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Essentially, the study tries to give readers a basic understanding of both de jure or formal provisions such as official policies and legislation, and the corresponding de facto situations or practices — the reality on the ground. The report provides valuable insights into the institutions and practices of government in Nepal — what is there, what works and what does not — along with suggestions for needed changes where appropriate.

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We hope that this effort will help citizens and rights holders better understand how their government and its agencies function, a necessary condition for greater government accountability, and an essential step on the road to a new Nepal that provides equal opportunities to all its citizens. This document does not have all the answers, but it is definitely a good attempt to explain government to citizens, and a good beginning for similar, more focused assessments in the future.
Preface

The Nepali state invests a significant amount of resources in maintaining a government that is responsible for ensuring a fairly extensive list of services to citizens. At the village level, it is not unusual to find about 40-50 civil servants, including teachers, agriculture and health extension workers, police personnel and Village Development Committee officials deputed for providing public services. In the districts, even in relatively less-served districts, there are around 600-800 persons on the government payroll, including those serving in the courts, urban development, and other services. At the centre, the government becomes more complex with various executive, legislature, judicial service units, public enterprises, security agencies, universities, development committees and commissions, among others. As result of this investment there is a system of government that is capable of opening its doors to the public each day—that the efficiency, accountability, and responsiveness of these agencies is at a less than desirable level is something else.

In addition to this formal structure of the state, Nepali citizens rely on a range of informal arrangements to fill the void created by a weak state. Clearly, states rarely function the way they are meant to and often the government, for various reasons, even breaches its own procedures. This, for instance, is most visible in the untimely transfers of government officials and ad hoc fund allocations, particularly, at the local level. In other instances, because of unfunded mandates and lack of human resources many functions of the government are never executed. Beyond inability to rule by law and capacity issues, individual interests and incentives also produce behaviors and practices that are not described in formal documents.

The Nepali public authority, therefore, includes both the formal and informal structures of governance and documenting this in its entirety requires a massive undertaking. This study limits itself to describing how the state is structured, how it has evolved over time, its essential functions and the practices that drive it – or don’t. Along with descriptions of the various state organs, this study captures some informal aspects of governance practice in Nepal by discussing both de jure and de facto state of governance, where applicable.

The document has two main purposes. Firstly, there is no reliable description of how government is organized and how it functions even though it is the largest line item in the annual budget. This information can provide a reference to key decision makers, reform advocates, donors and the Nepali public. Secondly, as Nepal prepares itself to federalize, a ready reference to the structure and function of the existing Nepali state is always a useful information tool for planning new structures, and such information is not available from a single source. The second purpose of this report is to provide a comprehensive description of the architecture of the government as that can assist the process of planning government in the context of federalization. The Asia Foundation hopes that the readers will find this book useful on both accounts.
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Acronyms

ARC     Administrative Reforms Commission
CA      Constituent Assembly
CPA     Comprehensive Peace Accord
CPN (M) Communist Party of Nepal (Maoist)
CPN-UML Communist Party of Nepal (Unified Marxist Leninist)
CDO     Chief District Officer
CIAA    Commission for Investigation of Abuse of Authority
DADO    District Agriculture Development Office
DAO     District Administration Office
DCC     District Development Committee
DCPR    Department of Civil Personnel Records
DEC     District Education Committee
DEO     District Education Office
DIMC    Decentralized Implementation and Monitoring Committee
DTCO    District Treasury and Controller’s Office
FCGO    Financial Comptroller General’s Office
GNABR   Government of Nepal (Allocation of Business) Rules
GNTBR   Government of Nepal (Transaction of Business) Rules
GoN     Government of Nepal
HMG/N   His Majesty’s Government of Nepal
LDO     Local Development Officer
LGCDP   Local Governance and Community Development Program
LSGA    Local Self-Governance Act
NPC     National Planning Commission
NRB     Nepal Rastra Bank
GGMOA   Good Governance (Management and Operation) Act
MoAC    Ministry of Agriculture and Cooperatives
MoF     Ministry of Finance
MoGA    Ministry of General Administration
MoHA    Ministry of Home Affairs
MoLD    Ministry of Local Development
NVAC    National Vigilance Center
OPMCM   Office of the Prime Minister and Council of Ministers
RAO     Regional Administration Office
PSC     Public Service Commission
VDC     Village Development Committee
Chapter 1
Evolution of Nepali Politics and Administration

Modern Nepal dates back to 1768, when King Prithivi Narayan Shah, ruler of a small principality of Gorkha, annexed Kathmandu Valley as part of his unification campaign. He named the new country Nepal, shifted his capital to Kathmandu, and founded the Shah dynasty. The process of unification and territorial expansion continued until 1815, when Nepal signed the Treaty of Sugauli with the British East India Company. The treaty fixed the present day territorial boundaries of Nepal. Nepal has had various forms of government, state structures and working procedures since then. In 2006, Nepal began debating the restructuring of the state, and redefining its organs and functions for incorporation into a new constitution. This chapter reviews the history of political and administrative systems in Nepal.

1.1 Shah-Rana Period

Shah kings or their regents ruled Nepal between 1769 and 1846, a period marked by territorial expansion, palace infightings, and a battle with the British East India Company that culminated in the signing of the Treaty of Sugauli in 1815. The Shah kings, the supreme rulers, ruled through advisors. The field administration consisted of provinces, districts and annexed vassal states and villages. The field administration was primarily responsible for maintaining law and order and collecting revenue.

The administration was highly centralized, with the king as the source of all legislative, executive, and judicial authority. Families that had assisted King Prithivi Narayan Shah in the unification/annexation dominated the administration. Service conditions and tenure of government employees depended on the whim of the ruler, with no distinction between army and civilian positions. The rulers introduced an annual pajani — the screening of government employees — as a time to select new employees and fire those who had gone out of favor.

The Rana period began in 1846 following a bloody massacre resulting from a power struggle between the various factions within the palace. The mastermind of the massacre, Jung Bahadur Rana, effectively eliminated all political rivals and eventually assumed full control of the state. This relegated the monarchy to political and administrative obscurity. Nepal remained under the Ranas for 104 years. State authority and administration were centralized under a Rana prime minister, a post that was inherited by the eldest member of the ruling family. It was a period when even national income was considered personal income of the Prime Minister.
The Ranas continued the pajani system. The Prime Minister screened the monarch, his relatives and senior-most officers. The commander-in-chief screened others with the knowledge of the Prime Minister. The Ranas also controlled the country through the daudha system, in which inspection teams with authority to dispense quick justice were sent to the districts every winter to ensure that field offices were attending to public grievances.

The Rana administration was characterized by the systems of chakari (sycophancy), chaplusy (flattery), and chukli (doing intelligence work for the boss to receive favors); a lack of distinction between military and civil service, whereby officials were easily transferred from one administration to another; rigorous record keeping and the clear enumeration, whenever the decision to open a new office was approved, of the functions, powers and duties of the heads of the office, the office budget and number of positions; the exercise of power at field level through siblings, courtiers or trusted representatives; and a foreign policy that focused on maintaining good relations with neighboring countries, especially the rulers of British India. However, minimum attention was given to improving the lives of the Nepali people, and there was no political freedom. Chandra Shamsher Rana also established a central secretariat as a nucleus of government functions at a locality now known as Charkhal Adda in Dilli Bazaar.

1.2 Modern Nepali administration

Nepal began modernizing after the end of Rana rule in 1951, when democracy was introduced and the country was governed by its first statute, the Interim Government Act of Nepal 1951. This law introduced parliamentary governance with the monarch as the head of state, while recognizing the role of political parties in the management of state affairs. It also introduced the idea of separation of powers between a legislature, an executive and a judiciary, although in practice the king enjoyed the highest executive, legislative and judicial authority.

Along with this change in the political system, the role of government began to expand from protecting national security and maintaining law and order to include providing basic services and promoting development. The 1950s saw the introduction of the first periodic five-year plan (1956-61) and the inauguration of the Tribhuvan Village Development Program. A new budget process was adopted that included publishing national income and expenditure data. Public administration, personnel systems, and work rules were reformed.

The government established a central secretariat at Singha Durbar, the 1400-room residence of the Rana prime minister, and reorganized the former Rana-led director general’s offices into 10 ministries. It began publication of the Nepal Gazette, which notifies the public of government decisions and is the authoritative text of the nation’s laws. It ended the system of paying salaries in cash and kind and replaced it with cash-only payments, and it introduced a modern filing system. The government established the Public Service Commission (PSC) in June 1951. Although the PSC was not consulted in many of the early appointments — perhaps to expedite hearings — it did lay down some minimum qualifications for different government positions.

The Administrative Reorganization Planning Commission (ARPC), headed by Prime Minister Tanka Prasad Acharya, was formed in July 1956, and it laid the foundations of modern Nepali administration. Among its major contributions were the adoption of detailed procedures for screening civil servants, division of the civil service into various units — administrative, foreign, education and others — adoption of the Civil Service Act 1956, establishment of the Organization and Management Unit, the Institute of Public Administration and the Clerical Training Center, and formation of a district reorganization commission.

The Interim Government of Nepal Act 1951 was replaced by the Constitution of the Kingdom of Nepal in 1959. This was followed by the general election of the House of Representatives. The democratically elected government under Prime Minister B. P. Koirala initiated several administrative reforms, including purging the civil service, putting newly appointed officers under a one-year probation period, and making the PSC more independent. It also changed some titles of government officers (assistant secretaries became section officers, for example), and all employees were paid in cash (to replace khanki which was income from some land allocated for the purpose). The government abolished the birta system of land tenure and instituted Nepal’s first income tax and urban property tax. It also signed a new trade treaty with India.

In December 1960, King Mahendra overthrew the elected government and began to rule directly. He dissolved the parliament, imprisoned the Prime Minister, Cabinet members and other political leaders, suspended and later abrogated the constitution, banned all political parties, and introduced a new political model that was called the Panchayat System. He legitimized the new system with the Constitution of Nepal 1962, which authorized him to run the country, albeit with an advisory legislature called the Rastrriya Panchayat, initially elected by an electoral college consisting of members of lower bodies called panchayats. Universal adult suffrage was introduced to elect the members of the Rastrriya Panchayat in the 1980s. The king appointed the Council of Ministers from this body, and it was later allowed to elect the Prime Minister, who could recommend other ministers. However, the king remained the source of executive, legislative, and judicial powers, and also served as the supreme commander of the army. Because the monarch held all administrative powers, the royal palace secretariat soon became the de facto center of government, while the authority of the central secretariat at Singha Durbar withered.
Government under the Panchayat System began with suspension of the PSC and a mass purge of civil servants, and sought the total commitment of public servants to the new polity. There was a clause that allowed the government to dismiss employees under the parcha system, a special provision whereby the dismissal from service by the government could not be challenged.

In 1961, the country was demarcated into 14 administrative zones with each zone headed by a zone commissioner, a royal appointee whose function, among others, was to assist the palace secretariat in suppressing political opposition. In the districts, now increased in number to 75 from 35, district panchayats were established by amalgamating the former village development blocks, and village and nagar (town) panchayats were also established. The responsibility of these local bodies was to undertake development activities with central government grants and their own resources.

The badahakins, who were heads of the district administration and representatives of the central government, were abolished in 1965 and replaced by newly appointed chief district officers (CDOs). The CDOs were secretaries of the district panchayats, and were later given the responsibility for maintaining law and order. Local development officers (LDOs) were created in the mid-1970s to serve as secretaries and chief administrators of the district panchayats.

In 1973, the government demarcated the country into four and then five development regions, and also designated their headquarters. The idea was to have government and other development agencies to place regional offices or directorates at the headquarters for supervising and coordinating district level departmental programs.

Several amendments were also made to the Civil Service Regulations (1965) to motivate civil servants; a plan to improve the capacity of the PSC was put into effect, and a post-graduate diploma program in public administration was started at the Tribhuvan University. The Center for Economic Development and Administration (CEDA) was established in 1969 for training senior and mid-level officers in government and public corporations, and for carrying out research on public administration. The Nepal Administrative Staff College (NASC) was established in 1982 to take on the capacity building functions of CEDA.

The Panchayat polity lasted for 30 years. In 1990, a jana andolan, or people’s movement, brought the Panchayat system to an end and restored multi-party parliamentary government. A team of political leaders and lawyers drafted the new constitution that was promulgated by the monarch. Under the Constitution of the Kingdom of Nepal 1990, the king became the head of state, and the prime minister, chosen from among themselves by elected members of parliament, became the head of government.

The government elected in 1991 formed a high-level Administrative Reforms Commission (ARC) in September of that year, headed by Prime Minister G.P. Koirala, with the mandate to suggest changes to suit the new political system. The ARC suggested a shift in the role of government from that of a service provider to that of a motivator and facilitator of the private and non-governmental sectors, assuming direct responsibility for those services that did not attract other sectors. It also recommended reducing the civil service by 15-20 percent, reorganizing administrative structures and improving government working procedures. Some of the ARC recommendations were incorporated into the new Civil Service Act 1992 and Regulations 1993. One innovation was the introduction of a planning unit at all ministries.

The government retained the three-tier local governance system, with the center and the village or municipalities and district level local governments, but changed their names to village development committee (VDC), municipality and district development committee (DDC). Before enacting the Civil Service Act 1992 and regulations, the government amended the civil service regulations of 1965, lowered the retirement age of government officers from 60 to 58 and introduced the 30-year service clause. The 30-year rule made 3,400 civil servants eligible for retirement; another 200 were forced to retire by the government under the 20-year rule (World Bank 1993).

The Nepali Congress Party government elected in 1991 sought a fresh mandate within three years in office due to infighting in its ranks. The election that followed produced a hung parliament, with the Communist Party of Nepal (Unified Marxist Leninist) as the largest party. The CPN (UML) formed a minority government, which introduced, among other things, a program to provide a lump-sum grant to VDCs for development activities. The government fell after nine months, but successive governments have continued the local grant program. As a result, VDCs now receive Rs.1 million every year as grant from the center.

The period after 1994 produced a number of coalition governments, one of which formed a decentralization commission on whose recommendation the Local Self-Governance Act 1999 (LSGA) was enacted. Two elections were held, in 1992 and 1998, to elect representatives to these bodies. But in 2002, as the six-year-old Maoist conflict intensified, the government decided it was not possible to hold new elections, and the term of office of local bodies elected in 1998 expired.

In October 2002, amid this escalating conflict and insecurity, King Gyanendra Shah sacked the elected government, and claiming residual authority, assumed executive powers, ruling the country through several directly appointed prime ministers. On February 1, 2005, he assumed executive authority as chair of the Council of Ministers and declared a state of emergency. The outcome was a new conflict with the parliamentary political parties. In November 2005, the leaders of the seven political parties in the dissolved parliament signed a 12-point agreement with the CPN(M) and jointly led the mass protest that forced the king to step down and reinstate parliament.

The reinstated House of Representatives adopted a declaration stripping the king of all powers granted to him by the 1990 constitution, and committed to elect a CA to write a new constitution. The new government also began negotiations with the Maoists, which culminated in the signing of the Comprehensive Peace Accord (CPA) in November 2006. This was followed by the promulgation of the Interim Constitution (2007). In the CA election held in 2008, the CPN(M) emerged as the largest party. Following the election, an amendment to the Interim Constitution ended monarchy in Nepal and committed to transform the unitary state into a federal republic. The Interim Constitution commits to make “an inclusive, democratic, and progressive restructuring of the State by eliminating its existing form of centralized and unitary structure in order to address the problems related
to women, Dalits, indigenous tribes, Madhesis, oppressed and minority community and other disadvantaged groups…” There were four governments in the four years after the election, while the promised new constitution, originally due by May 2010, had not been completed at the close of 2011.

Chapter 2
The Executive

The executive branch of government includes the President, the Prime Minister, the Council of Ministers or Cabinet, constitutional and statutory bodies, and the bureaucracy, comprising various personnel services, formed to carry out executive functions. The President, as head of state, does not perform day-to-day executive functions, but is a part of the executive branch. In practical terms, the Cabinet is the highest executive body with authority to issue directives to guide, control, and govern. Under Article 43 of the Interim Constitution, the Cabinet can make its own rules on the allocation and transaction of business, allowing it to set up and run the central secretariat. The Constitution also requires the Cabinet to perform executive functions in accordance with laws enacted by parliament. The Interim Constitution provides for a political system with an "impartial, efficient and fair" bureaucracy.

2.1 Head of State

As head of state, the President of Nepal is vested with the responsibility of protecting the Constitution. Under the provisions of the Interim Constitution, the President was elected from among the members of the CA to remain in office until the promulgation of the new Constitution. The President is briefed by the Prime Minister at regular intervals, but does not have substantive executive functions. All bills passed by parliament become laws upon approval of the President; the President may ask the government to reconsider the bill but has no authority to reject it. The President may also seek information and advice from the Prime Minister as needed. The Vice President functions as the head of state in the absence of the President. The CA elects both the President and the Vice President, and also has authority to impeach the two office holders. The CA elected Nepal’s first President and Vice President in July 2008.

2.2 Prime Minister and the Council of Ministers

The Prime Minister is the chief executive of the Government of Nepal and is elected by the Legislature-Parliament. The first responsibility of a newly elected Prime Minister is to put together a cabinet by appointing ministers, ministers of state, and assistant ministers. The law does not limit the number of ministers, and since 2008, depending on the political needs, different prime ministers have had cabinets of varying sizes (Table 2.1). The ministers are individually accountable to the Prime Minister and parliament, and the Cabinet, including the Prime Minister and his ministers, is also collectively answerable to parliament. Under the Interim Constitution, an individual does not need to be a member of parliament to become a minister.
The Interim Constitution authorizes the Cabinet to formulate rules for allocation and transaction of government business. The government has formulated the Government of Nepal (Allocation of Business) Rules 2007 (GNABR 2007) and the Government of Nepal (Transaction of Business) Rules 2007 (GNTBR 2007). The GNABR allocates Cabinet business to different sectors, including law and order, health, education, social welfare, agriculture, physical planning, communication, defense, foreign affairs, etc. The rules provide detailed descriptions of government functions, how the functions are allocated to the different ministries, and the departmental responsibility of ministers.

