

Overall Score:

67 - Weak

Legal Framework Score:

84 - Strong

Actual Implementation Score:

50 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁸⁰ Civil 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:

The Comprehensive Peace Agreement (CPA), which put an end to the decade-long armed conflict in Nepal, expresses the full commitment towards democratic value and acceptance including competitive multiparty democratic system of governance, civil liberty, fundamental rights, human rights, full freedom of the press and concept of rule of law." The Interim Constitution of 2007 formulated subsequently reiterates these norms and states, inter alia, that "every citizen shall have the freedom to form unions and associations."

Along with the constitutional guarantee, a number of statutes provide for the formation of civil society organizations (CSOs) in Nepal. The Social Welfare Act 1992, the Ninth Plan document 1997-2002 and the Local Self-Governance Act 1998 have underlined a legislative framework for the operation of people's institutions, non-governmental organizations (NGOs) and civil society in local self-government and in the development process. Among them, Section 4 of the Assembly or Union Act, 1949 is particularly important as it specifically mentions that CSOs may "organize peacefully and operate for criticizing and exerting pressure for a policy change, and amending and repealing laws." This was the first ever statutory provision which dealt with the formation of CSOs in Nepal. However, this provision of the Act materialized after the peoples' movement in 1990 (first peoples' movement) as a number of NGOs came into being, especially after the promulgation of the Constitution of the Kingdom of Nepal 1990. The number of registered NGOs in Nepal skyrocketed during that period, growing in number from 220 in 1990 to somewhere between 10,000 and 15,000 by the commencement of the year 2000.

References:

Peace Accord and Constitution

*Comprehensive Peace Agreement 2006

*Interim Constitution of Nepal 2007

*The Constitution of the Kingdom of Nepal 1990

Statutory Guarantees

*Assembly or Union Act 1949

*Citizens' Rights Act 1955

*National Directives Act 1961

*Institution Registration Act 1977

*The Cooperatives Act 1992

*Company Act 2006

*The Trade Union Act 1992.

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them in translated English version and 117 in Nepali language) on its website. Most of the Statutes/Acts, therefore, can be found in <http://www.lawcommission.gov.np>, either in English or in Nepali version.

http://www.swiss-nepal.ch/uploads/news/061121_SPA_Maoist_agreement.pdf

<http://www.undp.org/constitutionbuilding/constitutionnepal/interim.php>

<http://www.sambidhan.org>

http://www.fesnepal.org/publications/book_reviews/partners_for_progress.htm, last visited on 10 September 2009.

<http://jcmc.indiana.edu/vol7/issue2/montgomery.html>, last visited on 10 September 2009.

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:

No laws restrict CSOs in Nepal from accepting funds from foreign or domestic donors. However, a pre-approval is needed to utilize such funds. The Social Welfare Council (SWC), a statutory body, is the oversight agency for NGO resources.

The Social Welfare Act provides for the institutionalization, channeling, and control of the flow of both domestic and foreign assistance (grants and loans) to the non-governmental organizations (NGOs). Only with the approval of the SWC, should the NGOs be legally entitled to obtain any money, commodity, or technical expertise and any other form of assistance from the Government of Nepal (GoN), a foreign government, or international social organization/body/person. For this purpose, NGOs

need to apply to SWC with the project proposal and funding details. The foreign organizations providing assistance are required to release funds to the local NGOs through the commercial banks of Nepal. Nepal based International Non-governmental Organizations (INGOs) are also required to operate their funds only by opening central accounts in any one of such commercial banks. They are required to conclude their agreements with the SWC before commencing work in the country.

Despite such explicit regulatory provision, many NGOs in Nepal, however, lack transparency, and they often flout legal provisions, as the SWC lacks a monitoring and follow-up mechanism, and some powerful NGOs can easily influence SWC decisions. Besides, there seems to have been no transparency of the total fund flow for various reasons, including non-submission of the audit reports by most of the NGOs.

References:

*Social Welfare Act 1992 [Section 16, 12 (1), (2) and (3)]

*Donation Act 1973 (Section 3)

*Social Welfare Rules 1992 (Rule 20 and 12)

See also: Financial Accountability in Nepal: A Country Assessment, The World Bank, 2003, p. 122.

http://www.swc.org.np/information_bullitine.php

<http://books.google.com.np/books?id=L59IEDpeVDEC&pg=PA121&lpg=PA121&dq=#v=onepage&q=&f=false>, last visited on 10 September 2009.

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:

CSOs must disclose their funding source(s). Financial reporting and auditing requirements of NGOs are prescribed in the Statutes and Acts under which they are registered and affiliated. All non-governmental organizations (NGOs) are required to submit their annual programs and budgets to their annual general meeting (AGM) for approval. All INGOs permitted to work in Nepal are required to furnish income and expenditure statements to the Social Welfare Council (SWC) every four months. They are only entitled to conduct financial transactions through the fund which is compulsorily deposited in the commercial banks.

The accounts of the NGOs are subject to audit by the auditors registered at the Office of the Auditor General (OAG). The auditors are appointed according to the NGO statutes. The audit report with the physical verification statement is required to be submitted by the SWC related NGOs to the SWC within four months from the expiry of the fiscal year. The Auditor General audits the SWC. NGOs are required to submit their audit reports as: (a) NGOs registered under the Institution Registration Act 1977 to the AGM and the concerned District Administration Office (DAO); (b) SWC-affiliated NGOs to the SWC as well as the concerned DAO.

The DAO monitors the financial matters and has the authority to inspect nongovernmental organizations' (NGOs) funding. In addition, NGOs must submit a financial disclosure each year in order to renew their ability to function in the country. The designated local authority, the Chief District Officer (CDO), is entitled to authorize any officer at any time to inspect the amounts of the NGOs which are required to be compulsorily handed over on demand. In case of any misappropriation or loss of assets and abuse of authority that are found during the investigation, legal actions or court proceedings may be initiated under Institution Registration Act 1977 against the alleged NGO authorities.

The legal provision related to financial reporting and auditing requirements of the NGOs, including International Non-governmental Organizations (INGOs), is thus pretty much comprehensive in Nepal. However a majority of the NGOs, including

INGOs, do not strictly observe the legal provisions. NGOs may flout the provisions of law by submitting fake documents, as no strict mechanism of effective scrutiny exists. There appears to be massive non-compliance with the law regarding auditing, particularly among local NGOs affiliated with the SWC, this is largely due to the fact that many NGOs are dormant. There seems to be lack of transparency in the total fund flow from various international NGOs, partly due to some INGOs choosing not to conclude agreements with SWC, or partly due to weak capacity of the SWC to monitor INGO compliance with relevant financial and banking regulations.

References:

*Institution Registration Act 1977 (Sections 4, 9 and 10)

*Social Welfare Rules 1992 (Rule 2 and 20)

See also: Financial Accountability in Nepal: A Country Assessment, The World Bank, 2003, pp. 121-122.

<http://books.google.com.np/books?id=L59IEDpeVDEC&pg=PA121&pg=PA121&dq#v=onepage&q=&f=false>, last visited on 10 September 2009.

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 after the success of First Jana Andolan (People's Movement) in 1990. The process continued as the country witnessed new negotiated political settlement in 2005-2006. 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. The Comprehensive Peace Agreement (CPA) promulgated after the political negotiation broadly defines key success criteria for achieving peace and development in Nepal, inter alia, as: (i) ending discrimination of all kinds; (ii) state restructuring and enhancing the state's accountability to citizens, people's empowerment, provision of fundamental rights, and access to basic services; and (iii) better governance, including economic and social rights, transparency and anti-corruption.

People from all the different backgrounds, therefore, can easily organize into CSOs in Nepal, be it laymen, persons with a political affiliation, professionals and even former bureaucrats. CSOs have been a lucrative business for those who used to have decision-making power and who can now easily establish connections with different donors by the virtue of their former position. An anti-corruption/good governance CSO, thus, can easily be formed and operated in the changed political context. The data available in the District Administration Office, Kathmandu shows that a number of organizations registered with it have, in one way or the other, the anti-corruption or good governance agenda as their objectives for forming their associations.

References:

*Comprehensive Peace Agreement 2006

Visit Assessment; and based on the data available with District Administration Office, Kathamandu.

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. Nepal is an example where civil society and political parties worked together and contributed significantly to making the Jana Andolan (People's Movement) II a success. Nepali civil society supported the democracy movement early and actively through writing, creating a discourse, and organizing street protest action under different banners. Their role continues today, as they are significantly involved in the ongoing peace process as well. Examining the history of civil society in Nepal, it is also recognized that Nepal not only formed alliances to fight for democracy but also contributed to the fight against the root causes of conflict, including bad governance, human rights abuses, and social injustice.

For instance, many civil society organizations (CSOs) continuously pressure the government to reform different sectors, particularly the human rights situation and governance. One such organization, Pro-Public, has moved a couple of public interest litigations (PILs) relating to election integrity. The Supreme Court of Nepal has issued directives to successive governments to enact laws that address the issue of respect to human rights, governance reform and political party financing, including asset disclosure by candidates contesting elections.

However, the evolving civil society has had some deficiencies, perceived and real, with which it has to contend. In Nepal, the civil society is identified largely with the non-governmental organizations (NGO) sector, and thus handicapped by the perception or sometimes the mere characterization of NGOs as being driven by purely pecuniary motives. The activities of nearly all NGOs are externally funded and sometimes supported by external ideas as well. The irony is that despite the good work of many NGOs whose activities contributed to the demand for democratization, this factor has not helped the image of the CSOs. Many civil society agents and institutions are also party-affiliated, calling their independence into question.

References:

<http://www.nepalbar.org>

<http://www.fnjnepal.org>

<http://www.propublic.org>

<http://www.advocacyforum.org>

<http://www.tinepal.org>

<http://www.fohrid.org.np>

Dr. Rohit Kumar Nepali and Uddhab P. Pyakurel, A Study of Nepal's Constituent Assembly Election: The Influence of Civil Society and the Multilateral System, Montreal International Forum, available at www.fimcivilsociety.org/en/library/RNepali2009.pdf, last visited on 11 September 2009.

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:

There are no reported cases of formal shut down. However, the so-called activism” of the Young Communist League (YCL), which is affiliated to the major opposition party — the Communist Party of Nepal (Maoists) — may have obstructed the activities of CSOs. Similarly, CSOs may have been affected in the Terai region by activities of the armed outfits of so called “Madhesh Liberation.”

References:

Media reports.

<http://advocacynet.org/wordpress-mu/tirado/blog/2009/06/19/the-nepali-bandh-a-nationwide-shutdown/>, last visited on September 11, 2009.

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. YES is a positive score.

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:

Unlike in the previous years, there is no reported case of imprisonment in the last year so far as anti-corruption activists are concerned. However other non-state actors, sister organizations of various political parties, and armed groups operating in the Terai region may have been involved in making threats and intimidation as well as confinement of civil society participants for the one reason or another.

References:

Interview with Mr. Krishna Bhandari, Executive Director, Reform Forum Nepal

<http://www.reformforum.org>

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:

No reported cases of state involvement in harm done to civil society activists working on corruption issues is available so far. However, other non-state actors may have been involved in abductions and the infliction of torture and harm.

References:

Media reports.

<http://www.ekantipur.com>

<http://www.myrepublica.com>

<http://www.aveneues.tv>

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:

There are no reported cases of the killing of civil society activists working on corruption issues are available.

References:

Media reports.

<http://www.nepalnews.com>

<http://www.nayapatrika.com>

<http://www.avenues.tv>

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?

88

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

YES | NO

Comments:

Article 30 (2) of the Interim Constitution, for the first time in Nepal's constitutional history, spells out the right to organize labor unions that reads: 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". In order to implement this constitutional guarantee, there exist other statutory provisions which can be found under the National Directives Act 1949 (Section 3) and the Trade Union Act 1992 (Chapter 2), among others.

References:

*The Interim Constitution of Nepal 2007

*The National Directives Act 1949

<http://www.undp.org.np/constitutionbuilding/constitutionnepal/interim.php>

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:

Restoration of multi-party democracy in Nepal in 1990 opened the space for civil society organizations including trade unions. Registration of trade unions started in 1993. The Trade Union Act of 1992 makes the registration and renewal of trade unions in every two years mandatory. The period between 1993 to 1999 can be called a conducive” period for union activism in Nepal, culminating into the emergence of trade union federations. There are various national federations in operation viz. Nepal Trade Union Congress (NTUC), General Federation of Nepalese Trade Unions (GEFONT) and Democratic Confederation of Nepalese Trade Unions (DECONT).

However trade unions are a part to the political discourse in Nepal because, in practice, they are the sister organizations of major political parties. For example, GEFONT belongs to Communist Party of Nepal (CPN-UML) whereas DECONT and the All Nepal Trade Union Federation (revolutionary) are the sister organizations of the Nepali Congress and CPN-Maoists respectively. Their orientation toward trade union rights, therefore, is politically motivated.

References:

Dev Raj Dahal, The Current Trade Union Situation in Nepal”, available at <http://library.fes.de/pdf-files/iez/01962.pdf>.

<http://www.gefont.org>

http://en.wikipedia.org/wiki/Democratic_Confederation_of_Nepalese_Trade_Unions

100: Trade unions are common and are an important part of 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 media is guaranteed as a fundamental right in the Interim Constitution of Nepal, as Article 15 of the Constitution specifically provides for Right regarding Publication, Broadcasting and Press". The other constitutional provisions include: (1) Article 12, Right to Freedom (2) Article 27, Right to Information (3) Article 23, Right to Religion (4) Article 28, Right to Privacy. There are other statutes and Acts also which guarantee this right. 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.

Nepal witnessed a vibrant growth of media especially after the promulgation of the Constitution of the Kingdom of Nepal 1990. With the success of People's Movement in 1990, free media was realized as the pillar of democracy; hence, a number of media organizations came into being. Since then Nepali media have been contributing in three strategic components of anti-corruption drives: preventing, analyzing and fighting. However, lack of training, poor professional standards, the dearth of investment into investigative reporting, and the non-implementation of the statutes/Acts make it difficult, and sometimes impossible, for journalists to access, impart or disseminate accurate information; let alone the political biases and partiality they practice in their reporting.

Apart from that, media development in Nepal remains constrained by inadequate legislation and/or implementation of laws as well as the lack of both institutional capacity of media organizations and resources (human and material). There are two vital laws enacted for protecting the rights of journalists and media freedoms. These include the Working Journalists Act and the Right to Information Act (18 July and 8 August 2007 respectively). However, both laws have not been enforced due to the lack of appropriate regulations and other implementation-related issues.

References:

*Constitution of the Kingdom of Nepal 1990 (now repealed)

*Interim Constitution of Nepal 2007

*Citizens' Rights Act 1955

*Press and Publication Act 1991

*National Broadcast Act 1993

*Working Journalists Act 1995

*Press Council Act 1991

*Defamation Act 1959

*National News Service Act 1962

*Radio Act 1958

*Gorkhapatra Corporation Act 1963

*Working Journalists Act 2007

*The Right to Information Act 2007

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them in translated English version and 117 in Nepali language) in its website. Most of the Statutes/Acts, therefore, can be found in <http://www.lawcommission.gov.np>, either in English or in Nepali version.

International Press Freedom and Freedom of Expression Mission to Nepal, A call to end violence and impunity, 2009, available at <http://www.i-m-s.dk/files/publications/1453%20Nepal.web.pdf>.

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:

In principle, freedom of speech has always been regarded as a fundamental right in Nepal. However, in practice, state-run media has always been the mouthpiece of the ruling party, and it is often misused to propagate respective political ideologies. One of the latest examples is that Nepal's Maoists were accused of curbing free speech while they were in the government (AlJazeera TV Report of 13 July 2008). Besides, different outfits affiliated to the Maoists, including the Young Communist League (YCL), are reported to have been engaged in storming the media house (Himal Media) and physically attacking the media persons, simply for the reason that differing opinion was expressed.

Similarly, a One-China policy," adopted by the government, has one way or the other contributed to curbing free speech as far as Tibetan issue is concerned.

References:

*Interim Constitution of Nepal 2007 [Article 12 (3) (A)]

*Citizens' Right Act 1955 [Section 6 (1) and 12]

AlJazeera TV Report of 13 July 2008, http://www.youtube.com/watch?v=j_wTCXmkYyQ

<http://www.himalmedia.com>; <http://www.mikeldunham.blogspot.com/mikeldunham/2008/12/nepal-political-situation-freedom-of-speech-or-freedom-of-thugs.html>

<http://www.flickr.com/photos/nepalphotos/2743932984/>

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.

100 | 75 | 50 | 25 | 0

Comments:

There are no barriers to forming a print media entity, normally. State atrocities against the press have stopped since the establishment of loktantra (democracy) on April 24, 2006. However, although the country has become Federal Democratic Republic, therefore ending the 240-year long monarchy, the journalists who have been synonymous with this struggle still have not been able to enjoy press freedom even after the democratic government was in place. The freedom of press has narrowed which is shown by the increasing murders of journalists, attacks on the press, interference and threats. The journalists are becoming insecure with each passing day due to the lack of action taken against those who are involved in suppressing press freedom.

References:

Ramjee Dahal, One Year of Republic: Press Freedom in Crisis, in A Year of Federal Democratic Republic: Press Freedom in Crisis – Press Freedom Annual Report 2009” published by Federation of Nepali Journalists.

<http://www.fnjnepal.org>

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 appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

The appeals mechanism for when a print media license is denied or revoked lies with the Appellate Court. The Appellate Court is the second in the tiers of judiciary that have general jurisdiction over appeals.

References:

*National Broadcast Act 1993 (Section 18)

*Press and Publication Act 1991(Section 32)

<http://www.lawcommission.gov.np> (For details about the Statutes/Acts)

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:

There is no fixed time frame or standards for obtaining a print media license . A license may be obtained within one to three months depending on the media type. In most cases, citizens can get a print media license within a week whereas electronic media may have to wait a little longer than print media because there is need for approval from the Ministry of Information and Communication for frequencies of transmission. However media owners, who can exert power, may get such a license even within a day. In other cases, ordinary citizens may encounter delays due to traditional bureaucratic procedures and, most often, due to unwillingness on the part of officials when applicants do not offer consideration” (speed money).

References:

Media legislation.

<http://www.presscouncilnepal.org>

<http://www.doinepal.gov.np>

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 nominal prescribed government fee to obtain a print media license is imposed when a license is issued.

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?

69

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

100 | 75 | 50 | 25 | 0

Comments:

There is no such barrier to forming a broadcast (radio and TV) media entity, legally and politically. There is much more media presence especially after the second people's movement of 2006. A number of private television channels are in operation. The trend of establishing new television channels continues as Terai TV has already started broadcasting whereas a couple of new television channels, including News 24, are in the offing.

Similarly, there are more than 20 commercial and community FM radio stations in the Kathmandu valley alone. The number beyond the Kathmandu valley is also large. However, Nepal has yet to amend the laws and regulations on broadcasting in the spirit of the guarantees provided by the Interim Constitution and the recommendations of the Media Commission. The outcome has been rapid but haphazard growth in licensing new broadcasters, especially FM radios, whose management, growth and sustainability remain major challenges.

