upon the interests of the members of the government, thus are not fully protected from political interference. Part of the reason may be due to the very nature of the government system, which has been plagued by nepotism, spoilage, patronage, and cronyism.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

54

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

No such independent mechanism exists. Complaints can be lodged to a superior authority though. There is a National Human Rights Commission also. However, the executive wings of the government often ignore the recommendation or directives of the Commission due to the prevalent culture of impunity. This provision of law, therefore, is still in its nascent stage and has not yet taken off.

References:

www.nhrc.nepal.org

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable because the superior authority does not normally respond and common citizens face discriminatory behavior while pursuing their complaints.

References:

Media reports

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

The Commission for the Investigation of the Abuse of Authority (CIAA) investigates and prosecutes. However, judges are excluded from the process, as there is a separate mechanism. The Judicial Council is the authority which deals with corruption in the judiciary.

References:

The Interim Constitution of Nepal 2007;
Corruption Control Act;
CIAA Act;
Other relevant Acts and Rules

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | **50** | 25 | 0

References:

Because the investigating authority relies heavily on law enforcement agencies themselves, the investigation of the law enforcement might be affected due to the internal connection the personnel have with other law enforcement officials.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Police are subject to normal prosecution in Nepal. The criminal law is equally applicable to law enforcement officials.

References:

Country Code (Muluki Ain) 1963;
Police Act 1955;
Armed Police Act 2001

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | **50** | 25 | 0

Comments:

Generally, law enforcement officials are subject to criminal prosecution, but they often enjoy a protection by their colleagues. Besides, the existing culture of impunity is itself an evidence that criminal prosecution of law enforcement officials has been a rare sight in Nepal.

References:

Impunity in Nepal: An Exploratory Study, Asia Foundation, http://www.asiafoundation.org/pdf/nepal_impunity.pdf

Nepal: Killing with Impunity

Amnesty International

<http://web.amnesty.org/library/index/engasa310012005>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.