The GNBTR prescribes the working procedures of the Cabinet, i.e., powers and responsibilities of the Prime Minister, ministers, the Cabinet as a whole, and the various agencies such as its sub-committees, the National Planning Commission (NPC) and the ministries. It also lists matters that must be referred to the Cabinet for approval.

The GNTBR 2007 identifies three layers of authority — that of the Cabinet, the ministries, and the prime minister — and provides guidelines for the conduct of business. Business under the jurisdiction of the Cabinet includes 43 categories — constitutional matters, policy matters, bills for parliament, delegated legislation, national budget, tax, emergency announcements, and ordinances. Each ministry is responsible for observing, consulting, and coordinating with other ministries.

Together with the responsibility as the chief executive of steering the state machinery, the Prime Minister is responsible for overseeing the execution of government policies and decisions, ensuring coordination among ministries in executing major decisions, directing ministers and resolving the differences and overlaps between ministries. The responsibility for other government business lies with individual ministries, according to the GNTBR. The Cabinet and ministers pass on political decisions to officials at concerned ministries, who follow a bureaucratic protocol for action based on practicability, consistency and legitimacy. The substantive responsibilities include the technical and policy functions of the ministry as assigned by law or delegated by the minister. Ministers are responsible for running their ministries, and are answerable to parliament. Ministers also represent their ministries in parliament, in parliamentary committees, and to the public. Unlike civil servants, ministers have to balance competing interests — their party, their constituency, parliament, and their Cabinet colleagues. Civil servants are governed by a separate set of laws and are required to follow established rules and procedures. Therefore, tussles do occur between ministers trying to respond to different influences, and civil servants, who are required to follow set legal procedures. In addition to the GNBTR and parliamentary directives, there are several major laws that relate to the conduct of government business (Box 2.1).

### Box 2.1 List of major laws on public administration in Nepal

1. The Administrative Procedure Regulation Act, 1956
2. The Corporation Act, 1964
3. The Development Board Act, 1956
8. The Local Administration Act, 1961

Note: These are generic laws related to public administration. Besides these there also are other laws, which are specific in nature — such laws have been referred in the text as appropriate.

### 2.3 Administrative Structures

#### 2.3.1 Ministry

**Office of the Prime Minister and Council of Ministers:** There is an Office of the Prime Minister and Council of Ministers (OPMCM) headed by the Chief Secretary, of special class rank. The Chief Secretary serves as secretary to the Cabinet, head of the OPMCM, and coordinator of other secretaries. Primary responsibilities include providing leadership to the civil service, directing and supervising its performance, making the bureaucracy active and efficient, and leading governance reforms.

**Minister:** Ministers are political appointees who manage the responsibilities of their respective ministries. As custodian of the executive power flowing down from the Cabinet, a minister communicates policy directions, administrative orders and decisions to the bureaucracy. The bureaucracy formulates policies and plans to implement decisions and directives of the government or the minister through various central and field level administrative mechanisms. The bureaucracy also monitors and evaluates program implementation, and recommends policy to the minister.

**The Secretary:** The secretary is a special class officer. Under the minister’s direction, the secretary prepares and submits policy proposals for consideration by the Cabinet. The secretary is the administrative head of the ministry, its line agencies and field offices, and also supervises and monitors policy and program implementation.

The secretary has both administrative and substantive (policy) responsibilities. The Good Governance (Management and Operation) Act 2007 (GGMOA) specifies administrative responsibilities, which broadly encompass day-to-day duties and functions. The substantive responsibilities include the technical and policy functions of the ministry as assigned by law or delegated by the minister.

#### 2.3.2 Departments

Departments are the second layer in the government hierarchy and serve as line agencies. Unlike ministries, departments have specialized human resources and technical equipment. They develop detailed plans and programs and implement them (also through field offices) after approval. They assist the ministries in policy matters, bringing in their operational knowledge and implementation experience. Departments are generally
headed by a director general — usually a first class officer — whose responsibilities include implementing approved programs and policies, supervising and coordinating field offices, developing technical skills, providing advice to the ministry and ensuring effective service delivery.

In 2011, the government had 51 departments of three broad types: (i) departments that use discrete skills and technology and maintain a host of specialties in human resources and equipment, such as the Department of Physical Planning under the Ministry of Physical Planning and Works, and the Survey Department under the Ministry of Land Reform and Management; (ii) departments engaged in technical operations, such as the Department of Food Technology and Quality Control under the Ministry of Agriculture and Cooperatives, and (iii) departments that exist primarily to coordinate field offices for implementing central level programs.

2.3.3 Central offices
Central offices are created for specific purposes and are placed directly under either the ministry or the department. They focus on specific central level functions or coordinate field offices. In 2011 there were 136 central level offices. The Office of the Financial Controller is an example.

2.4 Field level organizations
The GGMOA has organized the administrative system into central and field level units. The field units focus on service delivery and are present in all five development regions, 14 zones and 75 districts and sub-districts. Further reorganization is likely, as there have been demands that the districts be redrawn, because the existing boundaries laid down five decades ago no longer match local realities. Changes will also be needed to conform to the new federal structure.

Regional offices, directorates of ministries, and agencies were established to implement a regional approach to public administration and development. The chief of the Regional Administration Office (RAO) is a central government representative of the rank of secretary. There are regional offices in each of all five regions. The RAO’s duties range from administrative leadership during calamities like epidemics, famine, and natural disasters, to coordinating district level offices, maintaining law and order, supervising the district administration offices, combating delays and corruption, promoting efficient service delivery, and settling inter-district disputes. In practice, the Regional Administrator’s coordination with regional offices of sectoral ministries is largely ineffective because of unclear jurisdictions, accountability structures and lines of authority. For this reason, secretaries do not like being posted as permanent regional administrators, and most of these units end up being run by ‘acting’ officials of lower rank defeating the purpose of the role they are expected to play.

Some ministries and departments also have regional offices, though not necessarily in all regions. The army, the police, central intelligence, health, drinking water, higher secondary education, the Public Service Commission (PSC), Radio Nepal, irrigation, forests, postal system, agriculture, livestock, veterinary, telecommunications, electricity, revenue investigation, and food and quality control have regional presence, many at the regional headquarters.

Zonal offices function as intermediaries between the regional and district offices. During the Panchayat period, these offices were important politically, but most of them were dismantled after 1990, when multi-party democracy was established. Only a few zonal units remain. These include zonal offices of the PSC, police, hospitals, post offices, etc., and they provide sectoral services and also supervise district offices.

District offices are the key administrative field units. The chief district officer (CDO) heads the District Administration Office (DAO) as representative of the central government. The DAO’s roles and functions are specified by the Local Administration Act 1971 (amended 2002) and it functions under the Ministry of Home Affairs (MoHA). The Regional Administrator is the immediate supervisor of the CDO. The main tasks of the DAO are to provide security to government offices and the public, maintain law and order, and also provide some general services (Box 2.2). The CDO is also responsible for coordinating all district level offices. Almost all public service agencies and some regulatory agencies have offices in all 75 districts (Annex 3). In 2011, Nepal had 1,622 district level offices.

Each district has a local development officer (LDO) — the district level officer of the Ministry of Local Development (MoLD) — as the secretary to the elected DDC. The LDO is responsible for local development programs supported by the central government as well as those funded and managed by the DDC. The DDC’s functions are mandated by the Local Self-Governance Act 1999 (LSGA) and Rules. (See section on local bodies).

All 75 districts include the 240 electoral constituencies (for national election), 927 Ilakas (areas created for the DDC election), 3,915 village development units and 58 municipalities. Some government agencies have sub-district level units in the election constituencies, while others have their field units at the Ilaha and service center level.

A staff member from regular civil service functions as the government representative, and as secretary of the different local bodies: village development secretary (normally of assistant level) at the VDC, executive officer at the municipality, and LDO at the DDC.

There are nine wards in each VDC. Wards are demarcated on the basis of population. A municipality can have more than nine wards. The municipal wards provide 11 types of services, such as agriculture, drinking water, irrigation, healthcare, law and order, and certification.

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**Box 2.2 Some services provided by the DAO**

- Certification of kinship
- Certification of orphans
- Certification of kinship
- Child adoption
- Registration of associations
- Registration of newspapers and journals
- Issue of citizenship certificates
- Issue of passports
- Issue of passports
- Issue of passport
Besides permanent offices, the government can create offices for specific projects and functions. Such offices are often set up for pursuing specific goals, or when existing administrative arrangements are unsuitable for a task at hand. (See Annex 1 for a list of government ministries and departments.)

2.5 Independent Bodies

Statutory bodies: Statutory bodies are created by statute for specific functions, such as promoting literature, science or the arts, aiding backward communities, managing trusts (gathis), or preserving nature or religious shrines. The statute defines their functions, tasks, responsibilities, financial resources, governance structure, personnel management, accountability, and relationship to the government. Examples of these bodies include those created under the Uplift of Indigenous Peoples and Backward Communities Act 2011, Nepal Administrative Staff College Act 1982, Nepal Academy Act 1993, Nepal Academy for Science and Technology Act 1991, and B.P Koirala Memorial Cancer Hospital Act 1996.

Public corporations: Nepal has a number of public corporations, first established in the 1960s to provide essential public goods not available from the private sector. The government turned to public investment because it was unwilling to wait for the private sector to build basic infrastructure and deliver essential goods and services. In 2011, there were 36 public corporations — down from 69 in 1992 — with seven in the industrial sector, six in trading, seven in services, five in social work, three public utilities, and eight providing financial services.28 The number of employees in the 36 public enterprises was projected to reach 36,890 in fiscal year 2010/11.29 These enterprises were set up under various laws, and the staffs serve under varying terms.

Authorities: Authorities are a variant of the public corporation. They are departmental programs run independently under the management of an executive board. Nepal has authorities like the Nepal Electricity Authority, the Civil Aviation Authority of Nepal, the Nepal Telecommunications Authority and the Kathmandu Valley Development Authority.

Development boards: The Development Board Act 1956 was introduced to create autonomous bodies within government to expedite development projects by relaxing bureaucratic procedures. Development boards have authority to set their own personnel and financial rules and procurement procedures. In 2011, Nepal had 150 development boards on paper, but less than half of them were operational. Similar boards were created by laws such as the Nepal Tourism Board Act 1996, the National Cooperative Development Board Act 1992 and the Roads Board Act 2000, which promote tourism, support cooperatives, and raise funds for road maintenance, respectively.

2.6 Constitutional Bodies

Constitutional bodies function as checks and balances on executive authority by independently performing certain executive functions. The Interim Constitution provides for seven such bodies: (i) the Commission for Investigation of Abuse of Authority (CIAA), (ii) the Auditor General, (iii) the Public Service Commission, (iv) the Election Commission, (v) the National Human Rights Commission, (vi) the Attorney General, and (vii) the Constitutional Council. The cabinet appoints the members of these constitutional bodies on the recommendation of the Constitutional Council — a measure to ensure their independence and impartiality.

The Prime Minister heads the Constitutional Council, which also includes the Chief Justice, the Speaker of the House, ministers representing three or fewer parties and the leader of the opposition party in parliament. The constitutional bodies submit their annual reports to the President, who sends it to parliament through the Prime Minister. Since 2006, the heads of these constitutional bodies have not been appointed on time, and at the end of 2010, four of these agencies remained without a chair — the CIAA since October 2006, the Election Commission since June 2009, the Public Service Commission since May 2008, and Auditor General’s office since December 2006.

2.7 Management of Public Agencies

The Interim Constitution (Article 153) provides for a bureaucracy to be governed under the Civil Service Act 1992 and the Civil Service Regulations 1993. There are also some government agencies that are governed under separate laws, such as the Health Service and the Parliament Service, but their rules are similar to those of the civil service.

2.7.1 Civil Service

The civil service is divided into professional (gazetted), support (non-gazetted) and helper (classless) personnel.30 Professional staff are grouped into 10 broad services: economic planning and statistics, engineering, agriculture, judicial, foreign, administrative, audit, forests, education and “miscellaneous.” The minimum academic qualification for professional positions is a bachelor’s degree. In 2010, there were 11,461 professional staffers, 42,529 at the support level and 21,838 at the level where jobs are not classified into classes (the support services).

In 2007, the government began holding separate competitions among women (33%), indigenous nationalities (27%), Madhesis (22%), the downtrodden (9%), persons with disabilities (5%) and candidates from backward regions (4%) to fill vacancies in the civil service. The percentages refer to the positions reserved for these groups. It also has the authority to fill certain kinds of positions by competition among women only.

Civil service vacancies are filled based on recommendations of the PSC. Its recruitment and selection process is reasonably fair, merit-based and highly competitive. However, the civil service has not been able to attract the best talents, because, as the Nepal Portfolio Performance Review 2010 states, it continues to suffer from poor incentives, fragmented decision-making, lack of adequate delegation of authority, imbalance in the number of professional and support staff, and inflexible working practices.

The Department of Civil Personnel Records (DCPR), under the Ministry of General Administration (MoGA), maintains a web-based personnel information system (PIS). It
is a database of records of civil servants, including appointments, transfers, promotions, placements, and retirement. It also maintains records on capacity development, rewards and punishments. In October 2010, the personnel information system had records of about 76,000 personnel: about 11,500 professional (gazetted), roughly 42,500 support (non-gazetted) and about 22,000 helpers (classless). The total number of civil service positions was 101,337. Women made up seven percent of professional staff and a higher percentage of support staff (Table 2.2).

### Table 2.2 Number of civil servants by level and gender (2010)

<table>
<thead>
<tr>
<th>Class Level</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
<th>% Male</th>
<th>% Female</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gazetted Total</td>
<td>10664</td>
<td>797</td>
<td>11461</td>
<td>93.05</td>
<td>6.95</td>
<td>15.11</td>
</tr>
<tr>
<td>Special</td>
<td>80</td>
<td>4</td>
<td>84</td>
<td>95.24</td>
<td>4.76</td>
<td>0.11</td>
</tr>
<tr>
<td>Gazetted First</td>
<td>421</td>
<td>15</td>
<td>436</td>
<td>96.56</td>
<td>3.44</td>
<td>0.57</td>
</tr>
<tr>
<td>Gazetted Second</td>
<td>2552</td>
<td>115</td>
<td>2667</td>
<td>95.69</td>
<td>4.31</td>
<td>3.52</td>
</tr>
<tr>
<td>Gazetted Third</td>
<td>761</td>
<td>662</td>
<td>1423</td>
<td>51.93</td>
<td>48.07</td>
<td>10.91</td>
</tr>
<tr>
<td>Support</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Gazetted Total</td>
<td>34766</td>
<td>7763</td>
<td>42529</td>
<td>82.75</td>
<td>17.25</td>
<td>56.09</td>
</tr>
<tr>
<td>Non-Gazetted First</td>
<td>13100</td>
<td>1625</td>
<td>14925</td>
<td>87.77</td>
<td>12.23</td>
<td>19.68</td>
</tr>
<tr>
<td>Non-Gazetted Second</td>
<td>15714</td>
<td>3030</td>
<td>18744</td>
<td>83.89</td>
<td>16.11</td>
<td>24.72</td>
</tr>
<tr>
<td>Non-Gazetted Third</td>
<td>5063</td>
<td>2872</td>
<td>7935</td>
<td>63.91</td>
<td>36.09</td>
<td>10.46</td>
</tr>
<tr>
<td>Non-Gazetted Fourth</td>
<td>889</td>
<td>36</td>
<td>925</td>
<td>96.11</td>
<td>3.89</td>
<td>0.13</td>
</tr>
<tr>
<td>Non-Gazetted Fifth</td>
<td>20376</td>
<td>1462</td>
<td>21838</td>
<td>93.31</td>
<td>6.69</td>
<td>28.8</td>
</tr>
<tr>
<td>Classless</td>
<td>65806</td>
<td>10222</td>
<td>76028</td>
<td>86.76</td>
<td>13.24</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: PIS Report printed on 27 October 2010

2.7.2 Managing the Civil Service

Central Personnel Agency: The MoGA is the central civil service personnel management agency and is responsible for formulating, implementing and reviewing plans, policies and programs for recruitment, placement, promotion, disciplinary action and retirement of civil servants. It also functions as the Salary and Allowance Review Committee and the Scholarship Committee. It is the central keeper of civil service personnel records through its line department, Nijamati Kitabkhana (DCPR). All ministries, departments, commissions, and central level offices need MoGA approval before taking any action related to civil service management.

The ministry is mandated to conduct management audits of government agencies to ensure compliance with the Civil Service Act 1992. The reports are submitted to the OPMCM, which can decide to implement the recommendations. However, in practice, there have been just a few audits, and the MoGA did not have a dedicated management audit section when this study was done in 2010. Further, there have been hardly any decisions on the reports that MoGA has submitted to OPMCM.

Job descriptions: The Civil Service Act 1992 mandates job descriptions stating the specific functions, duties, responsibilities, and authority of each civil service position. Newly appointed employees must receive job descriptions with criteria for performance evaluation along with the letter assigning them to their positions. However, this requirement is rarely observed. Job descriptions that do exist do not have specific and quantifiable performance criteria. These remain a low priority, because the civil service has not traditionally had a performance-based management culture.

Promotions: Civil servants are promoted on the basis of competency evaluations, internal competitive examinations, work performance and experience. Competency is measured through performance evaluations, seniority, educational attainment, service in different geographical regions and training. Separate promotion committees recommend advancement for professional and support level civil servants respectively. There is also a provision for promotion to professional class for employees who have held the same position for at least 15 years. However, despite clear and specific criteria, the promotion system has a number of shortcomings, and in practice, performance evaluations are primarily based on personal judgments rather than objective indicators.