References:

Various media reports.

International Press Freedom and Freedom of Expression Mission to Nepal, An Overview of Nepal's Media and Recommendations for Development Priorities: Building for the Future", 2008, available at <http://www.i-m-s.dk/files/publications/1318%20Nepal.web%202008.pdf>.

<http://www.kantipuronline.com/ktv.php>

<http://www.avenues.tv>

<http://www.imagechannels.com>

<http://www.unn.com.np>

<http://www.kfm961.com>

<http://www.radiosagarmatha.org>

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 appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

The Appellate Court hears the appeals when a broadcast license is denied or revoked. Like other types of media, both radio and TV are equally entitled to appeal in the event of a denial. The Press Council of Nepal, a statutory body, also looks into such matters and may make suggestions to the Government of Nepal.

References:

*National Broadcast Act 1993 (Section 18)

*Press Council Act 1992 (Section 7)

<http://www.lawcommission.gov.np> (For details about the Statutes/Acts)

<http://www.presscouncilnepal.org>

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.

Comments:

No fixed terms and standards for obtaining a broadcast (radio and TV) media license within a reasonable time period are prescribed. Obtaining a license may take from one to three months depending on the media type, and an applicant's efforts, including follow-up as well as his/her political connections. The licensing process may take even longer if frequencies of specific areas are not available.

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.

Comments:

Licenses for a broadcast (radio and TV) media license can be obtained upon paying prescribed nominal government fees. The cost of a broadcast license is relatively costly compared to the print license.

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?

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

100 | 75 | 50 | 25 | 0

Comments:

No restrictions regarding the access to content published on-line have been imposed so far. Nepal's rural population still does not have adequate access to the Internet when compared to the urban population. However, Internet use is being expanded, even in semi-urban and district headquarters, and people can have access to it provided they do have the knowledge and skill of operation. The government has enacted the Cyber Act to govern this area; the Act, however, is still not effectively implemented because of the lack of capacity and mechanism.

The Electronic Transaction Act (Cyber Act) 2006 has not only legalized all forms of electronic transactions and digital signatures but has also clearly spelled out ways to regulate various computer-based activities and punish cyber crimes. The computer and cyber crimes such as hacking, piracy, copyright violation, fraudulent and all other deceitful activities have been clearly defined and punishments are set accordingly. The action against such crimes and punishment will be in the range of a minimum 50,000 Nepali rupees (US\$673) to a maximum 3,000,000 (US\$40,376) Nepali rupees in cash and six months to three years of imprisonment.

The Act has set forth legal framework, administrative and application mechanism for electronic transaction and digital signature. Besides legal validity of electronic records and digital signature, the Act has made a provision of Comptroller of Certification authority (CCA). The Act is divided into 12 sections and 80 clauses with detailed information on role and rights of the regulator, certification authority, customer, government and all the concerned stakeholders. It has also envisaged a separate judicial body, the IT Tribunal, and the Appellate Tribunal, to look into all cases related to computer and cyber crimes. The 3-member tribunal shall be headed by the district court judge or legal officer of equivalent status. The tribunal shall be responsible for preliminary cases, while the appellate tribunal will look into major appeals.

The electronic transaction and digital signature is valid not only for the private sector but also for the government agencies. It allows the government offices to use electronic medium for tender notice, vacancy announcement and others. It also validates public procurement and acceptance of electronic applications.

References:

*Media legislation

*Cyber Act 2006

<http://www.lawcommission.gov.np> (For details about the Statutes/Acts)

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 on-line.

100 | 75 | 50 | 25 | 0

Comments:

Censorship of online content is not practiced generally. Any online content or material, as long as it does not violate the law of the land, can be created and posted. The Cyber Act restricts and controls unlawful contents on the Web. The government has started to regulate in this area; focused intervention, however, has not been possible due to the transition period. In the absence of established monitoring mechanism, strict scrutiny is impossible.

References:

*Cyber Act 2006

Interview with Mr. Prakash Shrestha, Administration Chief, Xavier Academy.

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:

No radio station, television channel, website or other type of digital or electronic means; or press or any other communication media of Nepal shall be censored, closed, seized or have its registration canceled for printing and publishing any news item, article, editorial and writing.

References:

*Interim Constitution of Nepal 2007 (Article 15)

*Defamation Act 1959 (Section 4)

<http://www.undp.org.np/constitutionbuilding/constitutionnepal/interim.php>

<http://www.sambidhan.org>

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.

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

Comments:

No restrictions or self-censorship regarding corruption-related stories have been imposed by the government generally. However, attacks against the media and journalists continues unabated in Nepal. Various groups that have been accused of attacking the media and journalists are affiliated with political parties and groups all of which have specific demands for inclusion in the new constitution.

Journalists have been attacked for both reporting and/or not reporting on these groups and their demands in the ways the proponents would have liked. Attacks on the media intensified after July 2008. Besides, the law and order situation in Nepal has deteriorated and many parts of the country have little or no government presence. The security situation has also worsened. General insecurity, especially that of media workers, has also been reported mainly in the eastern region's hill districts. In the southern plains there are over a dozen armed groups claiming to represent the demands of the Madhesi people, whilst violence in the hills is related to the demand for establishing autonomous identity-based provinces.

Furthermore, media companies have faced increasing disruptions owing to trade-union related disputes championed by workers affiliated with the Maoist party. The government has failed to bring those accused of violence against journalists to justice. The authority's inability to guarantee justice to the victims has sent the message that it is acceptable to attack the media, which could have long-term implications in a society with weak or almost non-existent law enforcement.

References:

*Interim Constitution of Nepal 2007

*Media legislation.

International Press Freedom and Freedom of Expression Mission to Nepal, A Call to End Violence and Impunity, 2009, available at http://www.i-m-s.dk/files/publications/1453%20Nepal_web.pdf.

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.

100 | 75 | 50 | 25 | 0

Comments:

Because of the constitutional and statutory provisions, media cannot be prevented legally from publishing or airing controversial or corruption-related materials. It is the general practice, however, that media houses themselves opt for self-censorship in the event of lack of reliable evidence. In some cases, any story which does not have a news value, or is related to the owner of that particular media, may not be published. Whereas in other cases, journalists get discouraged due to security reasons as armed groups often threaten journalists, especially in regard to extortion-related stories.

References:

*Interim Constitution of Nepal 2007

*Media legislation.

Interview with Mr. Binod Poudel, a journalist involved in editing a business magazine

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?

65

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

YES | NO

Comments:

Because laws require mandatory registration, ownership must be disclosed by the media entities in Nepal. So far as the

ownership is concerned, foreign investment is also reported in media but the real investors often are not reported on because these investors use Nepali citizens as cover for completing the legal formalities.

References:

*Company Act 2006

*Institution Registration Act 1977

*Press and Publication Act 1991 (Chapter 2, Section 3)

<http://www.lawcommission.gov.np> (For details about the Statutes/Acts)

YES: A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

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

YES | NO

Comments:

Ownership of broadcast (radio and TV) media companies is automatically disclosed, as registration and formal legal process is mandatory.

References:

*National Broadcast Act 1993

YES: A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

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

100 | 75 | 50 | 25 | 0

Comments:

In Nepal, the Federation of Nepalese Journalists (FNJ) and Press Council Nepal (PCN) have jointly developed the code of conduct for journalists. The Press Council of Nepal is the statutory body that regulates the press in terms of the implementation of the said code of conduct. Section 12 of the Nepal Press Council Act provides for hearing and settlement of complaints against abuse of press freedom by media practitioners from any person or a party aggrieved.

There has been a steady increase in the number of complaints lodged by private parties in subsequent years. Most of the complaints deal with the violation of the code of conduct prescribed by the Council. For instance, PCN received 10 complaints during 2007/08 and 16 complains during 2008/09 fiscal year. From fiscal year 2009 up to 2009 BS, a total of 113 complaints were filed at PCN. Among them 39 were categorized as defamation.

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

Part of the reason is that although a professional journalist is appointed as chairman of the press council, PCN lacks the capacity to effectively implement the code of conduct because the appointment is political, so he or she may be influenced by political ideology or by the individual who appointed her or him. In addition, journalists’ salaries and incentives are inadequate, so breach of code of conduct cannot always be prevented, especially in the tabloids. The code of conduct is limited to mere formality.

References:

*Press Council Act 1992

<http://www.presscouncilnepal.org>

http://www.nepalmonitor.com/2008/12/balancing_individual_privacy_with_press_freedom_in_nepal_.html

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.

The editorial of “Samhita”, (May-July 2009), a quarterly publication of Press Council Nepal.

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.

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

Comments:

Nepal’s media is vibrant and diverse and has the potential to play a major role in facilitating debate and discussions on constitution making and state building. However, its ability, and that of journalists, to facilitate impartial dialogue is contingent on building a fear-free environment where journalists can work independently and impartially while communicating messages to and from readers and audiences.

A few professional media houses or organizations apart notwithstanding, many mainstream and popular media in Nepal are not free from political biases. It is apparent that party politics still continues to have undue influence within the journalistic community itself (to the extent that some journalists’ trade unions are based on party affiliation) at the expense of professional interests and solidarity. This political affiliation puts at risk the ability of the media to provide unbiased coverage and facilitate impartial dialogue on the complex issues related to state building. There have also been reports of identity playing into the already politicized divisions.

More recently, there has developed a trend of establishing media entity just to propagate the respective political ideologies or issues. The latest example is that many madheshi groups have established different media just to further their agenda of so called one madhesh: one province.”

References:

Interview with Mr. Birendra Thapaliya, President, Human Rights and Democratic Forum (FOHRID)

International Press Freedom and Freedom of Expression Mission to Nepal, A call to end violence and impunity, 2009, available at <http://www.i-m-s.dk/files/publications/1453%20Nepal.web.pdf>.

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 party in power has always controlled the media to routinely discriminate against the opposition. The opposition parties, therefore, do have limited access. The situation gets even worse in the event of a coalition government. It is a general practice that the minister, who oversees the Ministry of Information and Communication, monopolizes the media as much as possible.

References:

Interview with Mr. Binod Chapagain, former radio journalist

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?

67

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

YES | NO

Comments:

No reported case of formal imprisonment of journalists for investigating corruption. However, the data available with Press Freedom Monitoring Unit of the Federation of Nepalese Journalists suggests that there were 32 arrests and detentions during a period from May 2008 to April 2009.

References:

Media reports.

Press Freedom Annual Report 2009, p. 9.

<http://www.fnjnepal.org>

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:

No reported case of actual harm, particularly to the journalists covering corruption, by the state. However, the Federation of Nepalese Journalists reports an instance of the police beating up the Biratnagar-based reporter Gokul Parajuli who went to report on news at Urban Development and Building Construction's Office; however, there is no clear mention about whether he was there to cover corruption-related news.

Besides, there are plenty of incidences of interference by the non-state actors. One such mentionable incident involves a group headed by the Vice-President of Media Printing Labor Association Ramesh K.C. and Hotel and Restaurant Labor Association Central Chairman Ramesh Babu Pant who were involved in attacking the reporters of Himal Khabarpatrika and vandalizing their office property.

References:
Media reports.

Press Freedom Annual Report 2009

<http://www.fnjnepal.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:

Nepal's political system became supportive of press freedom and freedom of expression after April 2006, but media and journalists continue to struggle for their safety in a climate of growing impunity. Contrary to the general expectation that the installation of an elected government would lead to improvements in the media environment, the situation began worsening in mid-2008 with the killings of two journalists.

However, there is no reported case of a journalist who was investigating corruption being killed. Yet, the Federation of Nepalese Journalists has recorded over 342 incidents of press freedom violations between January and December 2008. Two journalists were killed in Nepal this year. Among those killed were Janakpur-based reporter Uma Singh and Kailali-based reporter J.P. Joshi. The whereabouts of Kanchanpur-based reporter Prakash Singh Thakuri is still unknown, even after two years after his abduction.

References:
Media reports.

International Press Freedom and Freedom of Expression Mission to Nepal, A call to end violence and impunity, 2009, available at http://www.i-m-s.dk/files/publications/1453%20Nepal_web.pdf.

Press Freedom Annual Report 2009

<http://www.fnjnepal.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.

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

100

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 until recently 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*.

Some provisions of the Country Code provided little guidance in obtaining some of the key information. However, the task force headed by former secretary of the Judicial Council Kashi Raj Dahal prepared a specific bill in relation to Right to Information that was tabled in the Legislative-Parliament in January 2007 and was passed and promulgated on August 19, 2007. Except for information that is detrimental to public interest, all information belongs to public domain according to the Act. The Act, among other things seeks to ensure the access of the citizens to information relating to public importance, and to make the state proceedings transparent and accountable. In order to carry out the objectives of the Act, the government has formed the Nepal National Information Commission, and has formulated a Regulation on Right to Information 2009. This is an important step forward in implementing the Act.

References:

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

*Muluki Ain, Country Code 1963 (No. 17 of the chapter "Document Examination"; No. 211 of the chapter "Of Court Management")

*The Interim Constitution of Nepal 2007 (Article 27: Right to Information)

*The Right to Information Act 2007

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them in translated English version and 117 in Nepali language) in its website. Most of the Statutes/Acts, therefore, can be found in <http://www.lawcommission.gov.np>, either in English or in Nepali version.

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:

There are series of steps provisioned for the Appeal under the Right to Information Act. First step: Appeal to the public

information officer of the concerned authority within seven days. Second step: Appeal to the chief of the concerned ministry or department. Third step: Appeal to the High Level Information Commission. Final step: Appeal to the Supreme Court.

References:

Right to Information Act 2007 (Section 10)

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:

The Right to Information Act provides for having an Information officer, and a separate Information Section, as required in the Public Utilities, to disseminate the information regularly. The procedure to be followed in obtaining the information is outlined under the Act. Besides, the Information Commission has, inter alia, the right to order public utilities to make information available to citizens at large. The government of Nepal has already constituted the Information Commission and also appointed a chief information commissioner and two commissioners.

References:

Right to Information Act 2007 (Sections 6, 7 and Chapter 3)

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?

42

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

100 | 75 | 50 | 25 | 0

Comments:

Despite the law that requires a clear time line within which information must be made available, Nepalese government has not been very accountable to the people in terms of providing information of national importance. According to the Right to Information Act (RTI), the information of certain nature is to be made available immediately, whereas the other information that cannot be granted immediately shall have to be made available within 15 days of the formal request. Furthermore, the Act

requires the designated information officer to assign proper reasoning in cases where the information cannot be made available in time.

The information, particularly the politically-sensitive information, is often delayed and may even be withheld without assigning any reasons whatsoever. The report of the Rayamajhi Commission, a high-level investigation committee constituted to probe atrocities committed during the rule of People's Movement 2006, was produced to the parliament very late, and many citizens still do not know the findings of that report, as it was not adequately circulated to the people. Citizens have yet to have access to the reports of other different commissions that are constituted from time to time, including the Report of the Judicial Investigation Commission on Property.”

Given such a trend, the Nepali people have yet to see how the government deals with the information rights of the citizens while implementing the RTI. Whether the Act will be implemented in both the spirit and its letter still remains to be seen. According to the annual report of National Information Commission, the government has yet to provide necessary arrangements, such as the appointment of information officers in the ministry and its subordinate departments and branches, for carrying out the objectives of the RTI.

References:

Media reports.

The Right to Information Act [Section 7 (2) and (3)]

Annual Report of National Information Commission, 2008/09, available in Nepali at <http://www.nic.gov.np>

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.

100 | 75 | 50 | 25 | 0

Comments:

Records are available upon paying the prescribed fees. Such fees should not exceed the actual cost of providing information.”

The Right to Information Rules 2009 sets out the fees to be charged with regard to requested information. The fees, thus, to be charged, except otherwise provided separately in other Statutes/Acts, is: (a) Rs. 5/- per page for the information prepared or maintained on general size paper (8.3 inch width and 7 inch length), (b) Rs. 10/- per page for the information prepared or maintained in a bigger size than that of mentioned under the Clause (a), (c) Rs. 50/- for each Diskette or CD for the information to be provided through Diskette or CD, or other similar electronic devices, (d) Rs. 50/- per hour per person for the study or observation of any document, material or visit or observation of undergoing construction site of the Public Body, if that has to be done for more than half an hour. However, no fees will be charged for public libraries or such places which are available to public free of cost.

References:

*Right to Information Act 2007 (Section 8)

*Right to Information Rules 2009 (Clause 4)

<http://www.nic.gov.np>

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, responses to information requests are of high quality.

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

Comments:

The Right to Information Act grants every Nepali citizen the right to access information held by public bodies. Even though the Act is generally a progressive piece of legislation, it contains several shortcomings including: (a) it is limited in scope to citizens rather than applying to everyone; (b) the information request procedures require applicants to submit reasons for their requests, which is not only contrary to international standards but also potentially places the burden of proof on the applicant; and (c) it lacks an override providing for the disclosure of even exempt information where this is in the overall public interest.

Besides, its implementation is still to be tested fully as government has yet to do a lot of homework for its full-fledged implementation.

References:

*Right to Information Act 2007

*Right to Information Rules 2009

Memorandum on the Right to Information Act of the State of Nepal, 2008 Article 19 et. al. available at <http://www.article19.org/pdfs/analysis/nepal-rti-act.pdf>

Annual Report of National Information Commission, 2008/09, available in Nepali at <http://www.nic.gov.np>

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

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

Comments:

The Right to Information Act is explicit in this regard. The case has to be resolved within 60 days from the formal registration. The Right to Information Rules elaborates on the processing of the appeals. However, we have to wait for its effective implementation as this is a new piece of legislation, and the nation-state is focused on taking the peace process toward a logical end.

References:

*Right to Information Act 2007 (Section 10)

*Right to Information Rules 2009 (Clause 6)

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.

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

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

Comments:

Although information request legislation appears to be progressive in nature, it is yet to be fully implemented; hence, the question of costs for access to information remains to be tested.

References:

*Right to Information Act 2007

*Right to Information Rules 2009

Interview with Mr. Tika Mani Neupane, Assistant Registrar, Office of the Company Registrar

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.

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

100 | 75 | 50 | 25 | 0

Comments:

The practice to now has been that no reasons for denying an information request are given. However, the information legislation that was recently enacted requires mandatory reasoning but implementation of this law is yet to be tested.

References:

*Right to Information Act 2007

*Right to Information Rules 2009

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

58
II-1. Voting & Citizen Participation

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

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

YES | NO

Comments:

Adult suffrage has been in effect since 1960 in Nepal, albeit under different political regimes. At present, the Interim Constitution also provides such a guarantee.

According to Article 63 (5) of the Constitution, any Nepalese citizen who has attained the age of 18 is eligible to vote. Lately, there has been a demand by non-resident Nepali people that they should also be allowed to cast votes in the election held at home. The latest example is the launch by North American Nepali diaspora launched of an online global petition that demands that Nepalis who live abroad be given the right to vote in key constituent elections.

However, under the existing electoral regulations, Nepalis who live abroad cannot vote. According to these Nepalis, this kind of legal arrangement is unfair and unjust because the right to vote is a fundamental right that should be given to all Nepali citizens, regardless of where they live.