Code of conduct: There is a code of ethics that civil servants are required to uphold. The law contains procedures and sanctions to deal with cases of misconduct, including indiscipline and breach of instructions. It restricts employees from being involved in politics, criticizing the government and its policies, receiving gifts, presents, donations and loans, and agitating or participating in strikes. Further, all civil servants are required to accord decent treatment to service recipients and work in an impartial, fair and efficient manner.

Job security: The civil service law is very protective of the rights of government employees. No civil servant can be removed or dismissed from service without a reasonable opportunity for self-defense. No case may be filed without government approval against any civil servant for any act committed while discharging his or her official duty. Where there has been approval, the government defends that civil servant even after the termination of service. The conditions of service are also fully secured: the salary, pension and other benefits allocated to any civil servant at the time of appointment cannot be altered without his or her consent. Any order for departmental action requires prior consultation with the PSC, and there is an Administrative Court to hear appeals against departmental actions.

Civil servants retire at 58 years of age, or after three years of service in the case of Chief Secretary and five years in the case of Secretary.

Trade unions: Civil servants up to the class three professional level have trade union rights, and authorized unions have the right of collective bargaining. In principle, trade unions are expected to provide constructive suggestions and support the government in making the civil service more effective while safeguarding and promoting employees’ rights and interests. The Civil Service Act envisions one authorized trade union. However, there are six different trade unions in the civil service, and only one of them is unaffiliated with any political party. All of these unions enjoy trade union rights. The government may consult the authorized trade unions and seek suggestions while preparing bills, rules
and regulations. But since the trade unions are allied to political parties, they often focus on parochial interests rather than the interest of the civil service as a whole. Since 2006, employee unions have been accused of undue influences in promotions and transfers, among other things.

Individual ministries are responsible for preparing and enforcing job descriptions and managing employees, including maintaining records of disciplinary action. They have the authority to transfer staff within the ministry. They also review organizational structures and positions, and are required to inform the PSC about vacant positions. All ministries must have their salary reports approved by the Nijamati Kitabkhana (DCPR). Likewise, all ministries are required to evaluate the performance of civil servants. While this is the case, human resource management decisions of the ministry are routinely contested by the unions.

2.7.4 Public Service Commission
The government is required to consult the PSC on all matters related to personnel management, especially the terms and conditions of service, and the principles to be followed in recruitment, promotion, and departmental action against civil servants. The PSC's main task, however, is to conduct examinations for selecting candidates to fill vacant positions.

The President appoints the PSC chair and members at the recommendation of the Constitutional Council. At least 50 percent of its members must have served in government for over 20 years; others can be from academia, with research and teaching experience. PSC members can be removed from office only through impeachment by a two-thirds majority of parliament. Political party members are barred from serving on the PSC. Since 2006, political parties have practically shared the appointees to all constitutional bodies, including the PSC, in the name of reaching political consensus.

The PSC may seek opinions or advice from any other constitutional body, ministry, department, office or government entity while discharging its duties. It may also inspect public agencies to ensure that appointments, promotions or actions against any civil servant comply with the constitution, the Public Service Commission Act 2010, and prevailing laws. The PSC may advise public enterprises on the general principles of service upon request.

2.8 Other public services
In addition to the civil service, the Interim Constitution provides for the establishment of other government services. The Interim Constitution has also brought personnel management in the Nepal Army, the Nepal Police and the Armed Police Force within the purview of the PSC as a means of promoting fair and competitive practices. These services have about 200,000 positions and are governed under separate laws and regulations. Generally, the terms and conditions for employment by the security services differ from those in the civil service, but the general principles regarding appointment and promotion are similar, and these services also need to consult the PSC on personnel matters.

Local government bodies are governed by the LSGA, but the terms and conditions of employment at local bodies are similar to those in the civil service. There are about 26,000 employees in local government bodies.

The Teacher's Service Commission (TSC) is in charge of appointing teachers to government-approved positions at public schools, and recommending promotions. It has three members, including the chair. The government appoints its members at the recommendation of a three-member committee headed by the chairperson of the PSC — the vice-chancellor of Tribhuvan University, and the secretary of the Ministry of Education. However, the TSC has yet to be recognized as an independent, credible, fair and impartial body on a par with the PSC.

2.9 Governance
Good governance, the ultimate objective of the executive, can be analyzed in terms of institutional framework, flow of authority, standards or rules, and processes of operation. As discussed earlier, Article 43(2) of the constitution empowers the Cabinet to make rules for the allocation and transaction of business, but since the GNABR and GNTBR are not enforceable in a court of law, their application for the purpose of transparent and accountable public administration is limited: they are largely internal guidelines. The other basis for government operations is law enacted by parliament and the regulations the government adopts for implementing those laws. Here are some of the major laws related to public administration.

a) GGMOA: This law establishes the framework, principles and objectives under which the executive must formulate policies and working procedures. The government has also adopted rules for implementing the act. The main features of the framework under these laws are:
   i. Identifying the tiers of executive business transactions as central, regional, zonal, district and local
   ii. Identifying the executive bodies such as ministry, department or secretariat, commission, board, center, committee and others
   iii. Making the minister fully responsible for publishing the directives and executing policies and programs of the ministry
   iv. Making the Chief Secretary, as the head of the OPMCM and as secretary to the Cabinet, responsible for providing leadership to secretaries at other ministries, for initiating administrative reforms, and for implementing Cabinet decisions
   v. Prescribing the authority, duties and responsibilities of the ministry secretary and the heads of departments and central offices to monitor and review progress, help solve problems of subordinate offices, and carry out on-site inspections
c) The Local Self-Governance Act 1999 and the Local Self-Governance Rules 1999 provide the overall framework for local bodies. These are comprehensive laws for local governance. (For details, see the chapter on Local Bodies/Institutions).

d) The Development Board Act 1956 was enacted to allow certain development activities to be excluded from the general financial and personnel management rules in government and to allow independent boards to carry out the specific functions efficiently.

e) The Corporation Act 1964 is a general law allowing the government to establish corporations to implement specific programs. Separate corporation acts have been enacted to establish and run corporations. Examples include the Nepal Airlines Corporation Act 1962, the Gorkhapatra Corporation Act 1962, the National Insurance Corporation Act 1968, Nepal Communication Corporation Act 1971, and others.

The government has sectoral specialties such as health, agriculture, education, engineering, forestry, electricity, irrigation, drinking water, and communication. Sectoral administration laws specify sector programs, policies, standards and institutions, and arrangements of authority, institutions and human resources needed by the different sectors.

2.9.1 Government operational standards

The GGMOA guides the conduct of government business at all levels. The core principles include taking into account the larger interests of the people and nation,33 equity and inclusion, rule of law, guarantee of human rights, transparency, objectivity, accountability and integrity, financial discipline, fairness, efficiency and citizen-friendliness, accessibility to people, decentralization and devolution, utilization of local resources, and participation.

The Manual for Providing Services to the Public More Effectively 1999 elaborates on standards in service delivery and sets down the duties and responsibilities of the heads of local offices. These include:

- Displaying publicly the nature of services provided, processes involved, fees chargeable, time required and the position of the responsible employee/officer
- Arranging for a public relations officer
- Wearing compulsory identification cards at the office
- Serving citizens on a first-come-first-served basis
- Prioritizing the elderly, aashaya (indigent), and disabled
- In the case of local projects, involving consumer committees and displaying objectives, cost, completion time, quality, person responsible or in charge, contractor, etc.

The GGMOA requires superiors to inspect the work of subordinates at least once a year. Similarly, under the Local Administration Act, the CDO is required to inspect all district level offices at least once a year. Government procurements are also subject to regular inspections. All government offices are required to inspect their subordinate units twice a year to verify the number and condition of articles last procured.

Government records are to be classified as disposable in 1, 3, 5, 10 or 20 years, or non-disposable on the basis of the categories described in the Disposal of Government Documents Rules 1969. The signed originals of bills, treaties and agreements with foreign governments and organizations, decisions authenticated by the Council of Ministers (the main copy is retained at the related ministry), the map of Nepal, etc. are non-disposable. Timely disposal of documents is one objective of the annual inspection. However, the rules are generally not enforced, and disposable documents still claim much office space at most agencies.

2.9.2 Flow of authority

Law and the constitution define the flow of authority. The Cabinet has the responsibility to govern the country, and so the inherent authority to make decisions within that constitutional and legal framework. This large reservoir of undefined authority rests with the Council of Ministers, and passes on to the central secretariat through the GNTBR for administrative functions. This authority of the Cabinet, and that which it delegates through the GNTBR, are the dominant source of power in the executive.

The constitution also gives parliament the authority to decide the extent of executive powers, and legislation by parliament confers much of the authority and responsibility exercised by the executive. The executive may issue subordinate laws such as rules, regulations and orders, and more than 450 subordinate laws were in force in 2011. There are more than a dozen principal and subordinate laws dealing with the structure, management and authority of the executive.

Even though GGMOA and GGMOR enumerate the responsibilities of government officials at various levels, the practice of delegating authority from the minister to the secretary and downwards to subordinates still prevails, and there is often confusion as to who is responsible for exercising delegated authority. In practice, individuals with delegated authority can exercise it as long as they enjoy the confidence of their superior, but should they fall out of favor, they may suddenly be presented with a list of queries from the delegator seeking clarification of their actions. Past experience shows that the interpretation of the degree of mutual liability has swung from one extreme to another. In this situation of uncertainty, those with delegated authority are unable to exercise power with courage and confidence. The result is that delegated power, instead of being exercised conscientiously by those to whom it has been delegated, is often referred back, under some pretext, to the delegator.

**Standards:** The GGMOA lays down certain norms and principles to guide the conduct of government business at all levels. These standards reflect the larger interests of the people and nation: equity and inclusion, the rule of law, guarantee of human rights, transparency, objectivity, accountability and integrity, financial discipline, fairness, efficiency and citizen-friendliness, accessibility to people, decentralization and devolution, utilization of local resources and participation.

2.9.3 Processes

The GGMOA sets forth broad criteria for public policy. They include economic liberalization, poverty alleviation, social justice, sustainable use of natural and public resources, women’s empowerment, protection of the environment, uplift of the deprived
Structures, Functions and Practices

2.9.4. Decision making

Government decision making takes several forms. It includes the tok-adesh (directive for immediate action), tippani (note-taking), committee meetings, and decisions by the Cabinet.

Tok-adesh is typically a written directive that a certain action be taken. Tok-adesh is used when the action to be taken is straightforward and clear, and no reference check (or if similar decisions were made earlier) is necessary. Ministers often resort to tok-adesh for instructing heads of departments to take certain actions, regardless of whether those actions can be executed in the desired manner. At field offices, a tok-adesh or approval from the office head is needed to formally register petitions or applications – the originally intended purpose of the approval, unlike how ministers have tended to use it.

Tippani or “note-taking” is used when a prospective decision needs to be reviewed by several parties at different levels of the organizational hierarchy. A note originates at the lowest level, usually a section officer, detailing the premise for the decision. The note, which includes all relevant references to the matter, is passed up the chain of command for comments. The process usually ends with a decision at the highest level of authority, based on the comments of all participants. Noting that this process can be a long one, the Directives on Simplification of Government Decision 2008 sets limits on the use of tippani for policy issues: it requires that the note should originate just two levels below the final authority. This directive is not strictly followed, however, resulting in delays and other inefficiencies.

Committee meetings are held for consultation, coordination, and for making collective decisions. Committees, either standing or ad hoc, may be within the ministry or involve other ministries, and have authority to make decisions, both formal and informal. In practice, committees are formed whenever issues are complicated or sensitive, or when a single agency is unprepared to bear the brunt of difficult or unpleasant decisions.

Decisions by the Cabinet: Only matters on the Cabinet Business List in the GNBTR can be on its agenda, but a minister can recommend any issue for inclusion. Decisions that are beyond a minister’s authority, or those that involve inter-ministerial jurisdiction or collective political responsibility, are referred to the Cabinet, with the opinion of the minister.

The Chief Secretary, also secretary to the Cabinet, examines proposals sent to the Council of Ministers for compliance with the GNTRB. Points of inter-ministerial coordination and conformity with past policies are the main focus of scrutiny. The OPMCM holds meetings and discussions with the sponsoring ministry to ensure compliance and to clarify the issues involved before placing the proposal on the agenda that is circulated among Cabinet members at least 24 hours before the meeting. Cabinet meetings are closed to non-members, and the proceedings are confidential. Ministers are bound by their oath of office not to divulge Cabinet deliberations. The results of Cabinet meetings are supposed to remain unavailable to the public, including the judiciary, for 48 hours after circulation to members, and Cabinet decisions are to be made public only after authentication by the Chief Secretary. It has become normal, however, for the government spokesperson to announce the main decisions immediately after the meetings.

The Cabinet may also refer proposals to appropriate subcommittees, which may be asked to make a decision or to make recommendations to the Cabinet. Generally, decisions made at any level may be authenticated by an appropriate officer, from the Chief Secretary down to section officer, as stipulated by Authentication of the Government Order Act 1966. However, the Chief Secretary authenticates all Cabinet decisions when they are first issued.

2.10 Implementation

The government’s implementation processes can be divided into three types based on the nature of the activities involved: law and order, policy or program, and service delivery.

Law and order: The District Administration Office, the field unit of MoHA, enforces and maintains law and order with the help of the district police office. The DAO has the authority for quasi-judicial detention, prison administration, police administration, and smooth operations of public transport. Its jurisdiction includes drugs and addiction, explosives, regulating lotteries and donations. The DAO also performs other functions, such as issuing citizenship certificates and passports, registration of associations, applications for adoption, registration of newspapers and journals, consumer protection, hearing law and order grievances, and investigating corruption.
Programs and policies: Departments implement programs and policies through district offices. They announce bids, secure contractors, and decide how NGOs or civil society may be involved. Although this is the general approach, implementation practices vary. Departments may initiate policy formulation while ministries may supervise implementation. This is common because accountability for policy and implementation lies with both the ministry and the department, and a department that functions under the delegated authority of the secretary is also considered to be an extension of the ministry.

Service delivery: Separate agencies provide services in agriculture, health, education and local development. The GGMOA and GGMOR have provisions for effective service delivery such as requiring service providers to form committees at central and local levels, displaying the Citizens’ Charter showing services available and procedures for accessing them, securing public participation and ownership, organizing public hearings, and compensating for damages caused by failure to deliver services, among others. (Many services are also provided through local government bodies, which are discussed in the section on local bodies.)

2.11 Management Process

Although governance processes appear in different acts, rules and procedures, there are also some that are specifically devoted to the subject.

a) There is an internal management manual (under the Internal Management Manual Rules 1971) that prescribes procedures and conditions to be fulfilled when setting up government offices. For example, it is mandatory for all field offices to set up an information desk and display the Citizens’ Charter describing services provided and costs where applicable. Nepal has six work days each week. Civil servants are supposed to work 40 hours a week. Government offices are open Sunday through Thursday from 10 a.m. to 5 p.m. and Friday from 10 a.m. to 3 p.m. For the winter months of November through January, Sunday through Thursday hours end at 4 p.m.

b) There are specialized laws regarding office management, financial procedures, public procurement, personnel management and public service delivery.

c) There are sector-specific laws governing health, agriculture, education, engineering, forestry, electricity, irrigation, drinking water, and communication, and other substantive functions of the government.

2.12 Accountability

Accountability is assured when the jobs and responsibilities of public officials are clearly defined and the public is informed. The specification of duties and responsibilities is different at the political and bureaucratic levels.

Political accountability: Generally, most political jobs lack the kind of performance requirements that allow for strict, formal accountability. The constitution says that the Prime Minister and the ministers are collectively accountable to parliament, and ministers are accountable to parliament and the Prime Minister. In practice, however, the term “accountable” seems to imply winning the support of parliament rather than satisfying certain performance requirements, because the Prime Minister can keep his job (all prime ministers so far have been male) as long as he enjoys the confidence or political support of parliament, and ministers remain in office as long as the Prime Minister wants them in office. A general election is the only time when political appointees have to face the public for a verdict on their performance.

Accountability remains elusive in Nepal’s parliamentary system, where the separation of legislative and executive powers is not as clear as it generally is in presidential systems. In a parliamentary system, the executive provides political leadership to parliament and also serves as its agent in executing decisions. This arrangement makes it difficult for either side to clearly delineate its tasks. It is important, therefore, for the government to develop parliamentary
practices and conventions to ensure accountability in the conduct of government business, particularly the implementation of policies and priorities. The accountability of the political leadership that has evolved is based on the following conventions.

- The government announces new policies and programs in the President’s annual address to parliament, and seeks their approval.
- The government reviews its activities, income and expenditures for the year in the annual budget speech, and seeks parliamentary approval.
- Ministers respond to enquiries from parliamentary committees.
- It is the government’s duty to fulfill the commitments ministers make to parliament.
- Ministers are obligated to give sincere and honest answers to questions from members of parliament.
- The government is expected to respond to the issues raised in the parliamentary debates.
- The government must respect parliamentary resolutions.

**Administrative accountability**: Accountability is more straightforward in the bureaucracy, as there are job descriptions (albeit not uniformly used), performance benchmarks and formal procedures for delegating the authority, duties and responsibilities of the Chief Secretary, secretaries, and heads of departments. In some cases, the laws also define the duties and responsibilities of lower level officials such as regional administrators, chief district officers and local development officers.

### 2.12.1 Mechanisms for ensuring accountability

**Vertical and horizontal accountability**: There are built-in mechanisms for both vertical and horizontal accountability. Vertically, regional administrators, CDOs and LDOs are responsible for supervising agencies within their authority. Heads of agencies are responsible for supervising their subordinates. At the district, ministry and chief secretary levels, there are committees to monitor service delivery.

Horizontally, the Auditor General’s office can send auditors to check accounts and review physical documentation. The PSC audits personnel functions, and the Financial Comptroller General’s Office (FCGO) sends its accounts officers to examine the books at different offices. Various institutions are mandated to promote accountability. The National Vigilance Center (NVC), established in 2002 under the direct supervision and control of the Prime Minister in accordance with the Control of Corruption Act 2002, is vigilant about integrity and good governance. The CIAA has authority to make inquiries or investigate matters where it believes there are shortcomings. The GGMOA requires public service providers to hold public hearings once every six months to make the public servants sensitive to public interests, choices and conveniences.

Generally, accountability can be breached in three ways. First is failure to meet job requirements in terms of targets, standards, quality, efficiency, etc. Evaluation is usually done by the supervisor, and sanctions are usually departmental actions as provided by the civil service law and regulations. At the political level, steps may be taken by the head of government, the political party, or parliament, depending on the seriousness and political implications of the breach. However, formal actions taken against politicians are rare.

The second type of breach includes violations of laws or procedures, financial irregularities, unlawful gains, and unfair dealings. These are addressed in the same manner for both political and administrative personnel under the applicable laws (the Financial Procedure Act 1998 and Rules 2007, the Public Procurement Act 2006, and the Control of Corruption Act 2002).

The third type of sanction stems from citizens’ right to redress of grievances and compensation for damages, as provided by the GGMOA. An errant official can be individually liable for damages and compensation. The Right to Information Act 2007 and Regulations allow citizens to seek information from the government to build cases for compensation.

### 2.13 Oversight institutions

**The National Vigilance Center (NVC)**: The NVC was established in 2002 under the direct supervision and control of the Prime Minister in accordance with the Control of Corruption Act 2002. The task of the NVC is to promote integrity and good governance. It is empowered to monitor the incomes and individual property statements of public servants, and it has the authority to accept information on the shortcomings of government agencies and officials, and suspicions of irregularity or corruption.

**Commission for Investigation of Abuse of Authority (CIAA)**: The CIAA is a constitutional body with the authority to investigate abuse of authority and unlawful gains by public officials, including political appointees. If the CIAA finds that a person is abusing their public office, it can file a case in court, or recommend departmental action by the relevant authority. Another very important function of the CIAA is to advise the government on policies and laws to curb corruption. CIAA commissioners, including the chief commissioner, are appointed by the President on the recommendation of the Constitutional Council for a period of six years. They retire at the end of their term, or at 65 years of age, whichever comes first. The CIAA submits an annual report to the President, who sends it to the legislature.

**State Management Committee (SMC) and Public Accounts Committee (PAC)**: Parliamentary committees such as the SMC and the PAC, constituted under the Rules of Procedures of the Legislature-Parliament, can enquire into any issue of financial or management irregularity, unfairness or inefficiency. The committees can summon ministers or civil servants to committee hearings for questioning.

**Auditor General**: The Auditor General audits the finances of all government offices, including the judiciary and the legislature. These audits are required for all public agencies. The Auditor General is a constitutional appointee recommended by the Constitutional Council, who serves for a period of six years, or until reaching the retirement age of 65. The Auditor General submits its annual report to the President, who sends it to the legislature. The PAC discusses the report on behalf of the parliament.
2.14 Analysis and discussion

Modern public administration has a relatively short history in Nepal. It began taking shape in the early 1950s and has continued to evolve alongside the political changes and upheavals that have marked the period between 1950 and 2010. Politics shape government structure and functions, and the state administration cannot remain insulated from changes in the political landscape. Nepal has had two administrative reform commissions, one in the 1950s and another in the early 1990s. There was no such commission after the political changes of 2006, but it is likely there will be a new one after the new constitution is prepared, because the prospective new federal system will require restructuring public administration.

Nepal has had an essentially parliamentary form of government since 1990, and state structures have been designed to match the needs of the polity. An analysis of government structures and functions suggests that they resemble those in countries with similar forms of government, but with idiosyncrasies and inefficiencies unique to Nepal. For instance, there are over 150 development boards and committees created for various purposes (for expediting projects, for example), and many of them are not even functional. While such boards and committees can often be effective, the fact that so many are inactive suggests that they are redundant, unnecessary, or have outlived their purpose.

The governance act (GGMOA) clearly lays down the standards for government business at all levels. These include taking into account the larger interests of the people and nation, equity and inclusion, rule of law, human rights, transparency, objectivity, accountability and integrity, financial discipline, fairness, efficiency, accessibility, decentralization and devolution, utilization of local resources and participation. These principles, however, are not always evident in practice, as is clear from the reports of different accountability agencies such as the CIAA, NVC, and parliamentary committees, as well as the mass media and other civil society groups.

In principle, governments exist to serve the people. This ideal informs public policies like the provisions of the GGMOA just enumerated. But ideals expressed in broad terms like “national interest” are more easily interpreted for political convenience than concrete benchmarks like the Rashtriya Mool Niti that existed before the 1990s. Clear and concrete language would better guide decision makers in interpreting the provisions of the GGMOA, and better serve the public interest.

Openness and transparency are vital for accountability, because only an informed public can demand and make use of effective public services. While both openness and transparency are acknowledged public policy objectives, the lack of adequate and timely information remains a major obstacle that continues to prevent people from accessing services effectively or holding public officials accountable for non-performance.

Further, while accountability is a stated government objective, the fact that Cabinet deliberations are still protected by law from public scrutiny or court review suggests that the desire to “protect” government information is a strong one, and that thoroughgoing accountability will remain hard to achieve. The GNBTR and GNBAR are not public documents in Nepal, while similar laws are readily available on the websites of other parliamentary democracies such as India. While there may be good reasons for protecting the confidentiality of government deliberations until a decision has been reached (though this has not been the practice, particularly since 2006), keeping Cabinet deliberations secret forever represents a mismatch between the ideal of accountability and the actual practice of government in Nepal.

Nepal has constitutional checks and balances on the executive, with bodies that get their mandate from Interim Constitution. Again, in principle, these bodies are independent — for example, appointees cannot be members of political parties — but their independence is questionable, given that political parties nominate the candidates, often based on affiliation rather than competence, a particularly common practice since 2006. Since political parties are not transparent about their membership, and there is no way to check membership roles of parties that do not release them, there is no way to ascertain the party affiliation of appointees. The clause requiring non-partisan nominees is meaningless in the absence of a mechanism to check if nominees hold party membership or not.
Chapter 3
The Legislature-Parliament

A Nepali legislature was first conceived in the 1948 constitution, but it was never formed. The first serving legislature, the Advisory Assembly, was formed in 1952, followed by the Parliament in 1959, the Rashtriya Panchayat in 1962, and the House of Representatives in 1991. The Interim Constitution of Nepal 2007 created a new legislative body called the Legislature-Parliament.36 This chapter discusses the functions of the Legislature-Parliament, which also serves as the Constituent Assembly.

3.1 Constituent Assembly / Legislature-Parliament

The CA was formed through a national election in April 2008, and held its first meeting on May 20 of that year. Its original two-year term expired on May 28, 2010, following which it extended its term four times, the fourth on November 30, 2011, for six months.57 There are 601 members in the CA — 240 elected through the first-past-the-post system, 335 elected through proportional representation, and 26 nominated by the Cabinet “on the basis of understanding, from amongst prominent persons … and the indigenous peoples which (sic) could not be represented through the election…”38

The same person heads both these institutions, as Chairperson in the CA and Speaker in the Legislature-Parliament. Under the Interim Constitution, the Chair/Speaker and Vice Chair/Deputy Speaker are chosen by the members of parliament, either by formal election, or by “political understanding” among the various parties. The Vice Chairperson/Deputy Speaker chairs the sessions in the absence of the chair. The Speaker can be removed from office for incompatible conduct through a motion backed by a fourth of the members and with approval of a two-thirds majority of all members of the CA.39

The Legislature-Parliament adopts its own rules and procedures for the conduct of business. These procedures are based on the Interim Constitution, the Constituent Assembly Rules 2008, and the Constituent Assembly (Conduct of Business of Legislature-Parliament) Rules 2008. All members of parliament are required to take an oath at the first session after their election to be entitled to parliamentary rights and privileges.

Constitution writing: The primary mandate of the CA is to prepare and promulgate a new constitution. The CA and its committees — one constitutional committee, 10 thematic committees and three procedural committees — began work in January 2009. Informal taskforces were also formed to narrow down the differences on outstanding issues among the political parties. The contested issues were how to restructure the state, the form of governance, fundamental duties and rights, and the independence of the judiciary, among others. The final draft would need to be passed by consensus of all CA members and, failing that, it would require a two-third majority vote.

Legislative duties: The CA also functions as a regular parliament, with core functions such as legislation, review of government policies, oversight of government administration, approval of tax proposals, and appropriation of public expenditures. The CA/Legislature-Parliament has a Legislative Committee for lawmakers.

The President summons and prorogues parliamentary sessions on the recommendation of the Prime Minister. Generally, there are three types of sessions: summer session, also called the budget session, which deliberates and decides policies, programs, and budget for the fiscal year; winter session, also called the bills session, which processes and approves or rejects pending bills; and the special session, which is convened when at least one fourth of the members of parliament petition the President, and which usually ends with the completion of the purpose stated in the petition. The summer session begins with a presidential address on government policy and programs for the year. The parliament debates its content, and the Prime Minister is required to respond to questions raised, following which the address is approved with or without amendments, or even rejected.40

Parliamentary sessions and committee meetings require a quorum of one-fourth of the total members. The legislative agenda is put up for deliberation as a motion by a member or a committee and is decided by a majority vote of the members present. The presiding member is ineligible to vote unless there is a tie. In most cases, the parliament approves decisions by a voice vote; in cases where a member demands a count of votes, the Speaker may order the secretary to collect the number of “yes”, “no” and “neutral” votes by calling names or having them sign on paper.

In special cases, the Prime Minister may call for a vote of confidence, and must also face a confidence vote when at least one-fourth of the total members of the parliament offer a no-confidence motion. A rule bars such motions within six months of a previous confidence vote. Such motions are decided by majority vote.

The parliament enjoys several constitutionally guaranteed privileges: full freedom of speech at meetings, full authority over the conduct of parliamentary business, safeguards against comment on good faith of any proceeding of parliament, immunity from arrest on non-criminal charges while parliament is in session, constitutionally authorized committee on privileges to decide cases with a view to safeguard the rights of members, and others.41 Parliament is restricted from discussing matters under consideration in any court of law, or the actions of any judge in the course of the performance of his or her duties.

3.2 Lawmaking process

Bills can be either “government” bills, which are introduced by the government, or “private” or “ordinary” bills, introduced by a member of parliament. The constitution stipulates that bills dealing with finances or money or with the security agencies must be government bills, and such bills require five days advance notice to the Secretary General of the Parliament Secretariat. Private bills require at least seven days advance notice. In practice, a majority of bills in Nepal have been government bills. According to
the Parliament Secretariat, the legislature has approved 453 government bills and three private bills. The three private bills were the Human Rights Bill, Nepal Health Professional Council Bill and the Legal Aid Bill. In all, 62 private bills have been introduced since 1991.

**Finance Bills:** There are different types of finance bills, including appropriation bills, vote on account bills, supplementary appropriation bills, and vote of credit bills. Any amendment to a finance bill can be proposed through a censure motion, which is carefully deliberated and decided in the parliament.

A bill for legislation that formulates or executes a new policy is called an original or independent bill. A bill that amends an existing act is called an amendment bill. A bill that codifies or consolidates different provisions of similar nature in existing laws is called a codification bill.

The President may enact an “ordinance” on the recommendation of the Cabinet when the parliament is not in session. The ordinance has the same force and effect as an “act,” but it must be approved by parliament in its next session, or it ceases to be in effect. The President can also repeal ordinances at any time. An ordinance, unless repealed or rendered ineffective earlier, ceases to be in effect 60 days after commencement of the next session of parliament. In the event an ordinance is passed onto the next session, an “ordinance substitution bill” is offered. Lawmaking must begin again with a new bill if the ordinance is rejected by parliament.

### 3.2.1 The Legislative Process

#### Preliminaries

A member intending to introduce a bill is first required to state its objectives and rationale to the Parliament Secretariat. Bills that involve finances must be accompanied by an estimate of the cost. Bills that require delegated legislation or subordinate legislation for execution must be accompanied by a memorandum stating the reasons for having delegated or subordinate legislation and the nature and limitations of such legislation. Concerned departments draft government bills; individual members may seek assistance from the Parliament Secretariat in drafting bills.

**Introduction:** A member seeking to introduce a bill, and any member who opposes the introduction, are allowed by the Speaker to make brief statements. The Speaker then offers a motion to introduce the bill. The legislative process begins if the parliament votes yes. Copies of the bill are made available to members two days before the motion to introduce the bill.

**Second reading:** A member introducing a bill proposes either that it be considered immediately, or that it be circulated for public comment. Whichever option the member proposes, any other member may propose the other option. The Parliament then discusses the objectives and rationale of the proposed bill, after which it is held for 72 hours to allow time for members to suggest amendments. If the option for public comment is adopted, the bill is published in the Nepal Gazette, specifying a period for public comment in accordance with the procedure determined by the Speaker. At the end of the comment period, the member in charge of the bill may move that the bill and the public comments be considered. When this general discussion concludes, the member may propose that the bill be discussed clause-by-clause by the parliament, or that it be referred to the Legislative Committee. Other members may propose amendments to the bill at this stage.

**Debate (clause by clause):** Normally, bills are referred to the Legislative Committee for a clause-by-clause discussion. After discussion, the committee submits its report to parliament. The member in charge of the bill may then propose either that the bill and the report be considered by the parliament as a whole, or that the bill be sent back to the Legislative Committee for reconsideration. The member can also withdraw the bill at this stage. According to Rule 77, the member in charge may move to withdraw the bill, and other members may oppose the withdrawal. After both sides are allowed to clarify their positions, the Speaker calls for a vote. If the parliament votes for withdrawal, the bill is considered withdrawn.

**Third Reading:** After the bill has been discussed clause-by-clause, either in parliament or in the Legislative Committee, and the final committee report with amendments has been submitted, the member in charge moves for passage of the bill. The Speaker offers a motion for a decision, and if the parliament passes it by majority vote, the vote is certified by the Speaker and forwarded to the President. (No bill rejected by parliament can become law). The bill becomes law after authentication by the President.

The time needed for a bill to become law basically depends on the size and nature of the bill, and the issues involved. The experience of the Parliament Secretariat indicates that at least three weeks is needed to satisfy the rules and manage the process of passing a bill. Sometimes, however, lack of understanding among stakeholders or gridlock between opposing parties can unpredictably prolong the process. Legislation relating to the Truth and Reconciliation Commission, and the Bill on Disappearances, has taken an exceptionally long time to pass.

With the approval of parliament, the Speaker may “fast track” a bill by suspending the rules. This approach has been used frequently since 2008, particularly for passing constitutional amendments extending the tenure of the CA. Parliamentary Rule 157 allows this suspension.
Box 3.2  Extraordinary situations

In 2010 the caretaker government introduced a bill without presenting the government policies and programs that is usually done before a finance bill. The parliament authorized the government to spend an amount not exceeding one-third of the total expenditure of previous fiscal year in 2010/11 under what can be called a “special arrangement.”

The first trimester of the fiscal year 2010/11 was funded as an exception because the government needed to pay recurring expenses such as salaries before a formal budget was approved – which in this case was done by the new government.

3.2.2 Financial Procedure

All taxes collected by the government must be authorized by law. Similarly, the government may not obtain loans or offer guarantees unless expressly approved by law. The constitution establishes a Consolidated Fund where all revenues received by the government, all loans obtained on the security of revenues, all monies received in loan repayment and other monies received by the government must be credited (one exception is revenues of religious endowments or Guthis).

Expenditures may be made from the Consolidated Fund or any other government fund (a) for money charged to the Consolidated Fund, (b) to meet expenditures under the Appropriation Act, (c) as advance money authorized by an act to meet expenditures when an appropriation bill is under consideration, or (d) expenditures to be incurred in extraordinary circumstances under a vote of credit act, which contains only a description of expenditures but no line items.

3.2.3 Budget Proposal

The Finance Minister presents an annual economic survey after the parliament approves the government’s policies and programs. This document provides an overview of economic performance of the past fiscal year (usually based on data for eight months). The Finance Minister also proposes estimated revenues and expenditures — the budget — for the new fiscal year. The estimates must be accompanied by expenditure statements for the preceding year from each ministry, and assessments of whether those expenditures achieved their objectives. The Finance Minister also introduces an appropriation bill — legislation to implement the budget — and, depending on the requirements, may introduce a vote on account bill, a bill to raise domestic loan, an economic bill, or a bill relating to loans and securities.

In circumstances where it is not possible to submit the budget for the next fiscal year by the end of the current year, the government can collect revenues in accordance with the Finance Act of the year just ended. In such situations, the Finance Minister may present a bill seeking authority to spend in the next fiscal year an amount not exceeding one-third of the total expenditure of the current fiscal year. The amount spent in such a manner is included in the appropriation bill. In extraordinary situations — such as 2002/03 and 2005/06, when Nepal had no parliament — finance ministers have made statements of income and expenditures through the media. This was, however, an exception to parliamentary norms.

In principle, public money cannot be spent in excess of the amount authorized by the Appropriation Act. The Finance Minister can propose a supplementary estimate for the fiscal year if the approved amount for a particular category is inadequate, for new services that were not planned but need funds, or if the expenditures made in a particular year were in excess of the authorized amount. In such cases, the amount needed under specific categories is included in the bill.

The Finance Minister presents the Vote on Account Bill to ask parliament for a portion of the estimated expenditure for the upcoming fiscal year in advance, pending passage of the appropriation bill. But the proposal cannot be submitted until the budget is presented in parliament, and the sum requested cannot exceed one-third of that budget. The expenditures incurred under the Vote on Account Act are eventually included in the appropriation bill. This arrangement is justified because budget discussions normally go beyond the end of the fiscal year, and funds are required for public expenditure while the budget is still under consideration.