References:

*Interim Constitution of Nepal 2007 (Article 63)

*Election legislation.

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them in translated English version and 117 in Nepali language) in its website. Most of the Statutes/Acts, therefore, can be found in <http://www.lawcommission.gov.np>, either in English or in Nepali version.

<http://www.advocacynet.org/resource/566>.

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:

Respect of human rights and periodic elections are fundamentals of Nepalese democracy. Nepal has been following universal election standards since 1960, except during the People's War as no election ((excluding the municipal election staged by the then Royal Government) could be held at that time.

After a long gap, Nepal managed to hold the election of the Constituent Assembly on April 10, 2008, despite two postponements. The 2008 Constituent Assembly election transitioned Nepal from a monarchy to a parliamentary republic and gave an overwhelming victory to the Communist Party of Nepal (Maoist), ostensibly ending the protracted civil war. Although acts of

violence occurred during the pre-electoral period, election observers noted the elections themselves were markedly peaceful and well-carried out.

References:

*Comprehensive Peace Accord 2006

*Interim Constitution of Nepal 2007

*Election legislation.

http://en.wikipedia.org/wiki/Elections_in_Nepal

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?

50

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

100 | 75 | 50 | 25 | 0

Comments:

Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability or other traditional barriers. The recent Constituent Assembly election is a good example of active participation. However, citizens in some parts of the country may not have been able to cast their vote due to weak database.

References:

Interview with Raksha Basyal, advocate

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 because Nepal is a country of remote and rural areas where physical accessibility is difficult due to lack of a proper transportation system. Secrecy cannot be fully maintained until the electronic voting machines are introduced in all the constituencies. There was an electronic machine in only one constituency, in Kathmandu, in the recently held Constituent Assembly election. Besides, the Election Commission has to increase its capacity of proper vigilance also.

References:

Nepal Constituent Assembly Portal

<http://www.nepalelectionportal.org/EN/>

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. However, Constituent Assembly elections held on 2008 marked a major step forward in the peace process and paved the way for the declaration of a federal democratic republic and the start of the constitution-writing process. Nepal now is in a process of transitioning to peace and stability after a decade-long armed conflict. The confrontational stances of various political parties, however, have put the peace process in peril.

References:

Western Envoys See Cracks in Nepal's Peace Process, Associated Press News Service, 10 March 2009.

<http://www.nepalmirror.com/news/2559.html>.

<http://www.hongkongnepali.com/component/content/article/44-english-section/2246-nepals-peace-process-in-peril.html>

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?

85

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

YES | NO

Comments:

Political parties can be formed 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, caste, tribe, language or gender, or if the name, objectives, insignia or flag are of such a nature that it is religious, communal or tends to fragment the country. The large number of political parties registered with the Election Commission for the Constituent Assembly election is proof that citizens have exercised the right to form political parties. As many as 25 parties are now represented in the Constituent Assembly.

References:

*Interim Constitution of Nepal 2007 [Article 142 (4)]

<http://www.election.gov.np/EN>

<http://www.can.gov.np>

<http://www.nepalcaportal.org/EN/ca-parties>

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 the right to run for political office. Some restrictions, however, do exist. 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, caste, tribe, language or gender, or if the name, objectives, insignia or flag are of such a nature that it is religious, communal or tends to fragment the country.

References:

*Interim Constitution of Nepal 2007 (Article 142)

*Election legislation.

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:

Legal restrictions notwithstanding, political parties can be formed freely in Nepal. However, there is no guarantee of electoral success for all parties.

References:

*Interim Constitution of Nepal 2007

*Election legislation.

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. Some minority groups that have no access to power may be denied the right to register to run for office under a legal or political pretext. The resource factor could be another reason. Because of the cost involved in running for political office, only well-known organized groups may get adequate funding. Therefore, people seldom run for political office in Nepal. Nevertheless, there are quite a few political parties in existence. There is a trend toward forming civil society organizations instead.

References:

Interview with Mr. Mahesh Sigdel, a civil society activist affiliated to Society for Humanism 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. A system of party lists may discourage or prevent independent 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:

Presently, the opposition's representation is so much so that no business of the Legislative-Parliament is carried out for over two months due to the persistent resistance of the opposition party, NCP (M), over the issue of so-called civilian supremacy" and the President's decree that reinstated the then-Chief of Army Staff, Mr. Rookmangud Katuwal.

In a society characterized by poverty and socio-religious inequalities, the people are looking for a kind of political representation that will open up perspectives and, they hope, change their fate. The masses in general, however, are deeply disappointed by the work of the political parties in Nepal. With larger numbers of the people still having no positive perspective, the leading parties are steadily losing their trust. Besides, all political parties are facing problems with implementing intraparty democracy, thereby paving the way for internal conflicts within the parties, which has resulted in zero level of accountability toward the people.

References:

Media reports.

<http://www.nepalnews.com>

<http://www.nagariknews.com>

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.

II-2. Election Integrity

18. Is the election monitoring agency effective?

70

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. Precise criteria have been prescribed for appointment to the Commission. Besides, the Legislative-Parliament Rules 2007, for the first time in Nepalese parliamentary history, provides for a parliamentary special committee on public hearings, which is mandated to conduct public hearings regarding appointments to constitutional posts.

References:

*Interim Constitution of Nepal 2007 (Chapter 14, Articles 128-130)

*Legislative-Parliament Rules 2007 (Clauses 212 and 213)

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 present office-bearers of the Commission were appointed after the endorsement of the parliamentary special committee.

References:

Election Commission Portal, <http://www.election.gov.np>

Media reports.

<http://www.ekantipur.com>

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 staffs are limited. The staffs deployed by the government for the electoral process largely come from different sectors and have different expertise and orientation. They may not be the professional enough to carry out the mandate of the Election Commission.

References:

*The Interim Constitution of Nepal 2007

*Election legislation.

The Election Commission Portal, <http://www.election.gov.np/EN/>

Nepal Constituent Assembly Portal, <http://www.nepalelectionportal.org/EN>

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. The reports are public documents, but the scope and content of the reports may sometimes be limited and might also lack essential information, particularly those posted on the web.

References:

The Election Commission Portal, <http://www.election.gov.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:

Generally speaking, the Election Commission (EC) of Nepal has not been very effective in penalizing the offenders so far as poll malpractices are concerned. This problem was also reflected during the Constituent Assembly (CA) elections. Despite satisfactory performance in the CA elections, the Election Commission failed to penalize the violators. The experience, thus, suggests that the EC was not very effective and was occasionally unable to enforce its judgments on political offenders. The EC staff lacked the professional willpower to impose penalties on offenders. As the monitoring mechanism was weak and largely ineffective, the imposition of penalties was also very ineffectual. For instance, the EC could not do much to curb Maoist excesses.

References:

Media reports.

Different media portals including Kantipur Publications, <http://www.ekantipur.com>

<http://www.crisisgroup.org>

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:

In exercising the powers conferred by the Act Relating to Electoral Rolls 2007, the Election Commission (EC) has framed detail provisions and procedures to collection and updating of electoral rolls, including publication of programs relating to electoral rolls, designation of employees (name registration officers, enumerators) for the tasks, the process of collecting names, verification of qualified and non-qualified voters and subsequent corrections and decision making by EC officials in finalizing the electoral rolls.

The rules thus formulated also details out about the transparency of the electoral roll to ensure voters their rights to vote, including the process of publication of updated electoral rolls in the respective village district council/municipality, the application process for voters to correct or add their names and remove names from the electoral roll of a particular constituency, and the process to be adopted by the EC in ensuring appropriate amendments are made to the electoral roll. Information on temporary voters and the processes to ensure their voting rights are also explained in detail. Besides, details of the functions, duties and power of registration officers, including preparation of required copies of electoral rolls, inspection of electoral rolls and issuance of duplicate copies thereof, settlement of disputes, provision for certification of voters, required documentation and correspondence of EC work are provided in the rules.

Although there is a formal process of preparing electoral rolls, there always remains, in every election, a widespread complaint of rolls not being up to date. Despite efforts to ensure that all eligible voters are included, there may be reports of omissions and additions. 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, which may be inaccessible for those who live in remote areas. The publication of voter lists is confined to paper. Due to the lack of an effective voter-education program, a large number of citizens remain unaware of the publication of voter lists, particularly the rural people. Consequently, some voters realize their names are not on the electoral roll only when they reach the polling booth.

References:

*The Act Relating to Electoral Rolls 2007

*The Rules Relating to Electoral Rolls 2007

Nepal Election Portal, <http://www.nepalelectionportal.org/EN/election-laws/regulations-relating.php#law3.3>.

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" voting by non-existent voters is common.

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

YES | NO

Comments:

A formal mechanism for contesting election results has been established under the legislation, and it is practiced in Nepal. Previously, this issue was dealt by the Election of House of Representatives Act; Election (Crime and Punishment) Act; and the Local Body (Election Procedures) Act. All these laws, however, have been repealed as of now.

References:

*Election of Members of the Constituent Assembly Act 2007

*Election (Offenses and Punishment) Act 2007

<http://www.nepalelectionportal.org/EN/election-laws/>

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:

The Special Courts previously has heard complaints regarding election results. The legal provisions for complaints and appeals are included in a number of different legal documents now: the Election of Members to the Constituent Assembly Act; the Law on the Functions, Duties and Powers of the Election Commission; the Constituent Assembly Court Act, the Election Offenses and Punishment Act; and the Code of Conduct. The Interim Constitution provides for the establishment of a Constituent Assembly Court (CAC), which was approved in August 2007. The CAC has jurisdiction for electoral complaints related to the results of the elections and its decisions are final. The CAC has the power to invalidate elections upon serious electoral offenses that undermine the impartiality of the elections. The court can also annul the election of a candidate if the elected candidate has spent more money than the established ceiling for campaign expenditures. However, no case of such nature is reported to have been decided by the CAC as yet.

There may be separate provisions for the upcoming periodic elections. Given the trend of judicial administration in Nepal, candidates may not be able to obtain prompt result due to the cumbersome court procedures. Although anyone can file a petition

in these courts, only strong political contenders, who can influence the state mechanism, can make her or his case heard effectively.

References:

*Interim Constitution of Nepal 2007

*The Constituent Assembly Court Act 2007

*Election legislation.

Nepal: Constituent Assembly Election April 2008, Report by Jeremy Franklin, NORDEM Report 9/2008, available at <http://www.humanrights.uio.no/forskning/publikasjoner/nordem-rapport/2008/0908.pdf>.

<http://www.lawcommission.gov.np> (For details about the legislation)

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 past elections, especially those held during the royal regime and even before, in the Panchayat era, the security forces, particularly the police, were often misused by the government and the government-supported candidates in Nepal. In many cases, police personnel have not maintained neutrality during elections; they tend to support the political party that is in power. In the recently held Constituent Assembly (CA) election too, several candidates — not those from the Maoist party obviously — blamed police inaction for their defeat.

Despite reports that the police have been trying to remain neutral, there were reports of them favoring or showing inclinations toward certain political parties. The political parties' major complaint was that the police did not provide them with the sufficient security, especially in their own constituencies, where they could not check Maoists' exploiting their voters. This is, however, a very controversial issue, as parties losing the election often tend to be negative so far as deployment of the state machinery in elections is concerned.

Nevertheless, the neutrality of the security forces is yet to be ascertained in the upcoming election, especially once the new constitution is promulgated, and the election held subsequently. However, many doubt that the confrontation of major political parties will hinder the process; hence, the constitution will not be promulgated in time.

References:

Media reports

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 overtly 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 can monitor the electoral process. However, a large number of polling sites may go unobserved because of geographical constraints. Nevertheless, no burdensome regulatory or bureaucratic requirements have been imposed on observers to discourage their involvement.

References:

Election Observation Directives 2007

<http://www.election.gov.np>

<http://www.nepalelectionportal.org/EN/observation/national-observers.php>

http://www.cartercenter.org/news/pr/nepal_030907.html

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:

The trend of election observation by international observers has increased significantly in Nepal. There were widespread

presence of international observers for the Constituent Assembly election, more than in any past election in Nepal. However, many polling booths did go unobserved due to geographical constraints. Besides, there were reports of various political parties and their sister organizations directly or indirectly obstructing the election observers in certain polling stations where concerned political parties had a strong influence.

References:

Media reports.

http://www.unmin.org_np/?d=activities&p=activity_detail&aid=116

<http://www.eueomnepal.org/nepali/Lto.html>

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.

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 Election Commission of Nepal, a constitutional body, is mandated to conduct, supervise, direct and control the elections. The Commission is composed of one chief election commissioner as head of the Institution, and four other election commissioners. The appointment is made by the president on the recommendation of the Constitutional Council.

Any matters of national importance can be decided through referendum by the Constituent Assembly, provided its two-thirds majority of the total number of members present therein is in favor of and decides to that effect. The Election Commission has also been mandated to conduct such a referendum.

So far as the local authorities are concerned, they are the decentralized statutory bodies. The periodic election of such bodies is also the responsibility of the Election Commission.

References:

*Interim Constitution of Nepal 2007 (Articles 128,129 and 157)

*Local Self-Governance Act 1999

*Election legislation.

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them in translated English version and 117 in Nepali language) on its website. Most of the Statutes/Acts, therefore, can be found in <http://www.lawcommission.gov.np>, either in English or in Nepali version.

<http://www.nepal.gov.np>

<http://www.election.gov.np/EN>

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 exists 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.

79 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

50

20a. In law, there are limits on individual donations to political parties.

YES | **NO**

Comments:

No law regulates private contributions to political parties; hence, private contributions are not very transparent in Nepal. Parties are run on an ad hoc basis. Because there is no specific regulatory mechanism in existence, the little guidance provided by other prevalent legislation is not being implemented. The Political Parties Act requires the political parties to declare donations exceeding 25,000 Nepali rupees (US\$336). The Election Commission has to make such declarations public within six months from the time the returns are filed. However, 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, has strongly recommended introducing specific regulation on political party financing. The government, however, has not yet enacted such legislation.

References:

*Interim Constitution of Nepal 2007 (Article 142)

*Political Parties Act 2002

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them in translated English version and 117 in Nepali language) in its website. Most of the Statutes/Acts, therefore, can be found in <http://www.lawcommission.gov.np>, either in English or in Nepali version.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | **NO**

Comments:

Because there is no law regulating political party financing, there are no statutory limits on corporate donations to candidates. However, political parties in Nepal are restricted in accepting donations or grants from international agencies, foreign governments and individuals. Although corporate ethics of Federation of Nepalese Chamber of Commerce and Industry (FNCCI) discusses refraining from providing donations or financial assistance to political parties or their leaders for consideration in business deals or for personal benefits, this code of conduct is not strictly adhered to in practice; hence, it is not very effective in this matter.

References:

The Political Parties Act 2002 [Section 5 (G)]

http://www.fncci.org.np/downloads/code_conduct_english.php

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

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

YES | **NO**

Comments:

In the absence of specific law on political party financing, election integrity remains questionable in Nepal as the governing legislation, the Act Relating to Political Parties, does not contain any provision for total party expenditures; hence, there are no specific statutory limits. However, limits are prescribed regarding total election expenditures. The Election Commission may impose limits on total expenditures for election campaigning. The cap of the amount allowed to be spent by the candidate in the election is prescribed by the commission upon a notification published in the Nepal Gazette.

References:

*Political Parties Act 2002

*Election of Members to the Constituent Assembly Act 2007 (Section 69)

*Election (Offences and Punishment) Act 2007

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

There is a provision relating to the submission of an Annual Report of Income and Expenditure by the political parties. The Political Parties Act makes it mandatory to disclose donations parties have received. Any donation which exceeds 25,000 Nepali rupees (US\$336) must be disclosed under the law. The candidates also are required to submit the expenditures of their election campaign after the election is over. However to the best of my knowledge, neither a political party nor a candidate disclosed its expenditures in the last Constituent Assembly election.

References:

Political Parties Act 2002 (Section 12)

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

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

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | NO

Comments:

The constitution mandates that political parties declare their income sources. In addition, there is a legislative provision with regard to independent auditing of party finances. This legislative provision basically deals with the general auditing system. However, in the event of any irregularities reported, complaints may be lodged to the Election Commission. The Election Commission may order independent auditing after it has heard the complaints.

References:

*Interim Constitution of Nepal 2007 [Article 142 (2) (C)]

*Political Parties Act 2002 (Section 11)

*Election legislation.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

The Election Commission has been mandated to monitor political party financing. However, despite being a constitutional body that exercises full autonomy, the commission has not been able to effectively monitor this financing because of inadequate regulations and bylaws. The commission also lacks dedicated human resources. In addition, the loyalty of the chief election commissioner and other commissioners to the parties, which recommended their appointments to the posts, makes it virtually difficult to conduct scrutiny.

References:

*Interim Constitution of Nepal 2007

*Political Parties Act 2002

*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 the financing of political parties. 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. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

20

21a. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

Because there is no specific legislation on political party financing, and no limit prescribed as such by other prevalent acts except the provision regarding disclosure of donations exceeding 25,000 Nepali rupees (US\$336) by the parties, individual donations to parties are mostly unaccounted for. Candidates are free to accept private contributions of any amount, and they generally do not disclose what they have received.

References:

Political Parties Act 2002

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | **NO**

Comments:

In the absence of specific legislation that regulates party financing, an individual candidates are free to accept corporate donations of any amount, and they generally do not disclose what they have received. Corporate bodies that provide funds to candidates also do not disclose to the public the amounts they have donated.

References:

Political Parties Act 2002

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

Comments:

There is no law that requires candidates to disclose the amount of donations they received before and after the election. Candidates are required to submit reports only on the expenditures of their election campaign. This did not happen, however, after the Constituent Assembly election because no candidates strictly adhered to this provision either, and the Election Commission also did not bother to follow up.

References:

Political Parties Act 2002

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

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

donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | NO

Comments:

No such mechanism for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered is available in Nepal.

References:

*Political Parties Act 2002

*Election legislation.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

The Election Commission is the monitoring agency, but it has not been an effective monitor because of a lack of willpower. The commission not only lacks adequate legislation but also the dedicated human resources for carrying out the essential follow-up monitoring.

References:

*Interim Constitution of Nepal 2007

*Political Parties Act 2002

*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 the financing of individual political candidates' campaigns. 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. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

4

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

No limit on individual donations to political parties is prescribed; individual donations to parties are unaccounted for. As no laws govern this area, the prevalent practice is that nobody knows anything about the individual donations given to parties.

References:

Election legislation.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The business community makes certain donations to the political parties and candidates during the elections. But it has been found that they are the least transparent about the donations that they make. Therefore, such amounts often go to the wrong persons and wrong parties.

Even the political parties are not interested in receiving donations openly. As there is no disclosure system in practice, nobody would be in a position to ascertain how much parties do receive in donations and no one knows how donations are utilized. Although the Election Commission makes it mandatory for all political parties to disclose their financing, most of the parties, however, do not abide by this provision. The practice is such that the Election Commission does not take any action, except making the issue public through the media in cases where a political party does not disclose their election-related expenses.