The government can request a vote of credit from the parliament to cover emergency spending due to natural disasters, threats of external aggression, internal disturbances or other exigencies for which it is not possible, practical or expedient to provide normal budget estimates and justifications. The Finance Minister may submit a Vote of Credit Bill to parliament containing only a statement of expenditures.

To meet unforeseen expenses, the government can create a Contingency Fund though an act of parliament. The monies appropriated by the act are deposited in the fund, which is controlled by the government. These monies must be reimbursed as soon as possible.

3.3 Other Parliamentary Functions

The parliament is entrusted with certain key functions, including the authority to amend or repeal any article of the constitution by a two-thirds majority of members present. The process of amending the constitution is similar to that of passing a bill, with a slight variation: instead of the Legislative Committee, the Speaker may, with approval of parliament, form a special committee for a clause-by-clause discussion of proposed amendments.

The parliament also conducts hearings on the appointment of ambassadors and appointments to the Supreme Court and the constitutional bodies, and it can consider motions to impeach appointees. These motions need a two-thirds majority to pass.

Parliament may control and review executive and administrative functions through questions, and by discussing motions such as a “proposal of urgent public importance”, a “motion to call attention” and, if needed, a vote of no confidence against the Prime Minister. An extraordinary procedure called an adjournment motion may also be used to consider matters of urgent public importance.

Committee reports are discussed in parliament, and the minister concerned is required to respond to members’ questions. This mechanism is intended, among other things, to assure accountability.
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3.4 The Parliament Secretariat

The Secretariat of the Legislature-Parliament, or the Parliament Secretariat, provides administrative, managerial, and logistical support to the parliament and its committees. It also provides services to offices of political parties in parliament. The Secretariat is headed by a Secretary General appointed by the President at the recommendation of the Speaker. The Secretary, also appointed by the President, assists the Secretary General. The Secretariat has eight divisions — legislative, personnel administration, international coordination, information and research, member support, human resource development, and law and security.

The Speaker chairs the Secretariat’s Operation and Management Committee (SOMC), the highest policymaking body. The Deputy Speaker, the Secretary General and two secretaries are members. (Two positions, Secretary General and Secretary of the Legislature-Parliament, are created by the Interim Constitution, Article 61a, and the Secretary of the Secretariat is created by the Legislature-Parliament Secretariat Act). The SOMC formulates policies for the operation and management of the Secretariat, and supervises its functions.

Grants from the government and aid from donors are the Secretariat’s sources of finance. All foreign assistance received must be reflected in the government’s annual budget. The Secretariat must get auditing approval from the MOF and the Auditor General before signing agreements to receive foreign assistance. Rule 4 of the Financial Procedures Rules of the Secretariat mandates that all foreign grants be reflected in its budget. The Secretariat has never complied with this provision, a point repeatedly raised by the Auditor General and by members of parliament.

### Parliamentary committees

Article 58 of the Interim Constitution, authorizes the parliament to form parliamentary committees. Its conduct of business rules (Clause 108, 2065) empowers it to make a legislative committee, and thematic and special committees. The Legislature Parliament has seven thematic committees – Finance and labor, international relations and human rights, natural resources and means, development, women, children and social welfare, state affairs and public accounts. The main functions of the committees are to monitor and evaluate government policies and actions to make it accountable to parliament.

Under the existing arrangement the Chair/ Speaker appoints up to 63 members to each committee in consultation with the political parties in parliament. The Prime Minister is an ex-officio member of all parliamentary committees. The representation of the parties is based on their strength in parliament; another consideration is inclusion of women, Dalits, Advasis Janajatis, Madhesi, and backward regions. All committees elect their chairpersons (in the event there is no consensus on the candidate). All committees are authorized to issue directives and/or provide feedback to government agencies on shortcomings relating to their conduct of business. They are also required to submit an annual report to parliament.

Ministers are barred from contesting to become a chair of a committee and chairing the meetings. The terms of the committees end with that of parliament. (For details see: Constituent Assembly (Legislature Parliament Conduct of Business) Rules, 2065)

### Public Accounts and State Affairs Committees

The main function of the Public Accounts Committee (PAC) is to oversee public accounts and review the Auditor General’s report. This entails investigating arrears in audit reports, directing concerned agencies and individuals to take corrective actions, and following up.

Between 2006 and 2011, the PAC met 135 times — roughly 500 hours — to review irregularities discovered in audit reports. Much of 2006 was spent on the backlog of audit reports and the irregularities from 2000 to 2005. Its report in 2006 noted that irregularities were frequent, and that due attention was not paid to settling advances on time, and it decried the widespread tendency to flout the law. The report instructed government agencies to correct the irregularities. However, four years later, in its 16th report, the PAC found that irregularities remained a major challenge, and had reached Rs. 90 billion.

By and large, PAC directives have yet to be fully implemented. There was some progress after it issued orders in February 2009 instructing the government to take action against employees who failed to settle accounts on time, but the PAC does not have a way to supervise the implementation of its directives, and this has affected compliance.

Besides reviewing audit reports, the PAC investigates suspected irregularities. One recent example involved the procurement of machine-readable passports. The PAC stepped in after the government scrapped the procurement process and awarded the contract to an Indian company. The investigation found fault with the decision, and instructed the government to make amends. After the Supreme Court also found fault with the decision, the government reversed itself and hired another supplier after cancelling the earlier procurement process.

The State Affairs Committee looks into the functioning of the OPMCM, the ministries of defense, home affairs, and general administration, and constitutional bodies such as the CIAA, the NPC and the National Election Commission, and issues directives as needed. (For details see http://www.can.gov.np/np/committees/view/482.) Its report in 2011 recommended that the government finalize the Rashtriya Mool Niti (a broad policy defining national interest,) and a policy on security, and also directed the government to make appointments to vacant positions in constitutional bodies. However, its recommendations have largely gone unimplemented. One recommendation that was acted on by the CIAA involved irregularities in procuring armored personnel vehicles for Nepali peacekeepers in Sudan.

(Based on reports of the PAC for various years, and that of the State Affairs Committee for 2011.)

3.5 Analysis and discussion

Nepal has yet to adopt the practice of providing written concept notes with background information about bills and explanations of clauses and sub-clauses. The three-column explanatory notes (teen mahale) that the ministries prepare when proposing amendments to existing laws, though always very brief, have been useful for understanding the intent of a particular amendment. The same would be useful for original bills. Lack of an approved concept note causes substantial delays to legislation, and anomalies in the committee discussion stages, such as members proposing amendments that are completely different from the original bill.44

The parliament could be more effective with better knowledge of the rules, procedures, practices, and techniques of crafting legislation. With training a low priority, the voices of new members are often lost, and legislation can be of poor quality.

Although committees are the backbone of parliament, they also have limitations. Since members are selected on the basis of party affiliation rather than expertise and interest, their contributions are not always optimal. For many, a committee membership
is not as prized as a ministerial appointment. Further, the law requires that committee appointments reflect the distribution of political parties in parliament, with proportional representation of women, indigenous peoples, Madhesis, Dalits, backward regions and other communities, which can sometimes result in members being assigned to committees not in their area of interest. The committee assignment process needs a better balance between representation, merit and specialization.

The senior level staff of the Secretariat have expertise in parliamentary affairs, but that is not reflected in their performance. Attendance at parliamentary sessions by ministers has also been low, which means they are not present to listen to motions on public grievances that are delivered orally. Overall, legislative oversight in Nepal is not as comprehensive and effective as it is in most functional democracies.

Chapter 4
The Judiciary

The preamble of the Interim Constitution of Nepal 2007 fully commits to democratic norms and values, an independent judiciary and rule of law. It also seeks a balance between the three organs of state — the executive, the judiciary and the legislature. This section reviews the structure, systems and effectiveness of the judiciary.

The earliest Nepali laws were based on the Dharmashastras (sacred canons), and where these were silent, the ruler’s order or word was law. The Lichhavis were first to develop a judicial system of Adhikaranus, such as Kuther Adhikaran for revenue administration and Sholla Adhikaran to hear more serious offences. The Mallas also developed their own judicial system, including the Itachapali and Kotilinga courts to try criminal and civil cases. King Prithivi Narayan Shah later introduced courts presided over by Thakuris as Dittha, assisted by Magars as Bicharis and a Pandit as a legal professional. This system was in place until the Rana rule began in 1846.

The legal arrangements developed during the early periods of history were first consolidated and codified into an Ain (Code), which has been known as the Muluki Ain (Country Code) since its promulgation in 1853 by Prime Minister Jung Bahadur Rana. The preamble of this instrument said that it aimed to make penal provisions uniformly applicable to all persons, irrespective of their rank, class or caste. Since its promulgation, the Country Code has seen several amendments, including the major changes that were made during the reign of King Mahendra Shah in 1963.

With the end of the Rana regime in 1951, the Interim Government recognized the Pradhan Nyayalaya (Supreme Court) as the highest court. The British model had marked influences on the modern Nepali legal system: it was based on the principle of separation of power between the legislature, executive and judiciary, and envisaged an impartial, independent judiciary, legal profession, and court procedures. No change was made in the trial court structure.

Since 1990, Nepal’s judiciary has had a three-tier system of District Courts, appeals courts and the Supreme Court. There are 75 District Courts, 16 Appellate Courts and a Supreme Court in Nepal.

After the enactment of the State Cases Act 1961, Nepal moved from an inquisitorial system in criminal trials (where the judge investigates the case) to an adversarial system (where the judge decides based on evidence presented by adversaries), which was further consolidated through the State Cases Act 1992. Nepal has both statutory law — the constitution and laws enacted by parliament — and case law, based on decisions of the Supreme Court. A revision of the civil and criminal codes begun several years ago to replace the Muluki Ain would address Nepal’s international treaty obligations, but the process remains to be completed.
4.1 General Courts

4.1.1 Supreme Court

The Supreme Court is the highest judicial body. It comprises a Chief Justice and no more than 14 judges. Additionally, ad hoc judges may be appointed for a fixed term as needed. In practice, such ad hoc appointments have been limited to 10 judges.

On the recommendation of the Constitutional Council, the President appoints the Chief Justice for a term of six years from among the Supreme Court judges who have served for at least three years. The Chief Justice then appoints other judges on the recommendation of the Judicial Council from among the judges of the appeals court or any person who has worked in an equivalent position in the judicial service for at least seven years. Senior, Class I judicial service personnel with 12 years of experience who have practiced law for at least 15 years, or distinguished jurists who have worked at least 15 years in the judicial or legal field are eligible for appointment. A judge recommended for appointment requires the approval of a parliamentary hearing for confirmation. Supreme Court judges, including the Chief Justice, hold office until 65 years of age. They can be impeached for reasons of incompetence, moral turpitude or dishonesty by a two-thirds majority of parliament.

The Supreme Court has jurisdiction to hear both original and appellate cases, examine decisions referred for confirmation of sentences, review cases, and hear petitions as specified by law. Under extraordinary jurisdiction, it has the power to hear petitions, cases transferred from the district court by an order of the Supreme Court that has attracted a serious legal issue, and contempt of court. It may review its own judgments, revise decisions of a Court of Appeals, or decide the constitutionality of a law. It also has the power to make rules for administering the courts and formulating policies. The Full Court, a forum of all sitting judges, is the highest policymaking body in the judiciary. Box 4.1 summarizes the jurisdiction of the different courts in Nepal.

4.1.2 Court of Appeals

The Court of Appeals is the second in the hierarchy. The Chief Justice appoints its judges from among the judges of District Courts or Class I officers in the judicial service with at least seven years of experience. Senior advocates, advocates who have practiced for at least 10 years, or individuals who have taught or conducted research or worked in other fields of law and justice are also eligible for appointment. Judges of the Court of Appeals hold office until 63 years of age. The court mainly hears appeals of decisions of the District Courts and quasi-judicial bodies.

4.1.3 District Court

The District Court is a trial court with jurisdiction to hear all civil and criminal cases. Each of Nepal’s 75 districts has a court, with varied caseloads. The Kathmandu District Court had a caseload of 11,558 in 2008/09, while the Manang District Court had only four cases. The Kathmandu court serves a population of 1,081,845, while that in Manang serves 9,587. A District Court judge holds office until 63 years of age.

Box 4.1 Jurisdiction of District Court, Court of Appeal and Supreme Court

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<th>District Court</th>
<th>Court of Appeal</th>
<th>Supreme Court</th>
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<td>Original jurisdiction:</td>
<td>Original jurisdiction:</td>
<td>Ordinary jurisdiction:</td>
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<td>• Hear any civil or criminal case as a trial court within its territorial jurisdiction</td>
<td>• Hear any civil or criminal case as a trial court within its territorial jurisdiction</td>
<td>• Contempt of court, including contempt of any subordinate court or judicial bodies</td>
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<tr>
<td>• Contempt of court</td>
<td>• Cases transferred from the district court by an order of the Supreme Court that has attracted a serious legal issue</td>
<td>• Case transferred from a lower court that involves serious issues concerning interpretation of the Constitution or law</td>
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<tr>
<td>• Execution of judgments of district and superior courts</td>
<td>• Contempt of court</td>
<td>• Hear petitions as specified by law</td>
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<td>• Hear petitions as specified by law</td>
<td>• Decision of a court of appeal involving serious legal mistake or its decision if reversed, partly or fully, of the lower court</td>
<td>• Review its own decisions under certain conditions as specified by law</td>
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Appeal:

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<tr>
<th>District Court</th>
<th>Court of Appeal</th>
<th>Supreme Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Hear appeal against the decision of arbitration board of VDCs</td>
<td>• Hear appeal against decisions of district courts and quasi-judicial bodies within its territorial jurisdiction</td>
<td>• Cases decided by court of appeals.</td>
</tr>
<tr>
<td>• Decision of a court of appeal involving serious legal mistake or its decision if reversed, partly or fully, of the lower court</td>
<td>• Examine decisions referred for confirmation of sentence (sadak janchaune)</td>
<td>• Case that has reversed the decision, partly or fully, of the lower court</td>
</tr>
<tr>
<td>• Contempt of court, including the writs of habeas corpus, mandamus, prohibition, and quo warranto</td>
<td>• Decision of a court of appeal involving serious legal mistake or its decision if reversed, partly or fully, of the lower court</td>
<td>• Any other case specified by law</td>
</tr>
<tr>
<td>• Case involving loss or damage of public property as a result of failure of assessing the proof with due diligence attached with the case file</td>
<td>• Case involving a child, woman, elderly, the differently abled or suffering from mental illness where the decision has been materially affected because of lack of proper representation</td>
<td></td>
</tr>
</tbody>
</table>

Extraordinary jurisdiction:

<table>
<thead>
<tr>
<th>District Court</th>
<th>Court of Appeal</th>
<th>Supreme Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Issue writs of habeas corpus, mandamus or an order of injunction</td>
<td>• Issue appropriate orders and writs, including the writs of habeas corpus, mandamus, prohibition, and quo warranto, for enforcement of fundamental rights</td>
<td>• Declare a law void if it appears inconsistent with the Constitution</td>
</tr>
</tbody>
</table>

The Chief Justice appoints District Court judges from among Class II officers in judicial service who have worked for at least three years. There is a provision for lateral entry from the Bar Association: advocates with at least eight years of practice are eligible for appointment following a competitive examination conducted by the Judicial Council.
A Guide to Government in Nepal
Structures, Functions and Practices

Box 4.2 Caseloads of different courts

In all there are 92 general courts, and additionally, Nepal has nine specialized courts. All the 101 courts have their own administrative units. The total caseload in July 2009 was 115,845 (Supreme Court 2009). The judge-to-case ratio varies between 1:890 and 1:16. While a judge’s case load at the Supreme Court in 2009 was 1:890 cases that of a judge at the Debt Recovery Appellate Tribunal was 1:16. The judge to case ratio for the general courts was 1:429. The corresponding workload of a judge in 2008 in selected countries, for example, was 271 for Germany, 341 for France, 244 for Hungary, and 213 for Ukraine (Shrestha 2009). Similarly, court personnel-to-case ratio varies from 1:51 cases in the Supreme Court to 1:1 in the Debt Recovery Appellate Tribunal.

(Also see: Table 4.1)

Table 4.1 Workload and human resources in the judiciary, caseloads 2008/09

<table>
<thead>
<tr>
<th>Courts</th>
<th>Caseloads</th>
<th>No of judges</th>
<th>Judge/case ratio</th>
<th>No of court personnel</th>
<th>Court personnel / case ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>17,961</td>
<td>20</td>
<td>1:890</td>
<td>351</td>
<td>1:51</td>
</tr>
<tr>
<td>Courts of Appeal</td>
<td>20,288</td>
<td>110</td>
<td>1:184</td>
<td>826</td>
<td>1:25</td>
</tr>
<tr>
<td>District Courts</td>
<td>75,048</td>
<td>134</td>
<td>1:560</td>
<td>2,637</td>
<td>1:28</td>
</tr>
<tr>
<td>Total, General Courts</td>
<td>113,297</td>
<td>264</td>
<td>1:429</td>
<td>3,814</td>
<td>1:30</td>
</tr>
<tr>
<td>Special Court</td>
<td>258</td>
<td>3</td>
<td>1:86</td>
<td>45</td>
<td>1:6</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>29</td>
<td>3</td>
<td>1:09</td>
<td>22</td>
<td>1:1</td>
</tr>
<tr>
<td>Labor Court</td>
<td>224</td>
<td>1</td>
<td>1:224</td>
<td>14</td>
<td>1:16</td>
</tr>
<tr>
<td>Revenue Tribunals - 4</td>
<td>710</td>
<td>12</td>
<td>1:59</td>
<td>54</td>
<td>1:13</td>
</tr>
<tr>
<td>Debt Recovery Appellate Tribunal (2007/08)</td>
<td>11</td>
<td>1</td>
<td>1:11</td>
<td>15</td>
<td>1:1</td>
</tr>
<tr>
<td>Debt Recovery Tribunal</td>
<td>1,316</td>
<td>3</td>
<td>1:438</td>
<td>36</td>
<td>1:37</td>
</tr>
<tr>
<td>Total, Specialized Courts</td>
<td>2,553</td>
<td>23</td>
<td>1:111</td>
<td>186</td>
<td>1:14</td>
</tr>
<tr>
<td>Grand Total</td>
<td>115,845</td>
<td></td>
<td></td>
<td>4,000</td>
<td></td>
</tr>
</tbody>
</table>

Source: Supreme Court, Annual Reports

The provision for examinations was introduced in the Interim Constitution, but in the absence of an act, this provision has not taken effect.