References:

Election legislation.

Dr. Hari Bansh Jha, Financing Election in Nepal, available at http://www.telegraphnepal.com/news_det.php?news_id=1475.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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:

Since no specific law has been formulated to date to govern the area of limits on total party expenditures, the question of regulating a political party's ability to fund campaigns or politically-related activities is not applicable in Nepal.

References:

*The Political Parties Act 2002

*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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

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

Comments:

The Election Commission is mandated to carry out investigations. However, no credible investigations have been made to date so far in regard to post-election monitoring of party finances.

References:

Media reports.

Election legislation.

The Election Commission of Nepal Portal, <http://www.election.gov.np>

Nepal Election Portal, <http://www.nepalelectionportal.org>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

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

Comments:

There are no reported cases of an agency or entity monitoring the financing of political parties imposing penalties on offenders available.

References:

Media reports.

Election legislation.

Nepal Election Portal, <http://www.nepalelectionportal.org>

The Election Commission of Nepal Portal, <http://www.election.gov.np>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Since no specific law has been formulated to date to govern this area, questions regarding the auditing of contributions to political parties is not applicable in Nepal.

References:

Political Parties Act 2002

Election legislation.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable as no set mechanism for regulating an individual's ability to financially support a particular candidate is available in Nepal.

References:

*Interim Constitution of Nepal 2007

*Political Parties Act 2002

*Election legislation.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

Since no specific law has been formulated to date to govern a company's ability to financially support a candidate, this is not applicable in Nepal.

The failure of political institutions as a result of political corruption remains a fundamental problem across many countries in the Asia Pacific region, including Nepal. The findings of the Transparency International Global Corruption Barometer and other governance indicators highlight the perception in Asia Pacific that political parties are one of the institutions most affected by corruption. As many Asian countries are experiencing democracy in transition, opportunities exist to set new standards in political accountability.

References:

Transparency International, Global Corruption Barometer 2008

http://www.transparency.org/news_room/in_focus/2008/transparency_in_political_finance

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission and the Commission for the Investigation of Abuse of Authority (CIAA) can take up cases regarding campaign financing. However, there are no reported cases of such investigations to date. Besides, various media entities can investigate an individual candidate's campaign independently. But there are very few initiatives taken in this regard.

Transparency in income and expenditure of the political parties is not much of a concern for the parties themselves and the citizenry at large. Buying votes and influencing voters are a common practice even among the advanced democracies, and the issue is much more intensive in transitional and emerging democracies like Nepal. Nepal, like other fragile democracies, too, had become a victim of this phenomenon, even during past elections.

References:

Pranav Bhattarai, Tracking Money in Politics, Editorial, The Rising Nepal, http://www.gorkhapatra.org.np/rising_detail.php?article_id=25451&cat_id=7

The Election Commission of Nepal Portal, <http://www.election.gov.np>

The CIAA Portal, <http://www.ciaa.gov.np>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no reported case of an agency or entity monitoring the financing of individual candidates' campaigns imposing penalties on offenders available.

References:

The Election Commission of Nepal Portal, <http://www.election.gov.np>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no such system for auditing the finances of individual candidates' campaigns in Nepal. Lack of transparency in the

financing of political parties and related corruption has challenged the legitimacy of democratic governments in Nepal. As the country is undergoing historical political and social transformation, the need to reform political parties has become part of the public agenda. Developing a system of financial transparency and institutionalizing it in political parties is needed to create the benefits of political transformation.

References:

*Election legislation

*Other prevalent Nepalese laws.

Transparency in Political Finance: In

Focus, http://www.transparency.org/news_room/in_focus/2008/transparency_in_political_finance.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

19

24a. In practice, political parties 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, political parties and candidates have never been transparent in regard to financial matters, which is increasingly becoming a big threat to democracy itself. The parties have yet to deal with this issue.

References:

On Behalf of the Pro-public, Mihir Kumar Thakur vs. the Election Commission, Writ Nos. 2668 and 2669, Aug. 31, 2005, unpublished.

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

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

75:

50: Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

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

Comments:

As past experience suggests, political parties and candidates never publish 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:

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

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

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

Comments:

Most of the political parties do not normally disclose their finances in Nepal; it is, therefore, very difficult to retrieve the actual records. Some political parties, nevertheless, have started disclosing their finances, but the extent to which these statements reflect the reality of expenditures is debatable. Besides, the records are not accessible to people who are not directly concerned. Those people who are involved, however, can access those records at a reasonable cost.

References:

Interview with Mr. Bishal Sapkota, MBA, a civil society activist.

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.

24d. In practice, the publicly available records of political parties' finances are of high quality.

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

Comments:

The major political parties are not very accountable to the people in terms of disclosing the records insofar as financial matters is concerned.

References:

The Nepali Congress Portal; <http://www.nepalicongress.org>

The United Marxist Leninist (UML) Party Portal; <http://www.cpunml.org>

The Unified Communist Party Nepal (Maoist) Portal; <http://www.cpnm.org>

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

6

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no such system regarding the disclosure of data relating to financial support and expenditures.

References:

*Election legislation

*Asset Disclosure Regulation.

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

75:

50: Individual 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: Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No such system for accessing the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period is prevalent in Nepal.

References:

*Election legislation

*Other prevalent Nepalese law.

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The question of access to the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost is not applicable in Nepal.

References:

*Prevalent Nepalese laws

*Asset Disclosure Regulation.

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.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The candidates of major political parties are not very accountable to the people in terms of disclosing their records regarding financial matters.

References:

Interview with Mr. Pushkal Bhattarai, a local cadre affiliated to Nepali Congress Party.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category III. Government Accountability

III-1. ~~E~~ Executive Accountability

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

63

27a. 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 constitution grants the right of access to information as one of the fundamental rights of citizens. However, this right is not absolute and numerous case laws and statutes grant the government the privilege of non-disclosure of information to the individual or public in general. In fact, the constitution itself makes this clear by stating that no one is compelled to provide information on any matter about which secrecy is to be maintained by law.

In addition, the Interim Constitution of Nepal grants functional autonomy to the executive in determining its allocating and transacting of business. Along with the executive privilege associated with functional autonomy and intra-executive communications, the Evidence Act (1974) and the Secrecy of Documents Act (1982) also grant certain privileges to the executive in legal proceedings relating to the production of evidence during a trial.

Past experience suggests that no reasons for decisions have been given for especially politically sensitive issues. For instance, no prime minister has ever given reasons on not making public the different reports that the various commissions issue from time to time. The release of a report by the Rayamajhi Commission, for instance, was delayed for a long time and the prime minister, who happened to be the head of the state at that time, did not give any reasons for not making the report public.

References:

*Interim Constitution of Nepal 2007 [Articles 27, 43 (2) and (3)]

*Right to Information Act 2007

*The Evidence Act 1974

*Secrecy of Documents Act 1982

Radheshyam Adhikari v. Cabinet Secretariat and Others, 12 NKP 810 (2048 B.S.)

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.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The constitution vests the judiciary with the power to review the executive actions that contravene the constitution and other statutory provisions. As far as judicial review is concerned, the Nepalese judiciary is proactive. Many landmark decisions have been made by the Supreme Court of Nepal.

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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

Nepalese courts are generally proactive in defending citizens' rights. A strong media presence has contributed much in this regard. The judicial activism demonstrated by the Supreme Court in some cases in the past is commendable. However, the Nepalese judiciary has not demonstrated its activism in deciding the constitutionality of political decisions. For example, the

president case” (regarding the president’s decision to reinstate the then-Chief of the Army staff) has been pending for a long time.

References:

*Various decisions and verdicts of the Supreme Court

*Annual Reports of the Supreme Court

The Supreme Court of Nepal Portal, <http://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.

27d. 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:

Policy and regulations are formulated by the Council of Ministers in Nepal. The prime minister heads the Council of Ministers as its chief executive. Any decision made by the Council of Ministers shall have to be endorsed by the Parliament. The chief executive of Nepal, thus, has to follow the process of the constitution for making decisions. In addition, the executive is required to obey, respect, protect and maintain the Constitution.

So far as the decision making process is concerned, the decision made by the Maoist-led government in the past have caused political turmoil in Nepal. Despite the vehement opposition of the coalition partners in the Council of Ministers, Maoists decided to terminate the service of the then-Chief of Army Staff (CoAS). This ignited a constitutional debate among the political actors that ultimately led to the ousting of the Maoists from the government. The then-prime minister, Pushpa Kamal Dahal, had tendered his resignation citing the subsequent move by the president as unconstitutional, whereas other political parties considered the government’s decision to be against the constitution because other members of the government had boycotted the meeting of the Council of Ministers; hence, the decision was not legitimate.

References:

Interim Constitution of Nepal 2007

The Government of Nepal Portal; <http://www.opmcm.gov.np>

Media reports.

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.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

There are no Nepalese laws that bar the prosecution of the prime minister or the president for criminal offenses. However, there is no known case of any prime minister being prosecuted while in power.

References:

*Interim Constitution of Nepal 2007

*Prevalent criminal laws

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

Ministers can be prosecuted and no laws bar them from being convicted. There are cases (though none during the study period) of who were prosecuted while in power. Padma Sunder Lawoti, a cabinet minister, was investigated and prosecuted for corruption during the Panchayat regime. The then-secretary in the Ministry of Agriculture, Dan Bahadur Shahi, was also

prosecuted along with Minister Lawoti. Similarly, former ministers Khum Bahadur Khadka, Chiranjivi Wagle and others, who were appointed as ministers during the democratic period after 1990 people's movement, were also prosecuted for their involvement in corruption.

References:

*Interim Constitution of Nepal 2007

*Prevalent criminal 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.

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

38

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

Government officials, all the way up to prime minister, all are required to disclose their income and assets in Nepal. However, the disclosure system is largely ineffective because the monitoring authority, the National Vigilance Center (NVC), has not been able to effectively monitor these disclosures due to lack of a national database, inadequate rules and regulations, as well as the political will to implement the laws.

References:

Corruption Control Act 2002 (Section 50)

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.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

Disclosure of assets is a must for all those who hold public office. However, a number of public officials flout this provision of the law simply because there is no strict mechanism for regular follow up. Even if the follow up is made, the directives that are issued are seldom complied with.

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

Restrictions governing gifts and hospitality offered to members of the executive branch are imposed. However, in practice, they accept gifts formally and informally. A formal approval from the government is required to accept gifts made by the national servant" that do not excessively exceed the strict limits set under the law.

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.

29d. 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:

As the law requires all asset disclosures to be kept confidential, there is no requirement for independent auditing of disclosure forms under existing law.

References:

Corruption Control Act 2002 [Section 50 (4)]

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.

29e. 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 is no legal restriction on heads of state and government and ministers entering the private sector after leaving the government. The private sector is open to all ex-ministers.

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.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

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

Comments:

There is no law that restricts private sector involvement for heads of state and government and ministers.

References:

Civil service legislation.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Because the mechanism for implementing laws that govern gifts and hospitality are either weak or ineffective, the restriction has become mere symbolic.

References:

Civil service legislation.

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

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

Executive branch asset disclosures are not audited because these disclosures must be kept confidential according to the law; hence, there is no question about independent auditing.

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.

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

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

The law requires that all asset disclosures that are filed by public officials be kept confidential; hence they are not accessible to the general public. The Commission for Investigation of Abuse of Authority (CIAA), however, may have access to them for the purpose of the Corruption Control Act. Nevertheless, in practice, the voluntary asset disclosures made public by some ministers appear in the media.

No records can be accessed legally, as the law itself requires that such disclosures are to be kept confidential except for the purposes of investigation hence is limited to investigating officer only. This provision is intended to maintain the privacy rights of the public officials. Citizens, therefore, are restricted to have access to them. The Prime Minister and ministers both are placed as the 'public servant' under the purview of the Corruption Control Act.

However as far as disclosures by the Office of the Prime Minister and Council of Ministers is concerned, such disclosures appear by the virtue of one time decision of the Council of Ministers that was made almost a decade ago. Citizens, no doubt, can have access to the disclosures that is already made public. The question here is whether citizens can claim that as a matter of their right or not? This is a serious legal question: can a cabinet decision supersede the provision of the Statute? This is little bit confusing hence require interpretation, but no interpretation in this regard has been made till date by the competent authority.

References:

Corruption Control Act 2002 [Section 50 (4)]

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.

30b. 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:

Citizens are legally restricted from access to the asset disclosures of the heads of state and government. However, the Right to Information Act may help in this regard, but this has yet to be put into practice in Nepal.

No records can be accessed legally, as the law itself requires that such disclosures are to be kept confidential except for the purposes of investigation hence is limited to investigating officer only. This provision is intended to maintain the privacy rights of the public officials. Citizens, therefore, are restricted to have access to them. The Prime Minister and ministers both are placed as the 'public servant' under the purview of the Corruption Control Act.

However as far as disclosures by the Office of the Prime Minister and Council of Ministers is concerned, such disclosures appear by the virtue of one time decision of the Council of Ministers that was made almost a decade ago. Citizens, no doubt, can have access to the disclosures that is already made public. The question here is whether citizens can claim that as a matter of their right or not? This is a serious legal question: can a cabinet decision supersede the provision of the Statute? This is little bit confusing hence require interpretation, but no interpretation in this regard has been made till date by the competent authority.

References:

*Corruption Control Act 2002

*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 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.

30c. 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 access to the asset disclosure records of the heads of state and government is restricted by the law.

No records can be accessed legally, as the law itself requires that such disclosures are to be kept confidential except for the purposes of investigation hence is limited to investigating officer only. This provision is intended to maintain the privacy rights of the public officials. Citizens, therefore, are restricted to have access to them. The Prime Minister and ministers both are placed as the 'public servant' under the purview of the Corruption Control Act.

However as far as disclosures by the Office of the Prime Minister and Council of Ministers is concerned, such disclosures appear by the virtue of one time decision of the Council of Ministers that was made almost a decade ago. Citizens, no doubt, can have access to the disclosures that is already made public. The question here is whether citizens can claim that as a matter of their right or not? This is a serious legal question: can a cabinet decision supersede the provision of the Statute? This is little bit confusing hence require interpretation, but no interpretation in this regard has been made till date by the competent authority.

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.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable because no public access is granted to the asset disclosures of the heads of state and government.

References:

*Corruption control legislation

*Asset disclosure regulation

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

100

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

YES | NO

Comments:

Citizens have a constitutionally protected right to defend their infringed fundamental and legal rights. This protection is guaranteed to all classes and castes of the Nepali people. The Supreme Court and the Appellate Courts of Nepal have the power to issue writs against the executive. The constitution envisions the judiciary as an independent organ of the government that may issue any kind of order against the executive, who has no other legal option than to abide by the decision. These constitutional remedies, however, may be suspended during a state of emergency.

References:

*Interim Constitution of Nepal 2007

*Citizens' Right Act 1953

*Compensation of Torture Act 1996.

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>

<http://www.undp.org/np/constitutionbuilding/constitutionnepal/interim.php>

<http://www.sambidhan.org>

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.

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

25

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

100 | 75 | 50 | 25 | 0

Comments:

Unfortunately this has not been the case in Nepal. The ruling party (or parties in a coalition government) can easily influence government decisions. The ruling party also often misuses power by acquiring government funds, equipment, etc. to carry out party activities.

References:

Interview with Surendra Kunwar, Advocate

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

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

92

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

Judicial review has been an integral part of the democratic practice in Nepal. Successive democratic constitutions have vested the Supreme Court of Nepal with the power to entertain writ petitions to interpret laws passed by the legislature. Thus, judicial review of government-enacted legislation is possible in Nepal.

The Nepalese judiciary can review the actions of the legislature and executive to ensure that they do not violate constitutional prerogatives and limits. In addition to this original jurisdiction, the Supreme Court of Nepal has the Appellate and Advisory jurisdiction.

References:

*The Constitution of the Kingdom of Nepal 1990 (now repealed)

*The Interim Constitution of Nepal 2007

<http://www.undp.org.np/constitutionbuilding/constitutionnepal/interim.php>

<http://www.sambidhan.org>

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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Even though the separation of power and, with that, the provision that allows the judiciary to effectively review the other two organs of the government was realized in the Constitution of the Kingdom of Nepal 1990, the trail of judicial review can be traced back to the early days of the establishment of the Supreme Court itself.

In the celebrated case of Bisheshwor Prasad Koirala v Government of Nepal Kathmandu Magistrate [NKP 123 (2016B.S.)], the Supreme Court, for the very first time, examined the constitutionality of the Sawal (order) of Kathmandu Magistrate and declared the Kathmandu Magistrate's Sawal to be unconstitutional on the grounds that it violated the independence of the judiciary. The court held that it is the duty of the Supreme Court to declare any Act that is contrary to the constitutional provision to be unconstitutional, thereby establishing the duty as well as the right of the judiciary to conduct judicial review.

That judicial activism is demonstrated by the Supreme Court of Nepal in few cases is, no doubt, praiseworthy. The Supreme Court has not only reviewed laws passed by Parliament, it has demonstrated a proactive role in issuing orders that oblige the government to introduce a new act if there is no proper law addressing particular issues. For example, the Supreme Court has directed the government in one case to criminalize incidents of disappearance⁹ in Nepal.

References:

Various decisions and verdicts of the Supreme Court

Apurba Khatiwada, Judicial Review in Nepal¹⁰ March 28 2006, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=893803

<http://www.supremecourt.gov.np>

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.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Like any other citizen, members of the national legislature are subject to criminal proceedings. In the event that a parliamentary session is in progress, the parliament has to be informed about cases where members of the national legislature are arrested.

Baban Singh is a noted case. Not only Baban Singh, there are others in legislature who also have tainted images. No one is above the law. And no law restricts to prosecute a lawmaker for a criminal charge. The irony, however, is that persons like Baban Singh are representing people in the parliament; yet, Nepalese government has not dared to arrest and initiate the criminal proceedings against them. These cases are not a question of law but a problem linked to the widespread impunity, and lack of political will to prevent criminalization of politics.

References:

*Interim Constitution of Nepal 2007 [Article 56 (5)]

*Prevalent criminal laws

*Legislative-Parliament Rules 2007

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

32

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

Because they are public officials in the eyes of the law, the national legislators are required to submit asset disclosure forms at regular intervals. In addition, election legislation requires the candidates to submit the disclosures after they are elected to their

posts. However, this provision is not fully complied with in practice. Most of the legislators do not submit their asset disclosures on time.

References:

*Corruption Control Act 2002 [Sections 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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

There are no restrictions on national legislators entering the private sector after leaving the government imposed by law. Anyone may join the private sector, including an ex-national legislator. There are quite a few industrialists working as members in the Constituent Assembly because different political parties have nominated them as legislators. It is important to mention here that the Constituent Assembly has been vested with the authority of Legislative-Parliament as well. This makes it obvious that assembly members would look into their respective businesses after their term as legislators is over.

References:

*Prevalent laws

*Election legislation

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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

The restriction with regard to gifts and hospitality equally applies to members of the national legislature, as the law envisions them as public officials. They are subject to inquiry and subsequent action if they are found guilty of offenses in this regard.

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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

The laws do not permit asset disclosure forms of members of the national legislature to be audited, since it is required that all disclosure records be kept confidential except for the purposes of the Commission for the Investigation of Abuse of Authority. No mechanism, therefore, exists for the independent auditing of the asset disclosures by the national legislators in Nepal.

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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

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

Comments:

This is not applicable to Nepal because no law provides for regulations restricting post-government private sector employment for national legislators.

References:

Prevalent Nepalese laws.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. 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 offered to national legislators are not enforced effectively in Nepal due to political instability and lack of political will. The monitoring agency, the National Vigilance Center, often refers to inadequate governing rules and regulations as major impediments in this regard.

References:

Corruption Control Act 2002, Section 5

<http://www.nvc.gov.np>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

No such system for the audit of national legislative branch asset disclosures exists in Nepal.

References:

*Corruption Control Act 2002

*Legislation relating to parliamentary affairs

*Other prevalent Nepalese laws.

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: 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.

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

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

As laws require that all disclosures filed by the members of the national legislatures be kept confidential, the anti-corruption law, thus, explicitly restricts the public access to the asset disclosure records. They are made available to the investigating agency only.

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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Questions regarding citizen access to legislative asset disclosure records within a reasonable time period is not applicable.

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 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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

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.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

References:

Corruption Control Act 2002

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

75

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Prior to the promulgation of the Right to Information Act, citizen access to records of legislative processes and documents used to be governed by the Supreme Court's guidelines. Now it is governed by the specific Act, which has a comprehensive provision that relates to obtaining information.

References:

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

*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 are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

So far as the time line for access to records of legislative processes and documents is concerned, the Right to Information Act sets out a clear time line: Information of a certain nature is to be made available immediately, whereas other information has to be made available within 15 days of the time a formal request is made. Previously, records were accessible within 1 or 2 weeks, sometimes longer, depending on the nature of the document.

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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records of legislative processes and documents can be obtained free of cost or by paying official charges, such as nominal fees and the cost of photocopying, etc. The Right to Information Act strictly prescribes for charging a fee on a 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.

50
III-3. Judicial Accountability

36. Are judges appointed fairly?

100

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

National-level judges are appointed through a specific selection procedure as prescribed under the constitution. The chief justice of the Supreme Court is appointed by the President 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:

Interim Constitution of Nepal 2007 (Articles 103 and 109)

<http://www.undp.org.np/constitutionbuilding/constitutionnepal/interim.php>

<http://www.sambidhan.org>

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.

36b. In practice, professional criteria are followed in selecting national-level judges.

Comments:

The law prescribes precise criteria. Any person who has worked as a Judge of the Supreme Court for at least three years shall be eligible for appointment as the Chief Justice of the Supreme Court.

As far as other judges are concerned, any person who has worked as a Judge of an Appellate Court or in any equivalent office of the Judicial Service for seven years, or has worked in the post of Gazetted First Class or a higher post of the Judicial Service for at least twelve years, or has practiced law for at least fifteen years as a law graduate advocate or senior advocate, or who is a distinguished jurist having worked for at least fifteen years in the judicial or legal field, shall only be eligible for appointment as a Judge of the Supreme Court.

Similarly, explicit criteria for judicial appointments have been prescribed for the judges of lower level courts as well.

References:

Interim Constitution of Nepal 2007 [Articles 103 (2), (3), Articles 109 (2), (3)]

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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

A confirmation process has been prescribed for constitutional posts. The Legislative-Parliament Rules (2007), for the first time in Nepalese legal and political history, have provisions for a parliamentary special committee for the purpose of conducting hearing of appointees of the constitutional posts. The parliamentary special committee on public hearings is entrusted with the responsibility of confirming nominees. Many judges, including the sitting chief justice of the Supreme Court, Min Bahadur Rayamajhi, had to face such parliamentary hearings prior to their appointment in the posts.

References:

Legislative-Parliament Rules 2007 [Clause 212]

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

79

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

The law requires judges to give proper reasons for their conclusions in regard to any particular case.

References:

*Country Code 1963, No. 202 of the chapter Of Court Management”

*Supreme Court Regulation 1992 [Clauses 67, 68, 72 and Annex 6]

*Various case laws, including 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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

The constitution gives the Supreme Court of Nepal the power to interpret laws, and envisions it as a court of record; hence, it is required to give reasons for its decisions. However, in practice, some of their decisions do sometimes invite debate within the legal community.

References:

*Interim Constitution of Nepal 2007

*Act Relating to Interpretation of Statutes 1952

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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

An entity called the Judicial Council has been mandated to investigate breaches of procedure and abuse of power within the judiciary. The Council is entitled to deal with all of the matters relating to judicial administration, including the appointment, transfer, disciplinary action, and even the dismissal, of judges.

The judicial council has its own secretariat headed by a secretary who is appointed by the government under the recommendation of judicial service commission. The secretariat is responsible for assisting the council to maintain the performance records of all the judges as well as for implementing the council's decisions.

References:

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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

The judicial council is predominantly comprised of members from the judicial branch, including a representative from the Bar. The chief justice is the presiding officer. Other members include the senior-most judge from the Supreme Court; a senior advocate, with at least 20 years of experience and who has been nominated by the Nepal Bar Association; a jurist nominated by the prime minister; and the Minister of Justice.

Because the law prescribes the precise criteria of the council's composition, this automatically limits the political interference.

References:

The Interim Constitution of Nepal 2007 [Article 113 (1)]

<http://www.supremecourt.gov.np/main.php?d=general&f=judicialcouncil>

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

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

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

Comments:

An independent review of the judicial system suggests that there are numerous problems regarding the prevalent judicial culture.

The Council acts on formal complaints only. Even if investigations are initiated, however, the Council is said to give in to internal and external pressures brought by different interest groups. In addition, a passive enforcement mechanism adds to the problem. The effectiveness of this agency, therefore, is very limited.

Because of such shortcomings, there has been an emerging debate on judicial corruption in Nepal. Transparency International termed the Nepali judiciary as most corrupt in the year 2007.

The remarks by the President of the Nepal Bar Association (NBA) have lately caused controversy within the judiciary. The Supreme Court of Nepal, during an emergency five-hour hearing of the full court on September 19, retaliated against NBA President Bishwa Kant Mainali for remarks he made two days earlier regarding judicial corruption. Mainali asserted that without a proper accountability mechanism, a judgeship was a license for corruption, (which is a fairly commonplace view in Nepal as well as other Asian countries). In response, the Supreme Court decided to prohibit Mr. Mainali from practicing law in any Nepali court for six months effective from the date of the hearing.

This was the first time in the history of Nepal that such a decision was taken against the president of the NBA. The decision, however, was withdrawn later, since members of the Bar, along with members of civil society organizations, strongly opposed the ban on the President.

As far as the international perception towards the Nepali judiciary is concerned, Nepal ranked 25th in the Failed State Index 2009, which was released by the Fund for Peace (TFP), a Washington D.C.-based institution. TFP rates Nepal's leadership as poor; the military, police, judiciary as weak; and the civil service as moderate. It further elaborates that even though the Supreme Court is relatively independent, the lower courts remain subject to corruption and political pressure. Many Nepalese have very limited access to the judicial system."

References:

*Transparency International, Global Corruption Report 2007: Corruption in Judicial Systems, http://www.transparency.org/publications/publications/global_corruption_report/gcr2007

*Nepal: Supreme Court punishes the messenger and ignores the message, A Statement by the Asian Human Rights Commission, 19 September 2009, <http://www.ahrchk.net/statements/mainfile.php/2008statements/1696/>

*The Fund for Peace, Failed State Index 2009, http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=362&Itemid=524

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.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Despite the independence and enabling mechanisms available, very few cases are reported. Many think that corrupt judges are being provided safe sanctuary by the upper echelon in the political leadership. According to the business anti-corruption portal, ... the judiciary is perceived to be among the most corrupt sectors in Nepal. The poorer sections of society lack access to the courts and have no means to seek redress for corruption or abuses of power. Lower level courts are known for slow procedures and corrupt judges and court staff. Court employees and public prosecutors are perceived as the main facilitators of corruption within the judiciary.”

References:

*The Telegraph Nepal Portal, http://www.telegraphnepal.com/news_det.php?news_id=6458

*Business Anti-Corruption Portal,

<http://www.business-anti-corruption.com/country-profiles/south-asia/nepal/corruption-levels/judicial-system/>

http://www.nepalmonitor.com/2007/05/post_11.html

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.

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

29

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

In order to ensure transparency in the judiciary, laws require judges to disclose their income and assets. The Judicial Council is the collecting and monitoring authority of such disclosures.

References:

*Judicial Council Act 199

*Judges' Code of Conduct 1998

*Corruption Control Act 2002

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.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

Some restrictions governing gifts and hospitality offered to members of the national-level judiciary do exist. However, to what degree these restrictions are complied with in practice is questionable as there is no strict monitoring in place.

References:

*Judicial Council Act 199

*Judges' Code of Conduct 1998

*Corruption Control Act 2002

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.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

Due to the prevalent provisions of a law on the right to privacy, all asset disclosures from judges are kept confidential thereby leaving no room for independent auditing. However, the investigating agency may have access to it if required.

References:

*Corruption Control Act 2002

*Prevalent laws of 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.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

Comments:

There is no restriction as such. Any individual can join private sector, including a retired judge. However, practicing law as a defense lawyer is prohibited.

So far as other government services are concerned, retired judicial personnel are restricted in serving in any capacity, though they can serve as chairperson in the National Human Rights Commission (the present Chief Commissioner of the National Human Rights Commission is the retired judge of the Supreme Court).

References:

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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

Because there are no restrictions in relation to private-sector employment, except for private law practice, this is not applicable in the case of Nepal.

References:

Prevalent Nepalese laws

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations governing gifts and hospitality offered to members of the national-level judiciary are not effectively enforced even though a regulatory mechanism exists in law.

References:

*Corruption Control Act 2002

*Laws relating to judicial administration

*Judges' Code of Conduct

*Other prevalent Nepalese laws

Interview with Rajendra Luintel, a Supreme Court Personnel.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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 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.

38g. In practice, national-level judiciary asset disclosures are audited.

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

Comments:

Not applicable because no auditing of national-level judiciary asset disclosures is done.

References:

*Corruption Control Act 2002

*Judicial administration related laws.

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: 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.

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

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

Comments:

Laws restrict citizen access to the asset disclosure records of members of the national-level judiciary.

References:

*Corruption Control Act 2002

*Judicial administration related laws.

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.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

References:

Prevalent Nepalese laws

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

References:

Prevalent Nepalese laws

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.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The quality of the asset disclosure records of the national-level judiciary is yet to be assessed because no access is granted to them.

References:

Prevalent Nepalese laws

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

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

83

40a. In law, the legislature can amend the budget.

YES | NO

Comments:

The Ministry of Finance, on behalf of the government, submits the budget estimates to the Parliament every year. Different organizations, including the National Planning Commission, line ministries and their department and project units are involved in the budgetary process. The legislative wing of the national legislature, which comprises the opposition and the treasury benches, can suggest adding or removing items or altering the amount allocated to certain sectors during a general debate session. The rules formulated by the Legislative-Parliament provide comprehensive provisions regarding procedures.

The government generally ensures safe passage of the budget, as it normally enjoys the majority in the Parliament. This year's budget, however, has not been passed due to the Maoists' obstruction in the Parliament over the issue of so called civilian supremacy" and the President's decree of reinstatement of the then-Chief of Army Staff.

References:

*Interim Constitution of Nepal 2007 [Article 93]

*Legislative-Parliament Rules 2007 [Chapters 19 and 20]

The National Planning Commission Portal, <http://cbs.gov.np/en/npcs/economic/process.php>

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.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

No public expenditures can be made without legislative approval. Therefore, the government may face a huge problem this year as no parliamentary session has been allowed by the Maoists during the last three months.

Post-facto approval is also possible. The government, however, has to regularize expenditures made from the state coffers. Government spending is scrutinized by the Comptroller and Auditor General of Nepal.

References:

*Interim Constitution of Nepal 2007

*Other prevalent Nepalese laws.

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>

*Office of the Auditor General of Nepal Portal; <http://www.oagnep.gov.np/>

*Financial Comptroller General Office Portal; <http://www.fcgo.gov.np/>

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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

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

Comments:

All the 601 Ministers of Parliament (who are elected and nominated from different political parties to ensure all types of representation i.e. caste, gender, ethnicity etc.) may not have the capacity to monitor the budget process. Yet, most lawmakers are qualified enough to provide input.

In addition, the finance committee, where members from different political parties make representations, has the right to question the government over the process, and provide necessary input. In this way, the opposition may suggest certain changes during the debate or in the parliamentary committee that discusses the proposed budget before it is passed or finalized. However, these opposition proposals may be rather insignificant, since the bill is endorsed by the majority.

References:

The Constituent Assembly Portal, <http://www.can.gov.np/>

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.

41. Can citizens access the national budgetary process?

50

41a. 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

Comments:

An elaborate procedure has been prescribed by the law. The budget process is transparent. The practice, however, is carried out only because the law requires it. The process has become only a simple ritual. In addition, there are problems with time constraints. This type of budget making process, therefore, does not necessarily ensure the public's participation at large.

References:

Laws relating to budgetary process.

The Ministry of Finance Portal, <http://www.mof.gov.np/>

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.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

The public cannot participate in budget hearings in Parliament. Only elected and nominated representatives may provide input. There is no mechanism available through which citizens can contribute to the debate. Citizens usually react to the budget afterward. However, in the recent years, the Nepalese media and civil society organizations have started organizing pre-budget debates involving experts and citizens alike. Citizens 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.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

A government booklet called Rato Kitaab” contains information relating to an itemized budget. Itemized budget allocations can be accessed only after the budget is presented in Parliament. Nevertheless, the Nepalese media, by and large, have started to keep the public informed on itemized budget allocations in both print and television debates.

References:

Interview with Mr. Mani Ram Neupane, a government official affiliated to the Inland Revenue Office, Kathmandu

The Ministry of Finance Portal, <http://www.mof.gov.np/>

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.

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

58

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Public Account Committee scrutinizes the reports submitted periodically by the government departments. This report is submitted by the constitutional body (i.e., the Auditor General) and also goes to this committee for inspection. In addition, oral testimony is sometimes sought from the government departments. However, the government often ignores the committee’s directives and seldom implements suggested reform measures.

References:

Legislative-Parliament Rules

Interview with Mr. Tulasi Bahadur Karki, non-governmental organization representative.

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.

43b. 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:

In the Nepalese Parliament, a member from the opposition party generally heads the Public Account Committee while the other members come from other major political parties, including the ruling party.

References:

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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

Comments:

The Public Account Committee conducts independent investigations of objections that are raised about audits. It is also required to submit its report. However, political parties do not cooperate with the committee in many cases. Its functioning is, therefore, largely ineffective. Lack of political will and human-resource constraints limit its effectiveness.

References:

Interview with Mr. B.P. Gautam, Advocate

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.

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

100

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

YES | NO

Comments:

The Public Account Committee (PAC), a special committee in the parliament, is the oversight agency. Apart from the PAC, the Finance Committee of Parliament also provides oversight of public funds.

References:

*Interim Constitution of Nepal 2007 (Articles 57 and 58)

*Legislative-Parliament Rules 2007 (Chapter 26, Clauses 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).

IV-1. ⁶³ Civil Service Regulations

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

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The constitution calls for a fairly competent civil service to run the administration of the country. It mandates the Public Service Commission (PSC) to select competent applicants and ensure their impartiality in civil service administration. The PSC was established in Nepal on June 15, 1951. The Commission is involved in selecting meritorious candidates to fill various vacant posts of the civil service. The continuity of the PSC has never been hindered since its establishment. The present Constitution of Nepal (2007) has designated the PSC as an independent constitutional body.

The Civil Service Act and the Civil Service Regulation provide the necessary authority for civil service administration in Nepal.

References:

*Interim Constitution of Nepal 2007 (Articles 126 and 153)

*Civil Service Act 1992

*Civil Service Rules 1993

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>

Public Service Commission Portal, <http://www.psc.gov.np/engintroduction.php>

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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

Precise criteria of eligibility have been prescribed under the laws. The norms and procedures of civil service recruitment are also outlined. A candidate who aspires to work in the civil service must pass an exam. In addition, nepotism has been categorically delineated and acts of corruption have been precisely defined.

References:

*Public Service Commission (Procedure) Act 1991

*Civil Service Act 1992

*Civil Service Regulation 1993

*Corruption Control Act 2002

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.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

Because civil servants' grievances are specific in nature, the law envisions an administrative court where they can seek redress regarding their issues. However, nothing bars them from approaching the formal (regular) courts in order to seek justice.

References:

*Civil Service Act 1992

*Administrative Court Rules 1994

*Prevalent Nepalese laws.

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

Any public official who is convicted for corruption, and subsequently dismissed, is prohibited from future employment in government service.

A civil servant who is accused of corruption is usually suspended from their job during the trial. They are dismissed only after they are convicted. Furthermore, such a person may be prevented from running for election. The dismissed person is prevented, in any form or capacity, from assuming public office again. However, no law prohibits such an individual from taking private jobs or working in a civil society organization.

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 or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

61

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In principle, the civil service in Nepal is independent. However, in practice, most civil servants are influenced. Civil servants' organizations exist within the civil service, but they are based on political ideologies. Often, they act according to affiliated political parties' directives and are less interested in protecting and promoting their professional rights.

Many allege that the Nepalese bureaucracy is the most politicized. Despite long suffering and sacrifice for democracy, the democratic leaders are not showing the strong will to develop a 'system' which will enable the civil service to assuming its responsibilities as per the norms of the democratic governance. The leaders rather prefer to make the bureaucracy a parasite. The civil servants, particularly at the top level, are also equally responsible for this phenomenon. This is understandable from the fact that instead of discouraging the politicians for such actions they rather encourage the politicians to repeat such deeds so as to provide opportunity for them (bureaucrats) to favor their own relatives and friends, and at the same time make it possible to be in the good books of the political boss."

References:

Madhu Nidhi Tiwari, Governance Reform in Political Transition: The Case of Nepal's Civil Service Reform", Nepalese Journal of Public Policy and Governance, Vol. xxiv, No.1, July, 2009, <http://www.pactu.edu.np/contents/njpg/1-madhu-nidhi-tiwari-governance-reform-in-political-transition-the-case-of-nepals-civil-service-reform.pdf>

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

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

Comments:

Because the law prescribes precise criteria, appointments to the civil service are usually made on a merit basis. However, political interests often supersede standards of professionalism.

For instance, most of the secretaries in the ministries, including the principal secretary, are transferred according to the interest of the power center or on the request of the concerned minister. Whenever there is a change of command in politics, the civil service positions become shaky.

Furthermore, Nepalese civil service is accused of being bloated and inefficient. The Royal government had very little transparency and it was hoped that democracy would create a more effective civil service. Currently, lingering animosity between former Royalists and Maoist appointees is creating something of a deadlock in a number of government departments.”