4.1.4 Court Administration

The Registrar is the official in charge of court administration. Four joint registrars, deputy registrars and other officers assist the Registrar at the Supreme Court. The functions are divided into four divisions: administrative, writ, petition and appellate functions, research and planning, and inspection and supervision. A Special Class officer heads the administration in the Supreme Court, and a Class II officer heads court administration at Court of Appeals level, while Class II or III officials lead the administration at District Courts.

4.1.5 Specialized Courts

Special Court: This is a three-member court comprising a chairperson and two judges of appellate level, constituted under the Special Court Act 2002 to adjudicate cases of corruption. The court also tries offences against the state and cases of money laundering. The CIAA files cases against public servants at the Special Court, and the court’s decisions can be appealed to the Supreme Court. The CIAA can order recovery of damages or losses from civil servants found guilty of abuse of authority, and such orders can be appealed to the Special Court. The number of cases filed at the Special Court from 2007 to 2009 (Table 4.2) averaged around 109 per year. The average rate of disposition was 139 per year.

Administrative Court: This is a three-member court constituted under the Civil Service Act 1992. It hears appeals of departmental actions. The chair is a serving or retired judge of the Court of Appeals level. The annual caseloads are low: rates of disposition ranged from 57 to 72 percent between 2006/07 and 2009/10 (Table 4.3). The jurisdiction of the court is narrow, and therefore only a limited number of cases actually reach the bench. A
Table 4.4  Caseload and disposition of cases at the Revenue Tribunals, 2007-2009

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Backlogs</th>
<th>New cases</th>
<th>Total</th>
<th>Con-versed (%)</th>
<th>Partly reversed/Re-viewed (%)</th>
<th>Others (%)</th>
<th>Total (%)</th>
<th>Dispo-sition %</th>
<th>Carry-over</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008/09</td>
<td>320</td>
<td>390</td>
<td>710</td>
<td>24 (17.9)</td>
<td>43 (32.1)</td>
<td>58 (43.3)</td>
<td>9 (6.7)</td>
<td>134 (100.0)</td>
<td>18.9</td>
</tr>
<tr>
<td>2007/08</td>
<td>505</td>
<td>215</td>
<td>720</td>
<td>48 (12.0)</td>
<td>164 (41.0)</td>
<td>150 (37.5)</td>
<td>38 (9.5)</td>
<td>400 (100.0)</td>
<td>55.6</td>
</tr>
<tr>
<td>2006/07</td>
<td>927</td>
<td>172</td>
<td>1,099</td>
<td>60 (10.1)</td>
<td>70 (11.8)</td>
<td>129 (21.7)</td>
<td>325 (56.4)</td>
<td>694 (100.0)</td>
<td>54.0</td>
</tr>
</tbody>
</table>

Source: Supreme Court, Annual Reports

draft bill has been prepared to amend provisions of various acts to authorize the court to also hear appeals of decisions of the promotion committee. After the bill becomes law, a large number of cases from the Supreme Court will be transferred to this court.

Labor Court: Nepal has a Labor Court, constituted under the Labor Act 1991, which hears appeals of decisions of the Labor Department in cases relating to payment of salaries, allowances, gratuities, provident funds, etc. The court also hears appeals of decisions of management or company officials. The Judicial Service Commission assigns an officer of the Judicial Service to preside as judge. Its annual case disposition rates average from 39 to 54 percent. A high proportion of decisions — between 42 and 61 percent — are reversed or partially reversed by higher courts for failure to observe due process and procedures. Some 20 to 36 percent of cases are sent back with comments.

Revenue Tribunal: The courts under the Revenue Tribunal Act 1974 hear appeals of decisions of district level customs, income tax, and value added tax offices. There are four tribunals, in Biratnagar, Kathmandu, Pokhara, and Nepalgunj. Each three-member tribunal comprises members from three different disciplines: law, taxation, and accounts. The legal representative chairs the tribunal, and is chosen on the recommendation of the Judicial Council from among currently serving judges on the Court of Appeals.

The tribunals reversed or partly reversed a large number of cases in 2008 and 2009, possibly due in part to the failure of revenue officers to follow norms or standards when calculating taxable income. Revenue officials levy taxes to meet annual revenue targets irrespective of whether their decisions will stand on appeal. In 2007, 56.4 percent of cases were sent back to the respective revenue offices for disposition by an ad hoc tax clearance commission — where payables can be negotiated, something that cannot be done at the tribunals (Table 4.4). Appeals from the tribunals can be made to the Debt Recovery Appellate Tribunal in Kathmandu.

Debt Recovery Tribunal: This tribunal, established by the Bank and Financial Institutions Loan Recovery Act 2001, helps banks and financial institutions recover loans. The three-member tribunal has members from law, banking, and accounting. The legal representative, assigned on the recommendation of the Judicial Service Commission from among class II officers of the judicial service, chairs the tribunal. It has a low rate of case dispositions.

4.1.6 Quasi-judicial Bodies
Many government officials, such as the chief district officers, revenue officers, customs officers, land administration officers, forest officers and the wardens of national parks, have some judicial powers. They hear and decide cases of violations of rules or executive orders. However, they are not trained in law, and they have very little knowledge of legal procedures.

The punishments they dispense, however, can be quite heavy, ranging from fines to prison terms of up to 15 years. The National Park and Wildlife Conservation Act 1973, for example, allows the warden of a national park to impose a prison sentence of up to 15 years for poaching and trading in endangered species. The caseloads are quite heavy at some of these agencies. In 2008, it was 33,786 at the land administration offices and 120,470 at the land revenue offices. Local governance bodies also have some judicial powers, but those have yet to come into force.

Generally, the Court of Appeals with territorial jurisdiction hears appeals of decisions of these agencies. Since their staffs are not trained in legal procedures, many decisions are reversed on appeal for failure to follow due process, a violation of the human rights and personal liberties of the accused. Regular inspection visits by appellate judges as required by law can help identify and prevent the procedural lapses at these agencies.

4.1.7 Office of the Attorney General
The Attorney General is the chief legal advisor to the government. The President appoints the Attorney General on the recommendation of the Prime Minister from among individuals qualified to be a judge of the Supreme Court, and the appointee holds office during the tenure of the Prime Minister. The Attorney General (or a subordinate) represents the government in court. Under the 1990 constitution, the Attorney General held the final authority to decide whether or not to prosecute. The Interim Constitution has made this authority conditional.

There is one office of the government attorney, under the attorney general’s office, for every general court.

The Office of the Attorney General and 16 appellate level offices pursue prosecutions on behalf of the government and represent it at the Supreme Court and appellate courts. The Attorney General’s office has 75 district offices for prosecutions and representation in the districts.

As with the courts, the caseload of government attorneys has been increasing (from 26,285 in 2005/06 to 30,974 in 2008/09). The conviction rate at trial courts is 82 to 84 percent. Conviction at the appellate level was 52 to 54 percent. The difference in the rates can be explained by convictions made by quasi-judicial bodies (95% to 98%). District attorneys do not have any role in collecting evidence, and the reason convictions at the appellate level are less frequent is that the District Courts do not use their authority to send cases back for further investigation and collection of evidence.

When he is satisfied with an investigation and the charges recommended by the police,
the District Attorney, under powers delegated by the Attorney General, files cases at the District Court. A decision not to proceed with a case must be approved by the Attorney General through the appellate office for confirming the decision not to prosecute. District attorneys rarely decline to prosecute: it occurred in just 3.4 percent of cases in 2008/09. This highlights the need for district attorneys to demand more thorough investigations and be more selective in accepting cases for prosecution.

The workload per attorney at the Office of Attorney General is over 540 cases per year, while the corresponding ratio at the appellate level is 1:148, and at the district level 1:163. The government spends Rs. 3,450 per case for prosecution, defending the government and representation. This is much lower compared to the costs private citizens pay for litigation through a private lawyer.

4.1.8 Justice administration agencies

Ministry of Law and Justice: The Ministry of Law and Justice is part of the executive. It drafts bills, ordinances and executive orders, reviews and updates existing laws, and conducts research on the legal system and judicial administration. It provides legal opinions to the government and oversees the management of free legal aid, and it edits notices for publication in the Nepal Gazette. A semi-autonomous entity under the ministry, the Judicial Service Training Center, conducts pre-service, in-service, and other short training courses on the law for judicial service personnel.

Judicial Service Commission: The Judicial Service Commission recommends appointments, transfers, and promotions of officers in the judicial service. However, it is the PSC that conducts examinations for appointment of class III judicial service officers. The functions of the Judicial Service Commission include recommending departmental actions and dismissals. The Chief Justice chairs the Commission, which includes the Minister for Law and Justice, a senior justice of the Supreme Court, the PSC chair, and the Attorney General. The Secretary of the Judicial Council is also the Secretary of the Commission.

In 2003, a public discussion program organized by the Commission suggested that the judicial service be consolidated to respond to the needs of judicial, law and government officers. The Commission also recommended avoiding compartmentalization of services that complement each other. A separate service rule, independent of the civil service rule that governs the judicial service at the moment, was also recommended. Since there are major differences in perks, authority, and other service conditions of judges and judicial service officials, serving on the bench remains a major attraction.

Nepal Bar Council: Legal professionals are registered under the Nepal Bar Council Act 1993. The Nepal Bar Council is a policy-making body responsible for conducting examinations for the bar. Lawyers in Nepal are classified as senior advocates, advocates, and pleaders. While senior advocates and advocates may practice in court, pleaders can practice in courts other than the Supreme Court. In 2008 there were 12,329 licensed lawyers, including 976 women. Since then, the number of licensed lawyers has increased to 12,831 in July 2010. However, not all licensed lawyers practice law as only 54 senior advocates and 6,206 advocates had renewed their licenses.

Nepal Police: The police force is a unit under the Ministry of Home Affairs. It was established by the Police Act 1956 to control and investigate crime and maintain law and order. When investigating a crime, the police may, with a court order, detain suspects for investigation. Upon completion of the investigation, the police submit a report and supporting evidence to the district attorney’s office. The District Attorney, if satisfied with the report and the evidence, files a case in District Court. If not satisfied, the District Attorney can direct the police to investigate further. Investigations are arranged through the Department of Crime Control and Investigation. Police officers in the department can be transferred at any time, and this can affect investigations.

Nepal Bar Association (NBA): The NBA is a representative organization of Nepali legal professionals. It was established in December 1956 and later formalized under the National Guidance Act 1961. Government sponsored legal aid activities are conducted through this body, which has 79 units across the country.

National Judicial Academy (NJA): The NJA was established in 2004 to meet the training and research needs of judges, government attorneys, legal officers, private attorneys, and others directly involved in the administration of justice. It works under broad policy guidelines from a 16-member governing council headed by the Chief Justice, and includes a broad range of stakeholders — the Ministry of Law and Justice, the Office of the Attorney General, the law faculty at Tribhuvan University and the Nepal Bar Association, among others. The NJA seeks to increase knowledge and skills to promote effective, efficient, and accessible justice. An executive director heads the NJA, whose faculty members supervise the academic and research programs.

4.3 Administration of Justice

The constitution entrusts the judiciary with the responsibility of protecting the rights of the people and ensuring rule of law. The judiciary prepared a five-year strategic plan in 2004 — the first in its history — which identified 16 strategic interventions, including improving access to justice. The judiciary’s second strategic plan (2010-2014) envisions the institutionalization of information and communication technologies. Many courts already make use of computers in daily operations, and the public can follow the status of cases on the Internet.

Case disposition: Of more than 100,000 cases, old and new, that come up for a hearing each year, half are carried forward, contributing to a growing backlog of cases. The introduction of electronic case management is expected to improve court administration and reduce the backlog. Having successfully computerized the Supreme Court, the program is being extended in phases to the lower courts. The system provides a uniform networked platform for managing case data that allows for clear and simple access to all cases. The system also has information on scheduled hearings.

While recent reform efforts have reduced the backlogs to a certain extent, much needs to be done. The Supreme Court’s strategic plan 2005-2009 called for a 10 percent annual reduction in the backlog, but achieved only about eight percent by the end of the implementation period, largely due to unfilled judicial vacancies. The backlog at
Protecting the human rights: The Supreme Court has issued a large number of habeas corpus writs against illegal detention, especially during the period of violent conflict from 1996 to 2006. It ruled that legal remedies for illegal detention could not be suspended even during a state of emergency. Through rulings on Public Interest Litigation, the court has exercised its independence, issuing judgments protecting personal liberty and human rights, and interpreting constitutional provisions. Judicial review of executive decisions and scrutinizing subordinate legislation for consistency with the constitution are other areas where the Supreme Court has a strong track record. One recent example was the Supreme Court’s February 2006 decision declaring the Royal Commission for Corruption Control (RCCC) void. (King Gyanendra, who began ruling directly in February 2005, had formed the RCCC). That said, there have been other instances where the Supreme Court has been accused of violating the separation of powers by infringing the constitutional authority of the other branches of government.

Corruption in the courts: Despite the public perception of widespread corruption in the courts, an opinion poll in 2002 found that only 10 percent of respondents with personal experience of going to court thought that judges were corrupt. It was different for court officials: 30 percent of these same respondents perceived them as corrupt. The first strategic plan of the Supreme Court agreed that “...the judiciary should develop a system of introspection, an inbuilt system to process allegations, allow ventilation of grievances, rectify mistakes and irregularities, and take action against the black sheep in robes, if there are any.” There have been various reports of corrupting influences on lower court decisions, including manipulating investigations and decisions to prosecute, assigning cases to corrupt judges, and inducing court officials to misplace files to delay hearings.

Informal justice: Nepal has a tradition of participatory justice at the local level. For example, the panchayat, a gathering of five locally well-known persons to adjudicate disputes within communities, was one such system. The Village Panchayat Act 1961 empowered village panchayats to hear petty civil cases, such as those relating to land, property and the use of irrigation waters. The Local Self-Governance Act 1999 also gives mediation and arbitration powers to local bodies, but this provision has not been implemented.

The Nepali judicial system is very procedure-oriented and requires significant time to complete litigation. Nepali courts also face a perennial shortage of resources, which is a reason for several community mediation schemes that are now underway.

Arbitration and mediation are two important informal systems in practice. The former is regulated by separate legislation. Court-referred mediation began in 2002 at selected District Courts, and it was institutionalized in 2006 through amendments to court rules at all levels, including the Supreme Court. Mediation is voluntary, and the courts regularly refer pending cases for mediation in which a trained mediator provides the service. The success rate of mediation in 2010 was 15 percent at the appellate level and 24 percent at the district level. The Supreme Court has plans to establish mediation centers in all districts. The Ministry of Law and Justice is drafting a Mediation Act.

Justice delivery: The first strategic plan of the Supreme Court called for the disposition of applications for execution of judgment within six months or a year at the latest, and reduction of the backlog of pending applications by 15 percent each year. However, in 2008/2009 the balance had increased slightly. Further, over Rs. 4 billion in court fines are still outstanding. The Supreme Court has established a Directorate of Judgment Execution and is developing a central database to expedite collections.

4.4 Accountability Institutions

The Judicial Council oversees appointments, transfers and discipline of judges. The Judicial Service Commission manages judicial service personnel.

The Judicial Council enjoys broad authority over appointments, transfers, disciplinary actions and dismissal of judges. It maintains judges’ personnel records and performance reports. The Council is a five-member body chaired by the Chief Justice and has its own secretariat. The Minister for Law and Justice, a senior judge of the Supreme Court, a senior member of the Bar and an independent lawyer are its members. However, the Council has occasionally been criticized for lack of impartiality among its members.
The other role of the Council is to maintain discipline in the judiciary. Of the 288 complaints lodged against judges from 1991 to 2003, 118 were found baseless upon preliminary investigation by the Council. It took action on 12 cases, and investigation continued on eight. It is unclear if the remaining complaints remained under investigation. There is also a discrepancy in the number of complaints: in 2009, the Council said there were 60 and the Supreme Court 55. The Council has been investigating several complaints alleging corrupt judges. The current draft amending the Judicial Council Act includes a provision for taking action against judges on charges of corruption even after retirement. The Council’s advisory role in judicial administration has largely escaped its attention. Its activities are also hardly noticed by the public after the process of selection and appointment of judges is over.

4.5 Analysis and discussion

Nepal seeks to become a federal, democratic republic, and this will require changes in the structure of many institutions, including the judiciary. The new constitution may guarantee its formal independence, but functional independence can only be established through practice. In the past, the judiciary has maintained its independence, even during the period of royal rule, and it must continue to review executive and legislative decisions with the same vigor in order to consolidate that independence going forward.

The judiciary has made progress towards clearing the backlog of cases, which is vital for increasing access to justice. The introduction of electronic case management platforms and court-facilitated mediation has advanced the process. The switchover to technology has been slow, however, and its effective use will require continual upgrading of systems and effective maintenance of equipment.

The judiciary has made major strides in gender and environmental justice and good governance. Through public interest litigation it has upheld individual liberty and human rights. The courts have issued over 100 writs of mandamus and directive orders, though about 60 percent of them have yet to be executed. There are, however, serious concerns about the disposition of cases at specialized courts, where a large number of cases have been reversed due to procedural errors. Many decisions by quasi-judicial bodies also get reversed for failure to follow correct procedures. These are issues of public concern, and the problems need to be rectified.