Consequently, Nepal ranked 25th in the Failed State Index (FSI) 2009, which was released by the Fund for Peace (TFP), a Washington DC-based institution. The TFP rates Nepalese leadership as poor; military, police, judiciary as weak; and civil service as moderate. The score for public services worsened from 6.6 in the FSI 2007 to 7.0 in the FSI 2008.

References:

The Fund for Peace, Failed State Index 2009, http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=362&Itemid=524

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.

45c. 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 completely ruled out because the civil service management falls under the purview of the Ministry of General Administration, which may not be immune from the political influence.

While there is a provision for performance evaluation, the process is not transparent; hence, it is not effective. In addition, the reform measures that have been adopted time to time have not yielded positive results because political instability has had an effect on reform endeavors. As a result, the administration could not nurture the democratic administrative culture to overcome the existing governance issues, and the task of transforming the civil service from non-responsive to responsive is, therefore, at stake.

References:

Civil Service Act and Rules

Madhu Nidhi Tiwari, Governance Reform in Political Transition: The Case of Nepal's Civil Service Reform", Nepalese Journal of Public Policy and Governance, Vol. xxiv, No.1, July, 2009, <http://www.pactu.edu.np/contents/njpgg/1-madhu-nidhi-tiwari-governance-reform-in-political-transition-the-case-of-nepals-civil-service-reform.pdf>

Government of Nepal Portal, <http://www.nepal.gov.np/>

Ministry of General Administration Portal, <http://www.moga.gov.np/>

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.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

While senior level civil servants have job descriptions, other civil servants have no clear job descriptions. They are assigned tasks without consistency and that have nothing to do with the responsibility, authority or pay of their positions. 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

Interview with Mr. Achyut Neupane, a Public Prosecutor affiliated to Appellate level Public Prosecutor's Office in Patan

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

There is no system for paying bonuses within the civil service in Nepal, except for civil servants who work in public enterprises. Bonuses are paid to industry employees only. Instead, the government generally provides for salary increases in the budget statement, and a dearness allowance⁹ is also provided to cover civil servants' expenses.

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.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

Comments:

The government writes in to the Public Service Commission (PSC) describing the number of actual positions required whenever a post becomes vacant. The PSC, then, advertises the positions in national newspapers, mostly in the state-owned media. The recruitment is done as per a 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:

Civil service management regulation.

*The Ministry of General Administration Portal; <http://www.moga.gov.np/>

*Public Service Commission Portal, <http://www.psc.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.

45g. In practice, the independent redress mechanism for the civil service is effective.

Comments:

The Administrative Court is not adequately resourced in terms of both funding and personnel. In addition to that, it has very limited jurisdiction and is, therefore, 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.

45h. 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 disbursements in the past year.

References:

The Government of Nepal Portal; <http://www.nepal.gov.np/>

The Ministry of General Administration Portal; <http://www.moga.gov.np/>

The Ministry of Finance Portal; <http://www.mof.gov.np/>

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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants who are convicted of corruption are strictly prohibited from future government employment. The prevalent law, however, does not provide for any system of blacklisting or for cooling-off periods. The prohibition, therefore, may not be effective. Nevertheless, there are no reported cases of civil servants being employed again in the civil service after their conviction.

References:

*Civil Service Act and Rules

*Corruption Control Act

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. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

42

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

Comments:

All members of civil service are required to file asset disclosure forms. The collecting agency is the concerned office or department, and the monitoring agency is the National Vigilance Center.

References:

*Corruption Control Act 2002

*Civil service Act and Rules

YES: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

High government officials, including members of the judiciary, must restrain from making decisions if their personal interest is involved so as to avoid potential conflict of interest.

References:

*Civil Service Act and Rules

*Country Code

*Good Governance Act 2008

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

Comments:

There is no restriction as such. As the private sector is open to all, a civil servant may enter the private sector after they leave government service.

As government salaries are quite low in comparison to wages in the private sector, this may tempt civil servants to look for a private sector job. Consequently, many civil servants opt for premature voluntary retirement. There are instances of in-service civil servants legitimately taking leave and joining the private sector by obtaining permission from the government. No mechanism of scrutiny for this exists.

References:

*Civil service legislation

*Other prevalent Nepalese laws

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

As national servants under the law, civil servants are restricted from accepting gifts or hospitality that are not in consonance with their duties and responsibilities and beyond what the laws permit.

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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | **NO**

Comments:

Independent auditing of the asset disclosure forms of senior members of the civil service is not possible in Nepal, as disclosures must be kept confidential according to the laws.

While the National Vigilance Council is a monitoring agency, the NVC has no power to conduct the audit of the asset disclosures forms. NVC functions as a preventive authority.

References:

Corruption Control Act 2002

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

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

Comments:

There is no specific law that restricts post-retirement private sector employment for civil servants.

References:

*Civil service legislation

*Other prevalent laws

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Not a single action on charges regarding the violation of the regulations governing gifts and hospitality offered to civil servants has been taken to date even though the law enables the National Vigilance Center (NVC) requires that they be monitored.

Interestingly, NVC, a statutory body, is established under the prime minister's office, yet it has not been able to function effectively.

References:

Media reports.

The National Vigilance Center Portal, <http://www.nvc.gov.np/>

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

In the absence of an effective scrutiny mechanism, a recusal system is difficult to implement so far as the government departments, except for the judiciary, is concerned. Judges, however, do comply with this provision.

References:

Interview with Mr. Govinda Sharma, Advocate

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.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable because no such system for civil service asset disclosures is prevalent.

References:

Prevalent Nepalese laws.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service 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.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

Asset disclosure records of senior civil servants are kept confidential per the requirement of laws.

References:

*Corruption Control Act 2002

*Civil Service Act and Rules

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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

References:

Prevalent Nepalese laws.

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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
Not applicable.

References:
Prevalent Nepalese laws.

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.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:
The quality of the asset disclosure records of senior civil servants is still to be tested as the Right to Information Act is yet to be fully implemented.

References:
Prevalent Nepalese laws.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

6

48a. 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:

No specific law has been formulated till date as far as protection of whistle blowers is concerned.

However, there are other laws which directly or indirectly deal with the protection of informers. The provision contained under the Corruption Control Act is largely confined to breaches of secrecy, and is basically meant for discouraging false reporting rather than encouraging accurate disclosure. The Right to Information Act, however, on the other hand provides some guidance on protecting whistle blowers. The Act protects public officials from recriminations, and provides for having entitled to compensation in the event of harm inflicted for the information disclosed.

Nevertheless, civil society organizations have been lobbying for introducing a specific law in this regard. A private bill has also been drafted. The proposed bill speaks of rewarding whistle blowers with up to 100,000 Nepali rupees (US\$1,366) for accurate information, and punishing whistle blowers with a fine of up to 50,000 Nepali rupees (US\$683) for filing false reports. Apart from rewards and punishments, the bill also contains provisions related to making and processing complaints and providing protection to whistle blowers.

References:

*Corruption Control Act 2002 (Section 56)

*Right to Information Act 2007 (Section 29)

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>

Forum for Protection of Public Interest, Pro Public, Portal, <http://www.propublic.org/index.php>

All About Whistleblowing: International Agreements and Laws on Whistleblower Protection, <http://whistleblowers.typepad.com/all-about-whistleblowing/whistleblower-protection-laws.html>

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.

48b. 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.

Comments:

Because no formal specific law exists to govern the area of protection for whistle blowers, and because existing legal measures either do not offer real protection, or are still to be implemented (because they are newly introduced), this question is not applicable at present.

References:

*Right to Information Act 2007

*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.

48c. 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:

This is not applicable, as there is no specific law on whistle-blower protection in Nepal. The provisions of prevalent laws are confined to civil servants only.

References:

*Right to Information Act 2007

*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.

48d. 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:

Were whistle blowers to receive protection, the majority of complaints registered with the Commission for the Investigation of Abuse of Authority (CIAA) would not have been anonymous. Whistle blowers do not want to take these kinds of chances and would prefer to abstain from disclosing their names because there are no laws that protect them if they openly report cases of corruption, graft, abuse of power, or abuse of resources.

References:

Annual Reports of the Commission for the Investigation of Abuse of Authority (CIAA), <http://www.ciaa.gov.np/>

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

44

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Although the Commission for the Investigation of Abuse of Authority has a full-time staff, it is centralized in the capital and lacks offices and adequate staff at the local level. A large number of its staff members are drawn from different parts of the government. As these personnel possess different backgrounds, they may not have the adequate professional capacity to perform their job in an efficient manner.

References:

Annual Reports of the Commission for the Investigation of Abuse of Authority, <http://www.ciaa.gov.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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

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

Comments:

Both the Commission for the Investigation of Abuse of Authority and the National Vigilance Center (NVC) receive yearly funding from the government. The government's budget is largely dependent on foreign aid, which may not always be consistent.

In addition, the state's priority is focused on writing the new constitution along with other issues relating to state restructuring; hence, the momentum for anti-corruption is presently slack.

References:

The Ministry of Finance Portal, <http://www.mof.gov.np/>

The CIAA Portal, <http://www.ciaa.gov.np/>

The National Vigilance Center (NVC) Portal, <http://www.nvc.gov.np/>

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.

50c. 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 complaints on behalf of the Commission for the Investigation of Abuse of Authority, it takes more than a month for the CDO to officially register the complaints with the commission. Because of this centralized system, the investigation also takes time.

References:

Prevalent laws.

Interview with Mr. Uttam Niroula, one time journalist and producer of anti-corruption radio programs.

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

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

Comments:

Both the Commission for the Investigation of Abuse of Authority and the National Vigilance Center must initiate investigations as soon as they receive complaints. These investigations may be, however, slow and limited for a number of reasons, including resource constraints. Past experience suggests that both these agencies remain somewhat reluctant to initiate investigations against senior politicians or influential members of the cabinet.

References:

Prevalent anti-corruption laws.

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

49. 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 has been mandated to act on complaints of public-sector corruption. It provides all sorts of facilities to informers, including several means of reporting, such as by telephone, hotline or e-mail. However, complaints may also be made to the National Vigilance Center.

References:

*Interim Constitution of Nepal 2007 (Chapter 11, Articles 119-121)

*Corruption Control Act 2002

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.

50 IV-3. Procurement

51. Is the public procurement process effective?

78

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

There was no specific law on public procurement until recently. There were other provisions though, which guided public procurement in Nepal.

However, in 2007, the government introduced the Public Procurement Act. The new act explicitly restricts the conflict of interest for public procurement officials. According to the act, involved public officials must abstain from making a decision and report to the superior authority or the immediate boss in their department in cases where their closest relatives are involved in prospective procurements.

References:

Public Procurement Act 2007 [Section 61 (F)]

Public Procurement Regulation 2007

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>.

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.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

The Public Procurement Monitoring Office (PPMO) has been established per the provision of the act. The PPMO is a government entity under the direct supervision of the prime minister, at the Office of the Prime Minister and the Council of Ministers. PPMO has a total of 24 staff members, including the secretary who is head of the institution. The functions, duties and powers of the PPMO are elaborate and well laid out. The PPMO has, among other tasks, a duty to provide regular training for procurement officers.

References:

Public Procurement Act 2007 (Section 65)

Public Procurement Monitoring Office Portal, <http://www.ppmo.gov.np/index.php?mid=1&lg=en>

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

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.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

As far as implementation of the conflicts of interest regulations for public procurement officials is concerned, the general provisions that existed prior to the new legislation were consistently ineffective. The success of the implementation of the new legislation, however, is still to be assessed as government needs to do a lot of homework in this regard, including training procurement officers.

References:

Public Procurement Act 2007

Public Procurement Regulation 2007

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.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The Commission for the Investigation of Abuse of Authority (CIAA) Act has defined the Civil” or “National” servant very explicitly. Because the procurement officers are the “civil servants” in the eyes of law, they are required to submit income and asset disclosure records every year.

The statutory body called the National Vigilance Center (NVC) is mandated to monitor the assets, incomes and spending habits of civil servants.

Interestingly, the law envisions a different entity, the Public Procurement Monitoring Office (PPMO) as the monitoring agency for procurement purpose yet this entity is not entitled to monitor the assets, income and spending habits of the procurement officers.

However, both the NVC and the PPMO are under the direct supervision of the prime minister. Due coordination between them may help a great deal in regard to monitoring the assets, incomes and spending habits of public procurement officials.

References:

*Commission for the Investigation of Abuse of Authority (CIAA) Act 1991

*Corruption Control Act 2002

The National Vigilance Center Portal, <http://www.nvc.gov.np>

The Public Procurement Monitoring Office Portal, <http://www.ppmo.gov.np/index.php?mid=1&lg=en>

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.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

Competitive bidding, except unless the context requires otherwise, is a must for procurement in public utilities. The opportunity to participate in competitive bidding must be made available to competent bidders without discrimination. The legislation also outlines in detail the procedures for competitive bidding.

References:

Public Procurement Act 2007 [Section 9 and Chapter 3 (Sections 11-28)]

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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

The law regarding the requirements regarding sole sourcing appears to be comprehensive in nature. Its implementation, however, is still to be tested in Nepal.

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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

A redress mechanism for procurement decisions has been clearly laid out under the legislation.

References:

Public Procurement Act 2007 [Chapter 6 (Sections 48-51)]

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | **NO**

Comments:

The Procurement Review Committee (PRC) has been given the power to resolve disputes in the bidding phase. The PRC is headed by the Appellate Court judge. The legislation, this way, appears to promote alternative dispute resolution mechanism so far as commercial disputes are concerned; hence, it is not very specific about the judicial process to be followed. However, an unsuccessful bidder always has the fundamental right to invoke the extraordinary jurisdiction of the Supreme Court.

References:

Public Procurement Act 2007 (Sections 48 and 58)

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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

Blacklisting companies guilty of major violations of procurement regulations is possible. The cooling-off period is from 1 to 3 years, depending on the case.

References:

Public Procurement Act 2007 (Section 63)

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

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

51j. 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:

Public procurement is popularly called “gold mine” in Nepal. This is evidence that the public perceives public procurement as being rife with corruption. A great deal of public procurement and contracting in Nepal is related to foreign aid and development projects. The flow of money from these projects is one of the main sources of corruption. Corruption may take the form of commissioning of agents, padding the costs by buying from specific companies, using money on unnecessary travel and consulting projects, giving gifts to public officials as appreciation of their services, etc.

There are provisions for blacklisting of those companies who have been proved to have engaged in corruption in a procurement process. However, this sanction is reportedly rarely used in practice. It is recommended that companies use a specialized public procurement due diligence tool in order to mitigate corruption risks related to public procurement in Nepal.

The lack of efficiency, transparency and competition in the procurement system has resulted in the launch of an e-procurement Internet portal that provides information on government and public sector procurement.

References:

Business Anti-Corruption Portal, <http://www.business-anti-corruption.com/country-profiles/south-asia/nepal/corruption-levels/public-procurement-and-contracting/>

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.

52. Can citizens access the public procurement process?

75

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

The legislation requires the entire public procurement process to 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.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

Public notice of the results of procurement decisions is mandatory under the law.

References:

Public Procurement Act 2007 (Section 60)

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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Information on public procurement regulations can be obtained within a fairly reasonable time.

The Electronic Transaction Act (Cyber Act) 2006 has legalized all forms of electronic transactions and digital signatures, but it has also clearly spelled out ways to regulate various computer-based activities. The electronic transaction and digital signature is valid not only for the private sector but also for the government agencies. It allows the government offices to use electronic media for tender notice, vacancy announcements, and other procedures. It also validates public procurements and the acceptance of electronic applications.

References:

*Public Procurement Act 2007

*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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

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

Comments:

Because the public procurement regulations are generally published and the Procurement Act requires that all related information be posted on the Procurement Monitoring Office website, citizens are supposed to be able to access them at a reasonable cost.

References:

*Public Procurement Act 2007

*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.

52e. In practice, major public procurements are effectively advertised.

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

Comments:

Advertisement of major public procurements is required under the law, and the general trend is that they are advertised in the broadsheet national dailies or by other government announcements.

References:

Public Procurement Act 2007

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.

52f. In practice, citizens can access the results of major public procurement bids.

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

Comments:

Publishing the results of major public procurement bids is mandatory under the law, so concerned citizens can access the result.

The Electronic Transaction Act (Cyber Act) 2006 has legalized all forms of electronic transactions and digital signatures but has also clearly spelled out ways to regulate various computer-based activities. The electronic transaction and digital signature is valid not only for the private sector but also for the government agencies. It allows the government offices to use electronic media for tender notice, vacancy announcement and other procedures. It also validates public procurements and the acceptance of electronic applications.

References:

Public Procurement Act 2007

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.

53. Is the privatization process effective?

75

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

All state asset sectors have been liberalized, except defense and other sensitive enterprises regarding the national interest.

References:

Privatization Act 1994

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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

No specific provision has been made regarding conflicts of interest for government officials involved in privatization. However, there is another Act called Good Governance (Management and Operation) Act 2007" which clearly requires that the decision making authority shall have to recuse themselves from policy decisions where their personal interests are involved.

References:

Privatization Act 1994

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.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Privatization law is silent in this regard, and the effective implementation of the Good Governance Act remains to be tested in Nepal.

References:

* Privatization Act 1994

* Good Governance (Management and Operation) Act 2007

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.

54. Can citizens access the terms and conditions of privatization bids?

75

54a. In law, citizens can access privatization regulations.

YES | NO

Comments:

Public notice of privatization regulations is mandatory.

References:

Privatization Act 1994 (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.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

A formal process for advertising privatizations is in place. This may include a government website, newspaper advertising or other official announcements.

References:

Ministry of Finance, Privatization Cell Portal, <http://www.privat.gov.np/index.html>

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.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

No particular provision in relation to announcement of privatization results can be found in the privatization legislation in Nepal. But, even though the law is silent in this matter, in practice, the results are generally published.

References:

Privatization Act 1994

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens who are concerned with privatization regulations can access them in a timely fashion.

References:

Ministry of Finance, Privatization Cell Portal, <http://www.privat.gov.np/index.html>

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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Information regarding privatization regulations are accessible at a fairly reasonable cost.

References:

Ministry of Finance, Privatization Cell Portal; <http://www.privat.gov.np/index.html>

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

56. Is the national ombudsman effective?

66

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

The Commission for the Investigation of Abuse of Authority (CIAA) is generally protected from political interference because all of its officials are appointed on the recommendation of a constitutional council and after the endorsement by a parliamentary hearing committee. The commission is comprised of a chief commissioner and other commissioners as required; these are appointed by the president upon the recommendation of the Constitutional Council, which is chaired by the prime minister.

Constitutional Council members include the Chief Justice, the Speaker of the Legislature-Parliament, the leader of the opposition party in the Legislature-Parliament, and three other ministers as designated by the prime minister.

The CIAA commissioners are appointed for a six-year term, with a retirement age of 65. The chief commissioner and the commissioners may only be removed from their office by an impeachment motion passed by the parliament with a two-thirds majority.

References:

*The Interim Constitution of Nepal 2007 (Article 119)

*Legislative-Parliament Rules 2007

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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

By and large, the anti-graft body is protected from political interference in the current political and legal context. Traditionally,

there was no system of hearing and confirmation process for this office. Under these circumstances, political influence over the appointment was bound to exist.