Chapter 5
Planning and Financial Management

During the Rana period (1846-1950), the government coffers were under full control of the ruling Rana family, and transactions were generally kept beyond the purview of the general public. However, there were public offices in charge of financial administration: Mulukikhana managed the central treasury; Kousi Tasakhana, the disbursement office, prepared consolidated accounts of expenditures compiled from the district land revenue offices; Kumari Chowk, the auditor’s office, believed to have been established in 1769, checked government income and expenditures based on monthly and annual accounts of public offices. The Ranas also operated customs offices at various border points and at primary bazaars. Kathmandu Goswara, the central office, fixed the annual customs tariffs, while the Madhes Bandobasta Adda did the same for the plains. In 1950, Prime Minister Mohan Shamsher Rana signed a trade agreement with India and abolished the domestic customs offices, and new customs offices were established only in the border areas.

5.1 Revenue administration

The establishment of permanent revenue collection offices in districts in the south was the most important Rana contribution to revenue administration. These offices were the hubs of fiscal administration in the districts. They later emerged as one of the three main pillars of district administration, along with the District Administration Office and the District Court.

Most government revenue came from the land tax, and the rates were based on productivity, irrigation facilities, and geographical location. Land in the hills was placed in four categories, abal, doyam, sim and chahar, while in the Tarai, revenue was collected on the basis of crops cultivated, productivity, and irrigation facilities. Collection of the land tax was contracted out to the village chief. The establishment of Sadar Mulukikhana during Juddha Shamsher’s rule was an innovation comparable to the present day Central Treasury, Financial Comptroller General’s Office (FCGO) and Nepal Rastra Bank (NRB), the country’s central bank.

Nepal witnessed numerous innovations in financial management in the 1950s. Among them, the Interim Government Act of Nepal 1951 established the Financial Working Procedure of government, spelled out the obligation to present the annual budget to the Advisory Assembly, and made it mandatory for all members of the assembly to participate in budget discussions. The act spelled out the royal family’s prerogatives in matters of expenditure, and had a chapter on the appointment of the Controller and the Auditor General.
The first budget of sorts — Rs 50.25 million — was announced in 1951. A proper national budget specifying ‘regular and development’ expenditures was first announced in fiscal year 1956/57. A Finance and Income Department was established after 1950. The Customs Commissioner’s Office was established in 1957, but was later closed down, and a separate Department of Customs and Excise Duty was established in 1963. The Accountant General’s Office under the Ministry of Finance (MoF) was set up in 1951; its primary function was to maintain records of annual income and expenditures, release government funds, and provide training in accounting.

The constitution of 1959 incorporated the concept of fiscal decentralization, and also made provisions for an Auditor General, who was appointed the same year. The Income Tax Act 1962 laid the basis for the system of tax collection. The government introduced the Procedural Regulation for Spending Public Money (1959) to govern public spending. Prior to that, there were no specific rules on how public money could be spent. The government began double entry bookkeeping in 1960.

The Constitution of Nepal 1962 created the Financial Work Procedure Rules, preventing government from levying any tax or obtaining any loan except in accordance with the law. It also required the government to submit the annual budget to the Rastriya Panchayat (legislature). The Payment Accounting System (bhukti shresta pranali) was also introduced at this time. In 1976, the Accountant General’s Office was upgraded to the Financial Comptroller General’s Office, headed by a Special Class officer. A separate civil service cadre of accountants was also created under the Nepal Administrative Service in 1978. The District Treasury and Controller’s Offices (DTCO) were established nationwide after the enactment of the Public Income/Expenditure Working Procedure Rules 1981. The constitution of 1990 provided for an Auditor General.

The Interim Constitution (2007) makes all taxes and loans subject to law, and also incorporated the concept of fiscal decentralization. The Ministry of Finance (MoF) has five departments and seven divisions, including the Financial Comptroller General’s Office (FCGO), the Department of Customs, the Inland Revenue Department and the Revenue Administration Training Center. These institutions are also involved in the budgeting process.

### Development planning

Development planning is the responsibility of the National Planning Commission (NPC), the National Development Council (NDC), MoF, and the line ministries. These institutions are also involved in the budgeting process.

**National Planning Commission:** The NPC is chaired by the Prime Minister and is the main body responsible for formulating development policies and preparing periodic and annual plans. In addition to exploring internal and external resources and approaches to development, the NPC also provides assistance and advice to other government bodies in formulating, implementing, monitoring and evaluating policies and programs. The NPC has a vice chairperson and seven members, all appointed by the government. The Chief Secretary and Secretary of Finance are ex-officio members. The secretary at the NPC is the member secretary of the planning body.

#### Laws on revenue administration

<table>
<thead>
<tr>
<th>Box 5.1</th>
<th>Laws on revenue administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customs Acts and regulations</td>
<td>1. Customs Act, 2004</td>
</tr>
<tr>
<td>2. Customs Regulation, 2004</td>
<td></td>
</tr>
<tr>
<td>4. Finance Act, 2005</td>
<td></td>
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<tr>
<td>2. Income Tax Rules, 2002</td>
<td></td>
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<tr>
<td>2. Value Added Rules, 2005</td>
<td></td>
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<tr>
<td>Excise Act and Rules</td>
<td>1. Excise Act, 2004</td>
</tr>
<tr>
<td>2. Excise Rules, 2004</td>
<td></td>
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<tr>
<td>Revenue Investigation Act and regulation</td>
<td>1. Revenue Tribunal Act</td>
</tr>
<tr>
<td>2. Special Courts Act, 2003</td>
<td></td>
</tr>
<tr>
<td>3. Foreign Exchange Regulation Act</td>
<td></td>
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<td>3. Public Procurement Act, 2006</td>
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</tbody>
</table>

The vice chairperson heads the Resource Committee of the NPC, which allocates resources for achieving the targets set by periodic plans. This committee includes the member in charge of the macro-economy, the Chief Secretary, the Finance Secretary, the Governor of Nepal Rastra Bank and the Financial Comptroller General as its members, and provides necessary budgeting guidelines and direction to other government bodies through the NPC.

**National Development Council:** First established in 1972, the NDC is a broadly based body that evaluates development plans and provides planning directives to the NPC. The NPC and MoF, in consultation with other ministries, identify national priority projects and programs, which are reviewed periodically by the NDC. The Prime Minister is the chair of the NDC. The membership includes ministers, state ministers (lower than ministers in terms of hierarchy), parliamentary party leaders, parliamentary committee chairs, NPC members, the central bank governor and 35 individuals nominated by the NPC to represent people from different walks of life.

**Ministry of Finance (MoF) and line ministries:** The MoF is the nation’s financial manager, with oversight of revenues and expenditures, and responsibility for maintaining a stable economy. Its functions include mobilizing and allocating resources, managing public investments and expenditures and strengthening the productive capacity of public enterprises. The MoF has five departments and seven divisions, including the FCGO, the Department of Customs, the Inland Revenue Department and the Revenue Administrative Training Center. The line ministries, working with the MoF, are responsible for planning and financial administration. They formulate annual estimates of income and expenditures in accordance with the objectives of the periodic plans.
5.2.1 The Budget Process

The Resource Committee of NPC initiates the budget process for the upcoming fiscal year by assessing the resources available for the development budget, based on revenue estimates, forecasts of foreign loans and grants, and the potential for borrowing. The NPC then prepares the budget preparation guidelines, taking into consideration the periodic plan, the Three-Year Expenditure Framework and the government’s international commitments. This guideline is sent to the ministries. Every year by December, the MoF provides the ministries with a budget ceiling, on the basis of which each ministry is required to prepare and submit its proposals for recurring and capital spending by March.

Representatives from the NPC and MoF discuss the submissions with the ministries, including specific line items, while also scrutinizing whether or not their capital budgets are consistent with the objectives of the periodic plan. The budget is sent to the Cabinet after the MoF scrutinizes the regular budget demands. The procedure is completed in four to six months between December and June.

After receiving Cabinet approval, MoF submits the annual estimate of revenue and expenditures for the upcoming year to the Legislature-Parliament in accordance with Article 93(I) of the Interim Constitution. The estimates are presented towards the end of the fiscal year, normally at the end of June or the first week of July. On the first day of the new fiscal year (the first day of the Nepali month of Shrawan, usually July 16), the parliament passes an advance bill to meet ongoing expenditures. The DTCOs, at the request of line offices, release their advance budgets, but these do not exceed one-sixth of the total expenses of the preceding year. The parliament discusses the budgets of all sectoral ministries before approval. Chart 5.1 illustrates the budgetary process.

5.2.3 Budget Implementation Process

At the beginning of the new fiscal year, upon approval of the budget by parliament, the MoF issues a source book. The source book documents the sources of funding for projects, detailing cash or in-kind grants, loans or direct payments, along with the budget headings and allocations. It also states the government’s counterpart fund (or the allocations it makes to match donor support to projects), if any.
In accordance with the Financial Procedure Act 1998, the Finance Secretary issues a fund warrant letter — a delegation of authority to spend — to all secretaries, along with the approved budget for spending, in accordance with the Financial Procedure Rules 2007. The fund warrant letter details the budget lines, specifying which funds are from the government or from donor agencies.

Under the Financial Procedure Act 1998, the secretary is a ministry's chief accounts officer. The secretary issues fund warrant letters to department or project chiefs to enable them to authorize their subordinate offices to spend the funds. A copy of the letter is also sent to the Auditor General's Office and the concerned District Treasury Control Office (DTCO) to facilitate budget release within the provisions of the warrant letter. It is the responsibility of the heads of offices to spend the budget in accordance with the prevailing law and to get the expenses audited.

Much of the government's budget for recurring and capital spending that is allocated to specific programs is documented in what is known as the Red Book. The MoF also retains a lump sum as unallocated funds to be allocated after the government decides spending on particular programs.

The fund warrant letter is supposed to reach districts at the beginning of the fiscal year, but there have been numerous cases where it was sent six or seven months late. As an extreme example, the fund warrant letter for an irrigation program, amounting to Rs. 30 million, was sent to the DTCO, Dang, on July 11, five days before the end of the fiscal year.

5.2.4 Financial Comptroller General's Office (FCGO)

The FCGO is the department of the MoF responsible for overseeing all government expenditures and consolidating annual financial statements. It also tracks revenue collection and computes other receivables, releases budgeted funds to government agencies on a quarterly basis, and carries out their internal audits through the DTCOs. The FCGO manages four divisions and 14 sections, two central level offices and 75 DTCOs.

The FCGO is required to submit an annual consolidated financial statement of the government to the Auditor General's Office, along with a description of the total expenditure, amount of budgetary transfer (virement), and the position of the government treasury.

As a comptroller of government accounts, the FCGO grants permission to open imprest fund accounts and other necessary government accounts. Similarly, it directs DTCOs on the release of foreign-aid funds, and releases government funds for projects implemented on a reimbursement basis, usually for loan-funded projects. DTCOs cannot disburse budgets without the authorization by the FCGO.

The DTCOs monitor the expenditures of the line offices. There are about 4,000 fund disbursement centers scattered across the country that are responsible for administering the budget within their units. The government has implemented the Treasury Single Account system on a pilot basis in some districts to improve the management of funds and to help reduce the deficit. Under this system, DTCOs are to make all payments of the line offices within two hours of receiving payment orders along with necessary documents needed for fund release.

5.2.5 Nepal Rastra Bank

Established in 1956, the NRB is the country's central bank and is responsible for ensuring monetary and financial stability in coordination with the MoF. A committee chaired by the Minister of Finance recommends the appointment of the governor of the central bank. NRB's main functions include issuing currency, formulating and implementing appropriate monetary policy, formulating and implementing a foreign exchange policy and determining a foreign exchange system, managing a foreign exchange reserve, issuing banking licenses, regulating commercial banks and financial institutions and serving as their banker, functioning as a banker, advisor and financial agent of the government, and establishing, promoting and regulating the system of payment, clearing and settlement.
5.3 Government Revenue

In 2010, Nepal had 30 customs offices, 143 sub-customs units, 23 Inland Revenue offices and 13 service centers. The customs administration collects customs duty, Value Added Tax (VAT), and excise and others taxes at border points, accounting for about 40 percent of total revenues in 2010. Customs duty contributed about 22 percent of total tax receipts. The revenue collected is enough to pay for more than 50 per cent of the total outlay of each periodic plan.

The government introduced the VAT in 1997 to replace the sales tax, hotel tax, contract tax and entertainment tax, and VAT is today the main source of revenue. The threshold for registering for VAT is Rs 2 million. In fiscal year 2009/10, the government began encouraging taxpayers to obtain Permanent Account Numbers (PAN). By December 2009, 50,763 individuals had obtained PANs. Efforts have continued to broaden the tax net, which now includes real estate transactions. Similar efforts have been undertaken to make customs administration more efficient. The government has recommended setting up a central revenue board as part of ongoing efforts to reform revenue administration.

The major challenges in revenue collection include low collection of taxes, the inability of government to increase the effectiveness of health and education taxes, unscientific customs valuation, non-issuance of bills and receipts, undervaluation of goods and services, evasion of excise duties, and lack of coordination between revenue collection entities. As indicated in the section on the judiciary, case disposition at revenue tribunals is also an area that needs improvement.

5.4 Monitoring and Control Mechanisms

There are a number of provisions in the Financial Procedure Act 1998 that specify the procedures and accountability for budget release. The act makes the secretaries, department chiefs and other authorities responsible for financial administration. The Financial Procedure Act 1998 and Financial Procedure Rules 2007 lay down several control mechanisms, such as the procedures and accountability for virement and the clearance of audit objections, as well as specifying the functions of the FCGO and DTCOs.

5.4.1 The Audit System

Internal Audit: All 75 DTCOs periodically report to FCGO and the Auditor General’s Office the budget amount released and spent in the stipulated month or period. According to the Financial Procedure Rules 2007, the DTCOs and the Funds and Account Comptroller’s Office must regularly carry out internal audits of all government offices.

Final Audit: The Interim Constitution provides for appointment by the President of an Auditor General to ensure proper use of public funds. Separate rules, regulations and legal provisions govern the Auditor General’s Office, particularly the Audit Act 1991. The responsibility of the Auditor General’s Office is to enhance good governance through accountability and transparency in the public sector. Its mission is to provide trustworthy, effective and independent auditing for efficient use of public resources. Article 123 of the Interim Constitution empowers the Auditor General’s Office to audit the accounts of all public agencies within the executive, legislature and judiciary. The government is also required to consult the Auditor General before appointing auditors to corporate bodies of which it owns more than 50 percent. By law, the accounts of all public agencies must be available for scrutiny by the Auditor General’s Office at any time.

The Auditor General submits the report of the audit to the President, who then sends it to parliament through the Prime Minister. In parliament, the Public Accounts Committee is entrusted with scrutinizing public spending and accounts. The Auditor General and officials from the office concerned are also invited to PAC discussions of the audit report. (See Box 3.4)

5.5 Conclusions

Nepal has policies and laws in place to ensure proper use of public funds, but they are often ignored in practice, as documented by the annual reports of the Auditor General. And while the budgeting process is straightforward, new programs and projects originate too often in departments/ministries. Mechanisms intended to reflect local aspirations and exploit local knowledge by involving local bodies in the planning process have remained largely ineffective.
Chapter 6
Local Government Institutions

The Local Self Governance Act (LSGA) 1999 is the basis for Nepal’s two-tier local government system. But the local bodies have been without elected representatives since May 2002, when the terms of those elected in 1998 expired. As a stopgap measure, successive governments began appointing local officials, and this practice has continued. (An attempt was made to hold municipal elections in 2005, but the political parties, who feared being sidelined by the royal regime, opposed it.) In 2008, the government formed All Party Mechanisms (APMs) to make local decisions, but they were dismissed in January 2012 amid charges of widespread misuse of local funds.

The LSGA seeks to promote people’s participation in governance through representative democracy and decentralization of authority. It establishes the institutional mechanisms needed for local self-governance and for making the bodies accountable to the people they serve and represent. Because there have been no local elections since 2002, the local institutions that were put in place to take democracy to the doorsteps of citizens have instead become an extended arm of the government under the direction of the MoLD.

6.1 Local Governance Structure

The LSGA establishes the structure of local government institutions (LGIs). The council is the supreme deliberative body. The council formulates and approves policies, programs and budgets, periodic and annual plans, staffing, audit reports, taxes, fees and service charges, etc. The committee is an executive body that implements the decisions of officials to the committee who are elected periodically. Between elections, the VDC (Local Development Officer) at the DDC — all central government officials — carry out the functions of both the council and the committee.

Under the LSGA and Regulations, local bodies may form committees for various purposes. Principal purposes include managing plans and accounts, recruiting, subject-matter/sectors and integrated development matters. In addition, there are district level committees with broad monitoring, supervision and coordination functions, which are generally chaired by elected officials. In their absence, they have been chaired by local officials.

6.2 Roles and Responsibilities

The LSGA enumerates the tasks and responsibilities of DDCs, municipalities and VDCs. In general, they perform most of the functions that the central government performs at the national level, but with a local focus — the DDC on the district, municipalities on urban centers, and the VDC on the village.

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6.3 Local development planning and implementation

All local bodies are required to prepare five-year and annual plans. The LSGA and Regulations provide for a bottom-up planning process for local bodies at each level, starting at the settlement level. The planning cycle follows a time-bound, 14-step process.

For the DDC, the planning process takes into account a number of factors: resources such as internal funds, grants, sectoral and other resources (including those provided by NGOs), comparative advantages, assistance to disadvantaged and marginalized groups, national targets and objectives, directives of the MoLD, NPC and other sectoral agencies, and plans of the village and municipal councils. The DDCs are also responsible for formulating and implementing programs in four sectoral areas that have been devolved — agriculture, livestock, health and education.

The planning cycle involves many processes, such as setting priorities, resource mapping, feasibility studies, coordination between DDC, government and NGOs, guidelines from the NPC, long-term vision of the periodic plan, MDG targets, requirements of

Box 6.1 Functions of local bodies

- The VDC is responsible for 48 functions under 11 headings: agriculture, rural drinking water, construction and transport, education and sports, irrigation, soil erosion and river control, physical development, health, forest and environment, language and culture, tourism and cottage industry, and some others under the heading ‘miscellaneous’.