It is, however, now mandatory for all constitutional posts to be confirmed by the parliamentary special committee through a hearing. This kind of parliamentary scrutiny reduces the chance of political interference because the parliamentary committee is comprised of mostly opposition party members. Besides, the Commission for the Investigation of Abuse of Authority has cultivated relationships with civil society organizations to join forces against corruption, most notably with Transparency International Nepal. This kind of affiliation helps to provide checks and balances so far as political loyalty is concerned.

References:

*Interim Constitution of Nepal 2007

*Legislative-Parliament Rules 2007

The Transparency International Nepal Portal, <http://www.tinepal.org/>

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

There is a set procedure for the removal of the chief commissioner who can be removed only through the parliamentary impeachment process.

References:

Interim Constitution of Nepal 2007 [Articles 119 (3) (B) and 105 (2)]

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Administrative support to the Commission for the Investigation of Abuse of Authority (CIAA) is provided entirely by the government of Nepal. All personnel are drawn from various branches of the civil services such as legal, engineering, general administration, accounting and police, etc.

The government has approved a total of 198 permanent positions to serve at various levels; a permanent Secretary from the civil service, as the head of administrative functions, executes the decisions made by the commission. Since the CIAA's staff are drawn from the government from many different backgrounds, not all of them may be competent enough to discharge their duties given the nature of how the CIAA functions.

In addition, the CIAA may face difficulty in handling cases of corruption or abuse of authority that are reported at the local level because it does not have offices established throughout the nation.

References:

The CIAA Portal, <http://www.ciaa.gov.np/>

The ICAC Portal, <http://www.icac.org.hk/news/issue19eng/button4.htm>

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.

56e. 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 of the Commission for the Investigation of Abuse of Authority (CIAA) are appointed per the recommendation of the Constitutional Council and following the endorsement by the parliamentary hearing committee; therefore, the appointments are considered to be supportive of functional independence. In order to make the CIAA a functional entity, the CIAA Act (1991) was created. The functional scope of this body covers a wide area. A series of operational regulations and procedural mechanisms have been created to make the CIAA an effective anti-abuse-of-authority institution.

References:

*Interim Constitution of Nepal 2007

*Legislative-Parliament Rules 2007

The CIAA Portal; <http://www.ciaa.gov.np/>

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

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

Comments:

The anti-graft body regularly receives state funding on an annual basis. The government budget, however, is largely dependent on foreign aid, which may not be consistent.

The Commission for the Investigation of Abuse of Authority received 6,90,63,542.97 Nepali rupees in the fiscal year 2007-2008; the disbursement for the fiscal year 2008-2009 was 8,42,65,372.59 Nepali rupees.

References:

The 18th (2007/08 FY) and 19th (2008/09 FY) Annual Reports of the CIAA, <http://www.ciaa.gov.np/reports.htm>

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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Commission for the Investigation of Abuse of Authority (CIAA) 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:

The CIAA Portal, <http://www.ciaa.gov.np/reports.htm>

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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Commission for the Investigation of Abuse of Authority (CIAA) investigations are usually initiated. The commission received 4,149 complaints in the fiscal year 2008-2009. Out of these complaints, it settled 3,303 cases and filed 47 cases in the Special Court after it conducted the necessary investigations.

However, Nepal's commitment to curb corruption is seriously hampered by the highly turbulent political environment. The corruption control legislation establishes sanctions for corrupt practices, but the anti-corruption legal framework is weakly enforced and the impunity of high-profile government officials is widespread. The country's anti-corruption institutions lack consistency in approach and clear areas of jurisdiction; this results in frequently overlapping functions. In practice, the existing anti-corruption organs primarily target low-level bureaucrats and have only a minimal impact upon the political elite.

References:

The Nineteenth Annual Report of CIAA, 2008/09

Business Anti-Corruption Portal, <http://www.business-anti-corruption.com/country-profiles/south-asia/nepal/initiatives/public-anti-corruption-initiatives/>

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.

56i. 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 vested authority to impose penalties, except for refusals to submit asset disclosures. The Special Court hears the case.

Nevertheless, despite the enactment of several new laws (the Rights to Information Act 2007, the Amendment of Special Court Act 2007, the Banking Offence Act 2007, the Anti-Money Laundering Act 2008, the Good Governance Act 2008) and the establishment of the Public Procurement Monitoring Office (PPMO) during the transition period, an anti-corruption agenda could not become a priority of the transitional government. The government's priority shifted to peace building, conflict resolution, social inclusion and elections. In the absence of an effective political will to combat corruption, the people's aspirations for a corruption free Nepal could not materialize during the year.

References:

Commission for the Investigation of Abuse of Authority (CIAA) Act 1991

Transparency International Nepal (TIN), Annual Progress Report of the Fiscal year 2007/08 (2064/65 BS), Presented at the 13th AGM, http://www.tinepal.org/13th_AGM_Progress_Report_23.7.pdf

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

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

Comments:

In the absence of a stringent follow-up mechanism, the findings and subsequent recommendations of the Commission for the Investigation of Abuse of Authority may be ignored.

References:

Interview with Mr. Kalyan Pokhrel, Advocate

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

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

Comments:

It may take quite some time for the Commission for the Investigation of Abuse of Authority to resolve a particular case. Not all of the complaints that are lodged with the CIAA are duly acknowledged because they are mostly dealt with in secret. In addition, there are other constraints, such as geography and resources.

References:

*The CIAA Act 1991

*Working Procedure of the CIAA

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.

57. Can citizens access the reports of the ombudsman?

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

Annual reports are prepared and submitted to the president who then forwards them to the parliament. Once the report reaches the Parliament Secretariat, it becomes a public document; hence, it can be accessed by the general public. In addition, the Commission for the Investigation of Abuse of Authority (CIAA) posts its reports online.

References:

*The Interim Constitution of Nepal 2007 (Article 121)

*Right to Information Act 2007

The CIAA Portal, <http://www.ciaa.gov.np/>

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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

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

Comments:

Commission for the Investigation of Abuse of Authority (CIAA) reports are accessible despite some constraints. For example, most of the people who live in remote areas do not have timely access. It may take weeks to access the reports because the Internet is easily accessible only in the capital and other urban areas. Even though these documents may exist in local libraries, the problem is that they are not updated regularly. And, one who lives in a remote area may have to wait for a longer period as it takes time to reach the hard copy to these libraries.

References:

Personal observation.

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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

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

Comments:

Citizens can generally access the Commission for the Investigation of Abuse of Authority reports at a reasonable cost. However, it may be difficult to obtain reports because of a lack of adequate distribution. People who do not have access to the Internet must collect the reports in person; this may involve costs including travel, food and other logistics.

References:

Personal 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.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

Nepal does not have an ombudsman per se, but the Commission for the Investigation of Abuse of Authority (CIAA) covers the same functions as an ombudsman as it mediates citizens' complaints against government employees and entities. The CIAA is an important constitutional body for controlling corruption in Nepal. It is a distinctive anti-corruption agency in South Asia and simultaneously plays the roles of ombudsman, investigator and prosecutor. It not only investigates corrupt behavior but also documents abuses of authority.

Along with the CIAA, an another statutory body, called the National Vigilance Center (NVC), has been established to help raise awareness of corruption and conduct activities that will help prevent it. Its main purpose is to conduct oversight functions to

ensure that public offices adhere to the principles of good governance and transparency. The NVC is responsible also for monitoring the income and asset disclosures of public officials.

References:

*Interim Constitution of Nepal 2007 (Article 119)

*Commission for the Investigation of Abuse of Authority (CIAA) Act 1991

*Corruption Control Act 2002

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>

CIAA Portal, <http://www.ciaa.gov.np/>

NVC Portal, <http://www.nvc.gov.np/>

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.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

72

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The Auditor General is appointed by the president on the recommendation of the Constitutional Council. Because it is a constitutional body, Auditor General is required to face hearings conducted by the parliamentary special committee on hearings.

References:

*Interim Constitution of Nepal 2007 [Article 122 (2)]

*Legislative-Parliament Rules, 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.

59b. 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 an impeachment process that takes place in the Parliament.

References:

The Interim Constitution of Nepal 2007 [Articles 122 (3) (B) and 105 (2)]

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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

A relatively professional, technical staff assists the Auditor General; however, some of the employees may lack professional competence, because they come from civil service, and, therefore, possess different skills than what is actually required by the Auditor's General's office.

References:

OAG Portal; <http://www.oagnep.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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The Constitutional Council decides who gets nominated to the audit agency. The nomination has to be confirmed by the parliamentary hearing process. Only then does the nominee become eligible to be appointed as Auditor General by the president.

References:

*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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The state is responsible for providing regular funding to the constitutional bodies. However, the government budget is largely dependent on foreign aid, which may not be consistent.

References:

OAG Portal, <http://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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Office of the Auditor General (OAG) regularly makes its annual report available to the public. The report is published and submitted to the president, who then passes it on to the legislature. The Public Accounts Committee (PAC) in the Parliament may scrutinize and further examine this report. The report is also made available to the public in printed form.

References:

Interim Constitution of Nepal 2007

OAG Portal, <http://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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The audit's findings are seldom implemented. Part of the reason for this is a lack of political will. Nevertheless, an audit report can bring pressure on the government.

References:

OAG Annual Reports, available at <http://www.oagnep.gov.np/>

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.

59h. In practice, the audit agency is able to initiate its own investigations.

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

Comments:

Audit investigations are generally initiated. However, such investigations may be sometimes affected by political circumstances and other reasons.

References:

OAG Annual Reports, available at <http://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.

60. Can citizens access reports of the supreme audit institution?

67

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

Audit agency reports are accessible.

References:

*Interim Constitution of Nepal 2007

*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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Audit agency reports become public as soon as the parliament secretariat receives them from the president's office. Once it is filed at the secretariat library, everyone is entitled to have access to it. The reports are also made available online.

References:

OAG Portal, <http://www.oagnep.gov.np/>

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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Although the audit agency report is made public, the number of copies that are issued is limited and the general public is required to visit the Auditor General's office in Kathmandu to obtain the report; therefore, cost are involved for those people who live outside the Kathmandu valley. And, more importantly, people who live in remote places may not have access to the Internet.

References:

OAG Portal, <http://www.oagnep.gov.np/>

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.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

The Auditor General is responsible for the public sector. The Office of the Auditor General (OAG) is an independent constitutional body whose goal is to enhance good governance through accountability and transparency in the public sector. The OAG reports to the President.

References:

Interim Constitution of Nepal 2007 (Article 122)

Office of the Auditor General Portal; <http://www.oagnep.gov.np/>

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.

80
V-3. Taxes and Customs

62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Internal Revenue Department (IRD) has a full-time staff. However, their professionalism is often questioned as many taxpayers remain unsatisfied and complain about the working style” of the personnel who are involved in tax administration.

References:

The IRD Portal, <http://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.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Internal Revenue Department (IRD) receives fairly consistent funding from the government, since the government must rely heavily on the revenue it collects. The IRD is under the Finance Ministry; hence, this department is more privileged in terms of government funding.

References:

The Ministry of Finance Portal; <http://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.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

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

Comments:

An adequate number of full-time staffs work at these agencies. However, so far as their professionalism is concerned, their images are tainted as they often indulge in corruption.

References:

The IRD Portal, <http://www.ird.gov.np/>

Interview with Mr. Dhanapati Shiwakoti, Proprietor of My Dear Stores, a taxpayer.

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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

State funding of customs and excise agencies is fairly consistent.

References:

The Ministry of Finance Portal; <http://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.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

The Internal Revenue Department (IRD) is a specialized government agency that is responsible for the administration of the value added tax (VAT), the income tax, and the excise duty. Likewise, the IRD is also responsible for monitoring the non-tax revenue of the government. It provides its services through 22 field offices, including a Large Taxpayer Office.

References:

*Income Tax Act 2002

*Other Prevalent Nepalese Legislation relating to Taxation.

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

75

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The tax laws are uniform and non-discriminatory. Laws are generally enforced consistently. However, in the absence of clear rules and procedures in determining gross income on tax returns, the designated tax officer may exercise discretionary power, which may result in an arbitrary decision.

Many taxpayers in Nepal claim that tax officials misuse their discretionary power so as to extract bribes from individuals. On the other hand, there are instances of tax defaults by influential business community members; yet, the government cannot do much to penalize them. A lack of professionalism within the civil service and the lack of political will are the major impediments toward effective implementation of tax laws in Nepal.

Nepali companies report that the tax system is both burdensome and non-transparent. Taxation is marred by the selective application of tax regulations, inefficiency and corruption on the part of tax officers, and a lack of transparency. However, there have been signs of improvement in recent years, primarily due to donor pressure and as the result of a project to computerize tax administration.

References:

The IRD Portal; <http://www.ird.gov.np/>

The Business Anti-Corruption Portal,
<http://www.business-anti-corruption.com/country-profiles/south-asia/nepal/corruption-levels/tax-administration/>

Interview with Mr. Ramesh Khadka, a taxpayer.

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.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

The Customs Department deals with customs, whereas excise matters are dealt with by the Internal Revenue Department (IRD) through Excise Offices that are located in districts. The excise duty is imposed on the consumption of selected goods, such as alcoholic beverages and tobacco products.

References:

*Customs Act 1962

*Excise Act 2001

*Excise Regulation 2002

*Alcohol Regulation 1976

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Customs and excise laws are generally enforced. Uniform enforcement, however, is significantly affected due to inadequate rules, procedures and inconsistent practices.

References:

Interview with Mr. Janak Ghimire, a retired government official of Custom Office.

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

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

40

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

A decentralized system of oversight is practiced insofar as state-owned enterprises are concerned in Nepal. As stated in the foregoing indicators, the government machinery may not be completely immune from the political interference because general managers are mostly appointed individuals who have some sort of affiliation or provide support to the political parties. The irony is that there is no law that clearly prohibits political interference in decision-making as far as this type of appointment is concerned.

References:

*Company Act 2006

*Other prevalent Nepalese laws.

YES: A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

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

Comments:

Many, but not all, oversight personnel are reported to be corrupt. Their professionalism, therefore, is often questioned.

References:

Interview with Mr. Umesh Timsina, Advocate

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Sufficient funds are allocated to the oversight mechanisms because the government itself controls state-owned enterprises.

References:

Prevalent Nepalese laws.

The Ministry of Finance Portal, <http://www.mof.gov.np/>

100: The agency, series of agencies, 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 agency, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

Comments:

The agency overseeing state-owned companies independently initiates investigations only in very rare cases. Nobody gets to know about these investigations.

References:

Interview with Mr. Umesh Timsina, Advocate

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

Comments:

Because cases are rare, effectiveness of the oversight on state-owned businesses is obviously limited. According to the Business Anti-Corruption Portal, "...Nepalis have to pay bribes in order to receive a number of public services, ranging from admission to a hospital and medical treatment to electricity connections. Regarding electricity, the most common form of corruption seems to be paying extra for an uninterrupted supply and bribes to correct over-billing. Generally, obtaining access to public utilities, including water and telephone connections, is almost impossible without encountering corruption and bribery."

In addition, there are also reports that common Nepalis have to pay bribes to obtain a drivers license.

"...There is considerable red tape and a lack of transparency in connection with public works in Nepal. Companies should note that the combination of low transparency and low accountability with frequent visits by inspectors may give rise to corrupt practices.

"Companies should also note that corruption is rife in connection with obtaining access to public utilities. In the Power Department, linesmen, metre readers, and billing employees are identified as the major actors in corruption. Directly extorted bribes are identified as the most common type of corrupt transaction. Furthermore, corruption in the form of bribes to correct over-billing is also quite common."

References:

Interview with Mr. Umesh Timsina, Advocate

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

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

69. Can citizens access the financial records of state-owned companies?

65

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

The financial records of state-owned companies are legally accessible.

References:

*The Right to Information Act 2007

*Other prevalent Nepalese legislation.

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.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

A document called "Yellow Book" is published by the Ministry of Finance every year. This book details the financial conditions of state-owned companies. This report may not portray the actual data, however.

References:

The Ministry of Finance Portal, <http://www.mof.gov.np/>

100: State-owned companies always publicly 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, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

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

Comments:

The audit of state-owned companies is done regularly as per the established standards. However, the third-party auditor has to heavily rely on the information provided by the companies; therefore, the information may be flawed. Bribes are generally offered to rectify the flaws.

References:

Interview with Mr. Sanjit Raj Pandey, a registered accountant

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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of Finance uploads the annual report of state-owned companies onto its official website; hence, the records are generally available.

References:

The Ministry of Finance Portal, <http://www.mof.gov.np/>

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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are posted online. However, ordinary Nepali citizens may not have, both in terms of knowledge and cost, the capacity to access it. Reports are easily available otherwise, and the cost is either nominal or non-existent.

References:

The Ministry of Finance Portal; <http://www.mof.gov.np/>

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. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

The government itself controls the state-owned enterprises; hence, no separate agency exists. 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 laws envision 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. No commercial courts, however, have been instituted to date.

References:

*Company Act 2006

*Other prevalent Nepalese laws.

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

68
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

75

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

No citizens or groups are categorically excluded from practicing a profession of their choice in Nepal. Freedom to practice any profession or to carry on in any occupation, industry or trade is guaranteed as a fundamental right.

References:

*Interim Constitution of Nepal 2007 [Article 12 (3) (F)]

*Other prevalent Nepalese laws.

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>

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

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

So far as businesses that are incorporated under the companies are concerned, the Company Board hears the appeal in case of a denial of registration. There are also other provisions for other businesses. In cases where no remedies are available, or no formal mechanism exists under the prevalent laws, the extraordinary jurisdiction of the Supreme Court or the Appellate Courts may be invoked anytime.

References:

*Interim Constitution of Nepal 2007

*Company Act 2006

*Other prevalent Nepalese laws.

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.

70c. 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 regarding business licenses prescribe set time lines for different entities. A license normally can be obtained within a reasonable period of time. However, the obtaining of some licenses may be delayed because of the nature of the business, and if there is a formal legal requirement for obtaining permission from a different authority.

References:

Prevalent Nepalese legislation relating to trade and industry.

Ministry of Commerce and Supply Portal; <http://www.moics.gov.np/>

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.

70d. 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 in person at the concerned office. Consequently, people from remote areas may have to bear extra financial burden to obtain a business license.

References:

Prevalent Nepalese legislation relating to trade and industry.

Ministry of Commerce and Supply Portal; <http://www.moics.gov.np/>

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

Regulations regarding public health standards need to be made public and transparent. Whether the Right to Information Act, which has only been newly introduced, will be effectively implemented remains to be seen.

References:

*Right to Information Act 2007

*Legislation relating to trade and industry.

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.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

Regulations regarding public environmental standards need to be made public and transparent. Because the Right to Information Act has only been newly introduced, whether it will be effectively implemented remains to be seen. People simply don't know that such regulations exist.

References:

*The Right to Information Act 2007

*The legislation relating to trade and industry.

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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

Regulations regarding public safety standards need to be made public and transparent. Because the Right to Information Act has only been newly introduced, whether it will be effectively implemented remains to be seen.

References:

*The Right to Information Act 2007

*Legislation relating to trade and industry.

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.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. 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. The process largely depends upon the discretion of the inspector, whose approach may be inconsistent and arbitrary at times.

References:

Ministry of Environment, Science and Technology Portal; <http://www.most.gov.np/en/>

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.

72b. 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

Comments:

The process for business inspections regarding public environmental standards is not transparent in Nepal.

References:

Ministry of Environment, Science and Technology Portal; <http://www.most.gov.np/en/>

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.

72c. 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

Comments:

Nobody knows how business inspections regarding public safety standards are carried out in Nepal. The authority who is concerned with this issue normally does not keep people informed about it.

References:

Ministry of Environment, Science and Technology Portal; <http://www.most.gov.np/en/>

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.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁶⁸Anti-Corruption Law

73. Is there legislation criminalizing corruption?

67

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

Attempted corruption is criminalized in Nepal. The punishment shall be half of the punishment to be imposed on the public servant or any other person who commits such offenses.

References:

Corruption Control Act 2002 (Section 21)

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

No specific anti-extortion law has been formulated in Nepal to date. Extortion is not covered under the present anti-corruption legal framework, whereas a broad category of corruption offenses have been defined.

References:

Corruption Control Act 2002 (Section 2 and 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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

Offering a bribe is absolutely illegal in Nepal. The law has criminalized it.

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.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

Passive corruption is a punishable offense in Nepal.

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.

73e. In law, bribing a foreign official is illegal.

YES | **NO**

Comments:

No explicit provisions have been made regarding bribing a foreign official. The law is silent on this issue.

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.

73f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

There is a clear proscription in this regard: Whoever being a public servant, misappropriates, causes loss to, or abuses or causes others to do so, or destroys or uses for personal purposes, while performing her/his duties pertaining to her/his office, shall be liable to be punished; and the property which has been misappropriated, damaged, misused or destroyed shall be recovered from her/him."

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.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

As far as breaching of confidential state information for private gain is concerned, the legal framework is silent. No provision relating to this can be found in current legislation. Other relevant laws also do not have a provision in this regard.

References:

*Corruption Control Act 2002

*Prevalent Nepalese laws.

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.

73h. In law, money laundering is illegal.

YES | NO

Comments:

The government has recently introduced specific legislation to govern this area. The government, however, is still to establish the institutional support mechanism as per the statutory obligation. Its implementation in practice therefore remains to be seen.

References:

Anti-Money Laundering Act 2008

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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

Conspiracy to commit any kind of crime is illegal under criminal laws.

References:

Country Code (Muluki Ain) 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

75. Is the anti-corruption agency effective?

69

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

Anti-corruption agencies are generally considered independent because they are either constitutional or statutory bodies. Professional competence, among other things, is a must for office-bearers and staff in these institutions. In addition, a parliamentary hearing process has been adopted for constitutional appointments.

References:

*Interim Constitution of Nepal 2007

*Legislative-Parliament Rules 2007

*Commission for the Investigation of Abuse of Authority (CIAA) Act, 1991

*Special Court Act 2002

*Revenue Tribunal Act 1974

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Political interference and influence affect anti-corruption institutions. For example, though the position has been vacant for more than two years, a chief commissioner of Commission for the Investigation of Abuse of Authority (CIAA), however, has not been appointed because political parties did not find a consensus candidate.” This is a clear demonstration of political interference and influence.

References:

The CIAA Portal, <http://www.ciaa.gov.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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The Commission for the 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); therefore, unjustified removal therefore is not possible.

The heads of these agencies can be removed from their positions if they are found guilty of gross misconduct or abuse of power. The impeachment process in the parliament has to be followed for the removal of the chief commissioner of CIAA.

References:

The CIAA Portal, <http://www.ciaa.gov.np/>

The Supreme Court Portal, <http://www.supremecourt.gov.np/>

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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

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

Comments:

The appointments to the anti-corruption agency are considered relatively fair as the laws require professional competence as a must criterion. A nominee for this constitutional post must undergo a thorough parliament hearing process to be confirmed.

References:

*Interim Constitution of Nepal 2007

*Legislative-Parliament Rules 2007

*Prevalent Nepalese laws.

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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

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

Comments:

Even though full-time staff members work in these institutions, the anti-corruption agencies must rely on staff who are provided by the executive branch. Because staff members come from different backgrounds, they may not be professional enough to carry out specific mandates in all cases. Also their political ideologies and affiliations may affect their professionalism.

References:

*The Interim Constitution of Nepal 2007

*Prevalent Nepalese laws.

The CIAA Portal, <http://www.ciaa.gov.np/>

The NVC Portal, <http://www.nvc.gov.np/>

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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agencies receive regular annual funding from the government, but the government budget is largely dependent on foreign aid, which may not be consistent. The Commission for the Investigation of Abuse of Authority received 6,90,63,542.97 Nepali Rupees in the fiscal year 2007-2008 and 8,42,65,372.59 Nepali rupees in the fiscal year 2008-2009. Similarly, the National Vigilance Center also receives regular funding from the government.

References:

*Budget Speech, 2009/10

*The 18th and 19th Annual Reports of CIAA (2007/08 and 2008/09)

Ministry of Finance Portal; <http://www.mof.gov.np/>

The CIAA Portal; <http://www.ciaa.gov.np/>

The NVC Portal; <http://www.nvc.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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agencies publish reports on an annual basis, and submit them to the authority concerned. The report of the Commission for the Investigation of Abuse of Authority is submitted to the President (the head of state), whereas the National Vigilance Center submits its report to the prime minister (the head of the government).

The reports become public when the head of the state and government forward them to the parliament. The concerned parliamentary special committees may scrutinize and further examine these reports in the Parliament. The reports are also made available to the public (meaning whoever is interested and requests them) in a printed form. In addition, the reports are available online.

References:

*The Interim Constitution of Nepal 2007

*Legislative-Parliament Rules 2007

Link

The CIAA Portal: <http://www.ciaa.gov.np/>

The NVC Portal: <http://www.nvc.gov.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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

In order to carry out their mandate, a wide range of powers have been vested in anti-corruption agencies that include: the gathering of information, the questioning of suspects, issuing arrest orders, bringing suspects to trial and imposing penalties.

Similarly, the National Vigilance Center is vested with the power to carry out technical auditing in the area of public construction (in addition to other areas). The investigation and enforcement of judgments and findings, however, are weak in Nepal.

References:

*Interim Constitution of Nepal 2007

*The CIAA Act 1991

*The Corruption Control Act 2002

The CIAA Portal; <http://www.ciaa.gov.np>

The NVC Portal; <http://www.nvc.gov.np>

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

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

Comments:

Despite some shortcomings, the anti-graft agency has the full authority to initiate an investigation. This largely depends on the willpower of the chief commissioner and other commissioners.

For example, when Surya Nath Upadhyay was chief commissioner, he demonstrated willpower by summoning the former prime minister, Girija Prasad Koirala, to the commission (Mr. Koirala, however, defied the order). This is the first time a chief executive was summoned for a corruption charge. But the present irony is that Commission for the Investigation of Abuse of Authority (CIAA) is still to have a commissioner appointed to head it despite that fact that the post has been vacant for two years now.

References:

Interview with Pradeep Shankar Wagle, Advocate

The CIAA Portal; <http://www.ciaa.gov.np>

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.

76. Can citizens access the anti-corruption agency?

50

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

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

Comments:

These agencies cannot act on complaints quickly due to a lack of resources (including professional human resources) and geographical constraints as well as absence of a wide-ranging network. The lackluster reaction to complaints is also due to political influence most of the time.

References:

The CIAA Portal, <http://www.ciaa.gov.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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

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

Comments:

No effective whistle blower protection mechanism exists; hence, the trend is that most of the complainants are filed anonymously. Even though the complaints themselves are made openly, the complainants still prefer to protect their identity as they often fear they will face negative consequences later.

References:

Prevalent Nepalese laws.

The CIAA Portal, <http://www.ciaa.gov.np>

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.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. 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 also other statutory agencies that deal with corruption cases such as the Special Court (a judicial body), Revenue Tribunal (a quasi-judicial body) etc. The National Vigilance Center (government agency established under the Prime Minister's Office) is entrusted with the role of prevention.

So far as private sector anti-corruption legal framework is concerned, it is dealt with in the Competition Promotion and Market Protection Act (2006) promulgated on Jan. 14, 2007. This legislation defines and bars anti-competitive practices, such as tied selling, bid rigging, cartel formation, collective price fixing, undue business influences, as well as syndicate and exclusive dealing. The effectiveness of the law, however, is yet to be seen as its enforcement mechanisms have not yet been established.

References:

*Interim Constitution of Nepal 2007

*Commission for the Investigation of Abuse of Authority (CIAA) Act 1991

*Special Court Act 2002

*Revenue Tribunal Act 1974

*Corruption Control Act 2002

*the Competition Promotion and Market Protection Act 2006

The Law Commission of Nepal has listed a total of 168 Statutes/Acts (51 of them translated into English and 117 in Nepali) on its website, <http://www.lawcommission.gov.np>

Commission for Investigation of Abuse of Authority (CIAA) Portal, <http://www.ciaa.gov.np/>
National Vigilance Center Portal; <http://www.nvc.gov.np/>

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.

73
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

58

77a. In law, there is a general right of appeal.

YES | NO

Comments:

A right to appeal is guaranteed in Nepal. Both the constitution and prevalent Nepalese laws guarantee this right. The Supreme Court and the Appellate Courts have jurisdiction.

References:

*Interim Constitution of Nepal 2007

*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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although laws prescribe a stipulated time frame, appeals take time depending on the case. It normally takes more than a year to decide on an appeal. The judicial process is considered to be quite lengthy. Thousands of cases are pending, and the numbers increase each year.

References:

Annual Reports of the Supreme Court

The Supreme Court Portal, <http://www.supremecourt.gov.np/>

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

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

Comments:

The appeal mechanism is generally affordable. However, due to geographical constraints, people have to bear the expenses of travel, food and accommodations. Costs can be quite high if those filing appeals need professional support; these costs are compounded by long delays. The costs may be too prohibitive for middle-class citizens.

References:

Different Reports and Publications of the Nepal Bar Association (NBA)

The NBA Portal, <http://www.nepalbar.org/>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

It is mandatory that criminal system follow the established legal code of conduct. However, law enforcement in Nepal is too weak. Consequently, Nepal ranks 25th in the Failed State Index (FSI).

References:

*Criminal laws

*Other prevalent Nepalese laws.

The Fund for Peace, Failed State Index 2009,

http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=362&Itemid=524

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.

79. In practice, are judicial decisions enforced by the state?

50

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions are generally enforced in criminal cases. However, delays are inevitable as the state lacks the capacity to recover imposed fines because the state machinery, such as the police, often does not cooperate in executing judicial decisions. Over the years, this issue is being raised frequently in during conferences of judges, public prosecutors and defense lawyers.

References:

Interview with Mr. Satish Khanal, a litigant.

The Supreme Court Portal; <http://www.supremecourt.gov.np>

The NBA Portal; <http://www.nepalbar.org>

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.

80. Is the judiciary able to act independently?

69

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

The independence of the judiciary is one of the fundamentals of the Nepalese democracy.

References:

Interim Constitution of Nepal 2007 (Part 10)

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 includes 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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

National-level judges are normally independent. The remuneration and terms and conditions of judges' service are determined by separate laws. National judges can be removed only through impeachment in Parliament. Yet, the Nepalese judiciary is not free from political bias and its image is tainted.

...The Nepali judiciary has been criticised for increased levels of corruption, inconsistency in interpretation of laws, a conservative attitude in handling public interest litigation, and frequent delays in delivering judgments. The Supreme Court is generally seen as free of government influence, but lower courts are especially vulnerable to political pressure and are widely known to be corrupt.”

References:

Prevalent Nepalese laws relating to judicial administration.

The Business Anti-Corruption Portal, <http://www.business-anti-corruption.com/country-profiles/south-asia/nepal/corruption-levels/judicial-system/>

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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | **NO**

Comments:

As the chief justice has been vested with the power to distribute cases to national-level judges, the distribution system thus is rather subjective in Nepal.

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.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

National-level judges of Nepal cannot be removed from the office without justification. Removal is not possible unless a process of impeachment is followed in the parliament.

References:

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.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

No reported case where judges have been physically harmed because of adjudicating corruption cases are available.

References:

Media reports.

The Supreme Court Portal, <http://www.supremecourt.gov.np/>

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

There are no reported cases of judges being killed because of adjudicating corruption cases.

References:

Media reports.

The Supreme Court Portal; <http://www.supremecourt.gov.np/>

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.

82. Do citizens have equal access to the justice system?

61

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

The Nepalese judiciary, to date, has been free from racial and ethnic bias; it is considered relatively progressive insofar as protecting the rights of marginalized people is concerned.

References:

Different Court Verdicts.

The Supreme Court Portal, http://www.supremecourt.gov.np

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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

There is no restriction regarding full access to the judicial system, especially for women. Over the years, the decisions of the Supreme Court have become increasingly gender sensitive.

References:

The Supreme Court Portal, <http://www.supremecourt.gov.np/>

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.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

State-provided legal aid is not very effective in Nepal. Paid, court-appointed lawyers, provide legal aid services but people have little trust in them as most of these lawyers are not very professional. In addition, the state-provided, legal-aid scheme restricts providing aid to those who are accused of certain offenses, including corruption.

References:

*Legal Aid Act 1997

*Legal Aid Rules 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.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

The Nepal Bar Association provides aid to needy people. There are other non-governmental organizations also which provide legal aid services. Yet, people in need do not often make use of such services because most of them are either simply unaware that they exist or the legal aid service is ineffective because of the lack of coordination that is found between service providers.

References:

The NBA Portal, <http://www.nepalbar.org/>

Interview with Mr. Ram Krishna Kafle, Advocate affiliated with an NGO which provides legal aid.

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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

People who earn the national average income can generally afford to bring a legal suit. However, other legitimate expenses (i.e. lawyer's fees) and illegitimate expenses (i.e. speed money to expedite the case) are neither consistent nor reasonable, which sometimes creates hindrances. Overall, the judicial process is costly and painstakingly slow, so it is often not the preferred means of seeking justice.

References:

Interview with Mr. Krishna Bahadur Thapa, a litigant whose case is ongoing in the Lalitpur District Court

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

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

Comments:

Court expenses appear to be nominal at the preliminary stage, but other hidden costs are involved as far as litigation is concerned. The costs of a legal suit may be quite high due to the delays in decision making. It often discourages people from filing a lawsuit in court.

References:

Interview with Mr. Krishna Bahadur Thapa, a litigant.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

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

Comments:

The court of first instance (district courts) is located in each district's headquarters; therefore, so some people must travel on foot for two to three days to reach it. Appellate courts are also divided into 16 geographical regions, so access to them is also difficult due to travel expenses. Citizens who live in rural areas have more limited access to the courts than those who live in urban areas.

References:

Interview with Mr. Surendra Kunwar, Advocate

The Supreme Court Portal, <http://www.supremecourt.gov.np>

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

83. Is the law enforcement agency (i.e. the police) effective?

50

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

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

Comments:

Professional qualification is a must criterion for appointments to law enforcement agencies. The Public Service Commission (PSC) conducts examinations for civil service jobs. Favoritism, however, may occur during the interview process.

But so far as the recruitment of police personnel are concerned, appointments are largely influenced by members of the government or certain interest groups even though a set mechanism of recruitment exists. Therefore, law enforcement agencies in Nepal are not absolutely immune of nepotism, spoilage, patronage and cronyism.

References:

*Interim Constitution of Nepal 2007

*Other prevalent Nepalese laws

The Public Service Commission (PSC) Portal, <http://www.psc.gov.np/>

The Nepal Police Portal, <http://www.nepalpolice.gov.np/>

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

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

Comments:

Though funding is provided on an annual basis, government's budget is, however, largely dependent on foreign aid which may not be consistent.

References:

Budget Speech 2009/10

The Ministry of Finance Portal, <http://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.

83c. In practice, the law enforcement agency is protected from political interference.

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

Comments:

As mentioned under the foregoing indicators, Nepali governance is not free from political influence. The law enforcement agency is also not immune from this problem.

Consequently, ..On several occasions, the international community has called the law enforcement tradition of Nepal ‘the culture of impunity.’ Nepal has socio-political, socio-economic, socio-ethnic and socio-psychological blockades against implementing law enforcement in its society because both law enforcement authorities and violators manage to overrule justice at every level. This is why law enforcement in Nepal has failed in its implementation because it can neither make clear distinctions nor can it give directives.”

References:

Prakash Bom, The Law Enforcement Tradition of Nepal, March 22, 2008, American Chronicle, <http://www.americanchronicle.com/articles/view/56135>

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.

84. Can law enforcement officials be held accountable for their actions?

75

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

Complaints can be made to a superior authority, courts and even to the National Human Rights Commission (NHRC). Despite the fact that the NHRC holds constitutional status and has the power to investigate human rights abuses, the executive branches of the government often ignore NHRC recommendations or directives.

References:

*Interim Constitution of Nepal 2007

*National Human Rights Commission Act 1997

*Other prevalent Nepalese laws.

National Human Rights Commission (NHRC) Portal, [http:// www.nhrcnepal.org/](http://www.nhrcnepal.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

84b. 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:

Although the National Human Rights Commission (NHRC) and other authorities do receive complaints, citizens' complaints do not get a due response in a timely manner. In addition, directives are often ignored by the executive branch.

References:

The NHRC Portal, <http://www.nhrcnepal.org/>

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.

84c. 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 Abuse of Authority (CIAA) is entrusted with the responsibility for investigations and prosecutions of corruption committed by law enforcement officials. Where the judiciary is concerned, the judicial council deals with corruption in the judicial branch.

References:

*Interim Constitution of Nepal 2007

*Prevalent Nepalese laws.

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.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

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

Comments:

Investigations of corruption by law enforcement officials are initiated generally. Their effectiveness, however, is often questioned because the investigating authority has to rely heavily on law enforcement agencies whose authority comes from the executive branch of the government itself.

References:

Interview with Mr. Dhundi Raj Neupane, a Police Inspector.

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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Police and other law-enforcement officials are subject to normal criminal prosecution in Nepal. Criminal law is equally applicable to law enforcement officials.

References:

*Country Code (Muluki Ain) 1963

*Police Act 1955

*Armed Police Act 2001

*Other prevalent Nepalese laws.

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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

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

Comments:

Law enforcement officials are subject to criminal prosecution but they are often protected. Immunity from prosecution is so deeply entrenched that it has been virtually institutionalized in Nepal.

References:

*Human Rights Yearbook 2009, Informal Sector Service Center (Insec), [http:// www.inseconline.org/](http://www.inseconline.org/)

*Advocacy Forum and Human Rights Watch, Still Waiting for Justice: No End to Impunity in Nepal, 2009, <http://www.hrw.org/en/reports/2009/10/15/still-waiting-justice-0>

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.