- Municipalities have 68 different functions. These include finance, physical development, water resources, environment, and sanitation, education, sports and culture, works and transport, health, social welfare, industry and tourism and under the heading ‘miscellaneous’. In addition, it has 13 ‘optional’ functions.

- Likewise, the LSGA specifies 48 functions of the DDC: agriculture, rural drinking water and settlement development, power, works and transport, land reforms and land management, women and disadvantaged people, forest and environment, education and sports, wage labor, irrigation, soil erosion control and river training, information and communication, language and culture, cottage industry, health and tourism.
relevant acts, rules and policy directives, etc. The planning involves activities ranging from need identification to post-implementation management, maintenance and repair and administration of completed projects. The process also involves mechanisms and procedures for inspection, review, supervision, monitoring, evaluation and handover of completed projects or programs. The plans are available to the public at the DDC information and documentation centers (Box 6.2).

6.3.1 Inclusion in Planning
The planning regulations require the process to include all stakeholders, but in practice, the planning meetings at the DDCs and VDCs generally have low participation by representatives of marginalized groups. Since 2006, officials have made greater efforts to be inclusive, but local planning functions remain largely unrepresentative in the absence of elected officials to lead the process.

NGOs participate actively in local planning. Their activities are generally aligned with the development plans of local bodies. They obtain resources from the local bodies for mobilizing communities for development activities, and also mobilize external or donor support for implementing their interventions. The local plans provide room for both types of activities — those funded through local resources and those carried out with support of outside donor agencies.

6.4 Structures for Service Delivery
The government delivers various public goods and services through local bodies and field units of sectoral ministries. The local bodies provide various services locally, and they also facilitate delivery of public services from the center.

The citizens’ charter posted in Dolakha DDC says it provides 24 kinds of services, and it states seven requirements that people must meet to secure them. The services provided include certification and renewal of registrations and recommendations needed for different public services; services related to programs, activities and grants; auditing, human resource and capacity development services; services related to information, statistics and data; institutional financial assistance; resource mobilization, and social security services. (VDCs are also required to display their charters to assist service seekers, but many VDCs visited during the field study did not display them prominently. At one VDC it was kept inside the office of the VDC secretary, defeating its very purpose).

6.5 Program implementation
The LSGA, its rules and the financial regulations detail the process for managing programs and projects. Generally, programs and projects are implemented through user committees. The LSGA also requires the involvement of NGOs in the implementation, operation and maintenance of programs. However, depending on the nature and size of a project and the technology used, infrastructure-building activities can also be contracted out. Existing provisions require that programs implemented by other agencies be handed over to local bodies, and that the programs be operated and maintained as specified by the agreement between the local bodies and the implementing agencies. In practice, NGOs are not always involved and where they are their selection is not transparent.

6.5.1 Financial Resources
The LSGA envisages three categories of local resources: (i) local revenue, (ii) grants, and (iii) allocations from sectoral ministries, particularly for devolved sectors — agriculture, livestock, health and education. Grants from the MoLD and the DDC provide the major part of the VDC budget.

Studies of the resource structure in three DDCs — Dolakha, Lalitpur and Dang — showed that land registration, taxes and fees for local natural resources were the major components. Relying extensively on these resources can result in environmental problems if they are not managed properly. During focus groups, the participants said the lack of political will was a major obstacle to the use of more reliable taxes and fees that local bodies are authorized to collect, such as the house tax and other direct taxes. The VDCs in general have few or no locally generated resources.

All local bodies receive grants from the center, which are a major part of their budget. In 2009/2010, the government allocated over Rs. 1 billion to DDCs. The MoLD has developed minimum conditions and performance measurement criteria (MC/PM) to ensure fair distribution of these resources among the local bodies. All local bodies receive an initial grant equal to 35 percent of their total allocation under the development budget.
of the MoLD, and the remainder is disbursed based on their performance and success in meeting minimum conditions. The best performing local bodies receive an additional 30 percent over their original allocation, while the worst performers forfeit 20 percent. In 2009/2010, 17 DDCs and 28 municipalities failed to meet MC/PM criteria, and forfeited portions of their allocations.

6.5.2 Flow of Funds
The MoLD, after receiving spending authority from the MoF, authorizes the DDCs and municipalities to spend the grants. At the district level, the DTCO releases the budget to the DDC. For the VDC budget, the DDC — through the Local Development Officer (LDO) — requests the DTCO to the release the budget. Capital grants to local bodies have to be used the same year.

The DDC has a District Development Fund (DDF) where all devolved sector budgets are received directly from the MoF. The financial authorization letters for devolved sector funds are sent to the LDO from the various ministries overseeing the programs. The LDO authorizes the sectoral district offices to operate the funds in accordance with the guidelines of the respective ministries and departments. The district office requests release of the fund through the LDO. The DDC is responsible for keeping accounts and carrying out internal audits of spending.

There are provisions for setting up an internal audit section at the DDC. This unit is also responsible for auditing VDC accounts. The Attorney General’s Office conducts the final audit of DDC accounts. A DDC appointed auditor audits the VDC accounts. The Councils of local bodies have authority to issue directives for settling irregularities in the audit reports. District level sectoral offices are required to hold public hearings on budget status and audit reports.

The ministries also implement sectoral programs through field offices, with or without the support of local bodies. Every year, substantial resources are channeled to the districts for NPC-approved sectoral programs. Such central level sectoral programs generally involve more than two districts, are highly technical or research-oriented and are designed to implement central level policies.

6.6 Administration and management
The local bodies can design their administrative/organizational structures according to their needs, workloads and means. However, most DDCs work with a uniform basic structure prescribed by the MoLD. In Dolakha, Lalitpur and Dang Districts, the DDCs had fairly well developed organizational structures clustered around functions related to administrative and technical programs, and accounting/financial management. The LSGA envisages that the DDCs will have more locally relevant structures. Generally, the VDCs have no formal administrative structures. They operate with very small staffs, or even as one-person offices. The VDCs visited during the field study had three to five staff members.

6.7 Local Government Staffs
The composition of the staff in local bodies is as follows;
- The central government appoints and pays a category of staff under the Civil Service Act and Rules. Secretaries of local bodies, accountants and some technical and administrative staff fall in this category. In Dang, Dolakha and Lalitpur DDCs, there were six, three and four centrally appointed staff members, respectively. During the armed conflict, many VDC secretaries in rural areas abandoned their workplaces, and in some cases they are still operating from the district headquarters.
- The local bodies hire staff locally, and they are governed by the LSGA and Rules. The Councils determine their positions, benefits and remuneration, and they are paid from local revenues and grants. The number of such staff in Dang, Dolakha and Lalitpur were 44, 51 and 41, respectively. Staffs in this category have limited opportunities for transfer and promotion. They may be permanent employees or contractors.
- The DDCs also have staffs working under sectoral ministries but they work under the direction of the DDC. Upon full enactment of the LSGA, these are to come under the DDC.
- Local bodies can create program and contingency fund staff positions. They are assigned for specific programs such as the Local Governance and Community Development Program (LGSDP). They work under contract for the duration of the project.

6.7.1 Issues of Staffing
The issues related to staffing at the local bodies are: (i) pressure to maintain salaries, perks and service conditions at par with those of central government staff, (ii) a paucity of competent, technically trained human resources at the local level, (iii) lack of decent housing for staff from outside the district, (iv) discord between centrally deployed and local staff, (v) misplaced accountability, (vi) political patronage and politicization of local staff, (vi) lack of adequate resources and logistical support, (vii) lack of motivation and training, (viii) lack of opportunities for career development, and (ix) failure to establish a Local Government Service Commission for recruiting staff at the local bodies. High turnover among central government staff (particularly LDOs), flight of VDC secretaries owing to threats and security issues, heavy politicization of staff, and the absence of elected representatives are some key factors that have hurt the effectiveness of the local bodies.

6.7.2 Capacity Development
DDC staff, VDC secretaries and members of the APMs (now dissolved) in Dolakha, Lalitpur and Dang Districts and other communities have been trained and orientated under the LGCDP. Some training is also done using money specifically allocated in annual program budgets. For instance, in 2009/2010, some communities in Gotikhel VDC participated in various skill development programs using 15 percent of the total budget.
budget allocated for marginalized communities. Similarly, Kavre VDC decided give APM members an orientation on central ministry guidelines.

The Local Development Training Academy provides training to members of local bodies. One training institute is located in Kathmandu Valley, the centre, and there are five Rural Development Training Centers, one in each of the five regions. Training is also conducted through the two Women Development Training Centers, and an Urban Development Training Center. However, the training centers have had no elected officials to train since 2002.

### 6.7.3 Monitoring, Supervision and Coordination Mechanism

The LSGA provides for a Decentralized Implementation and Monitoring Committee (DIMC) chaired by the Prime Minister. Its function is to monitor the performance of local bodies in line with the provisions of the LSGA. There is a ministerial level working committee of the DMIC under the MoLD. These committees coordinate all government, non-government and private sector organizations that support local institutions. A parliamentary committee, as provided by the LSGA, is also authorized to monitor and supervise local bodies as needed.

There are sectoral committees at the DDCs that are responsible for recommending annual sectoral plans. They also hold review meetings each trimester. The LSGA also provides for a coordination committee at the district level, made up of heads of subject/sectoral areas and coordinators of service centers.

### 6.8 Autonomy of Local Bodies

The local bodies are autonomous entities. However, in practice, they only have autonomy for administration and management. Major technical and budgetary decisions at the sectoral agencies rest with the ministries and not the district level offices. Central government staff function under the local bodies, but administratively, their loyalty lies with the central ministries and departments. The local bodies have no authority for deputing or transferring the secretaries or other centrally appointed staff of local institutions.

The secretary at the local bodies is also the administrative chief, and therefore has control over the staff. By implication, the central government has operational and administrative control of the local bodies. The staffs at the local bodies and sectoral offices also remain directly under the respective ministries and departments in the absence of a separate law governing employment at local bodies. This makes all sectoral staffs at local bodies primarily answerable to the ministry or department.

### 6.9 Conclusions

The local bodies have remained central actors in local development and service delivery in Nepal. Even though their mandate has remained unchanged since before 2002, government officials — assisted by APMs after 2008 — have essentially run the local bodies since the political mechanisms were dissolved. The participants at focus group discussions at the DDCs and VDCs said the decisions of local bodies (particularly those of the APMs) were not transparent, there was a lack of focus in development programs, which were essentially compromises, and that there was very little local ownership. The political appointment of decision makers had made them unaccountable locally, giving rise to corruption.
Chapter 7
Conclusions

This section summarizes key findings from our research on the current state of government and governance in Nepal. Without making specific recommendations, we have pointed to a set of “openings” for reforms to make government more responsive and accountable to its citizens.

The discharge of its duties by government affects all citizens. In low-income countries such as Nepal, how the government allocates resources, how it implements programs, which citizens are privileged by the system and who gets marginalized all matter a lot. Equally important is how political representation is realized and incorporated in policies, implementation of programs and the allocation of resources. The pursuit of equity and efficiency in the business of government should be no less important than other human enterprises; it is especially important for governments themselves.

As with many governments across the world, Nepal’s does not deliver all the goods and services required by its citizens. Other players, including private, social, religious and philanthropic organizations, fill the gap created by government’s resource constraints and inefficiencies. The government, however, enjoys an unrestricted monopoly on taxation, legislation and the use of force, and therefore must be considered the principal guarantor of state security, the rule of law, economic prosperity and development, human rights, freedom and justice. The primary responsibility for attaining greater welfare for all citizens lies squarely on the government, even as it may employ means and processes that involve outside actors and agencies.

Starting from these two reference points — government as an agency that needs to be equitable and efficient, and one that is primarily responsible for achieving greater welfare for all its citizens — we explore the following four structural and cultural weaknesses in the government of Nepal.

A legacy of control: Nepali government has evolved, and is still struggling to emerge, from a mindset of control that underlies its genesis. Historically, the government was conceived as a tool for controlling territory and managing citizens rather than serving them. This legacy is still deeply rooted in the Nepali government, and undercuts efforts to modernize and democratize internal procedures and functions. In spite of several reform commissions instituted since the mid-1950s, certain cultural and structural traits have remained ingrained in the system.

One is the jagir mentality, where bureaucrats historically received land grants for helping rulers control the people, not for serving them. If, in the past, the officials served the rulers, in democratic Nepal, the bureaucracy is expected to demonstrate undivided loyalty to political parties and partisan actors, who are in turn expected to reward that loyalty through modern forms of jagir — promotions, postings in “lucrative” positions, and other favors that meritocracy would deny. This subservient attitude has kept the bureaucracy weak in the impartial application of procedure that is a cornerstone of a just government.

The jagir mentality also shapes the way the bureaucracy handles information. The government’s innate propensity to protect information dates back to the age when the autocrats who ruled the country did everything in their power to shield information from the public. In every office of the government, including those in remote districts, the gopya (secret) stamp is used frequently on documents as ordinary as routine internal memos between two offices. Nepal’s Right to Information Act, which is less than five years old, is thought to be too liberal in protecting the right of citizens to know what their government is doing. In early 2012, there was an effort to repeal sections of the act to exclude even information pertaining to open bidding in public procurement. Laws as basic as the Government of Nepal Business Transactions Regulations remain officially a “top secret.” The equivalent regulation for the Government of India can be found posted on a government website.

As in the medieval era, there is a preoccupation with the structure of the bureaucracy in all discussions of “reform” within the government. The legitimacy of control-focused procedures, which are at the root of the inefficiencies seen in government, is rarely questioned. In a country that takes a minimum of a week and sometimes several months to issue basic legal documents such as citizenship certificates and passports, the service aspect of the function of government has yet to enter the discussion as a problem to be rectified. The two administrative reform commissions formed after 1950, for instance, offer a plethora of recommendations to improve the bureaucracy, without ever entering into an analysis of just what the net time and cost burden to the citizen to acquire routine services from the government should be. Modernization of the bureaucracy in Nepal should thus start by questioning its role and purpose, rather than by contemplating on how to restructure it.

Centralization: The centralization of authority in Nepal is more than a procedural problem, and is rooted in its history and culture. As stated earlier, Nepal’s officials were never designed to serve the people, but to control them. This tendency is compounded by the fact that Nepali institutions, in general, are hierarchical and centralized. Whether one looks at businesses or political parties, open, egalitarian and decentralized management systems are a rarity in Nepal. This has become almost a fact of life, and perhaps it is unrealistic to expect the culture of government to differ radically from the general culture of the society it serves.

Nepal was a monarchy until 2008, and two-and-half centuries of monarchy, no doubt, contributed to the culture of centralization. Since the abolition of monarchy, the reality in Nepal is that the political parties have become the torchbearers of centralized government control. The Constituent Assembly, for instance, often defies its own Rules of Procedure and refers critical decisions on key issues to the “top leaders of the three major parties;” at the time of this writing, the phrase “top leaders of the three major parties” was being used not only to portray how decisions on crucial matters are made in Nepal, but who within the party calls the shots. To cite another example, the list of party candidates for elections —
the “ticker” — is decided, not at the constituency level by party units or bodies, but by party headquarters. Even basic determinants of elections such as electability or popularity with the constituency get routinely trumped by attributes such as loyalty or family relations in deciding the fate of political activists. This results in tight and centralized control of political parties, from Kathmandu right down to remote rural villages.

The call for decentralization in Nepal is perhaps as old as the history of centralization in Nepal. The LSGA is but one inadequate attempt to decentralize the Nepali government, its impact blunted by the general culture of centralization that pervades the ministries. The official who controls the district resources under LSGA — the LDO — for instance, is a staff member of the Ministry of Local Development who answers to the Secretary of the Ministry, who, in turn, serves at the pleasure of the Minister of Local Development. The LDO’s leave applications, performance evaluations and transfer letters are all signed in Kathmandu. Why would the LDO feel any pressure for downward accountability to the district under these service conditions?

Political interference is often cited by the Nepali bureaucracy as a reason for failing to function impartially and efficiently in spite of the elaborate systems and procedures put in place to prevent personal biases in decision making. Politicians, on the other hand, often cite bureaucratic “inefficiencies” as a reason to interfere in routine matters of government. In a way, both the bureaucrats and their political masters appear concerned that the citizens are being underserved. Yet despite a rhetorical convergence on the broader goal of serving the people better, the two sides do not collaborate in designing a system that works without their direct control over the internal processes. It is difficult to imagine a functionally devolved system working efficiently across a vast geography when it depends so heavily on the input of an individual at the very top. This remains a key problem of Nepali government.

**Perfecting procedures vs. perfecting implementation:** Administrative procedures are often crafted to make them as perfect as possible. They often ignore the resources, capacities, and individual commitments needed to implement them at a reasonable level of effectiveness. Nepal’s system of administration has managed over the years to adopt rules and regulations for the government and bureaucracy that are more or less comparable to those in the developed world. But effective implementation has not followed. The Nepal Police, for instance, are responsible for 1,085 distinct functions ranging from disaster response to ferrying question papers for school exams. In the name of devolving authority, the LSGA has mandated the VDCs to conduct 48 development activities, including starting primary education in the mother tongues and developing and promoting herbal medicines. The inclusion of unfunded mandates in the terms of reference or list of responsibilities of government offices is endemic in all ministries. This discord between what regulations and directives require, and what government offices are actually funded to do, remains irreconcilable in almost all offices.

**Lack of decision making authority:** In the Nepali bureaucracy, delegation of authority horizontally among offices and bureaus at the same level of government exists to some extent, but devolution of authority — delegation downward — does not. Authority is delegated in writing (less often) or verbally on procedural matters, but rarely includes decision making power. In most offices, particularly at the district levels where the direct interaction of citizens with the government actually occurs, there is a bakim (“boss” — a term from the Moghul administration of India) and the rest of the staff work “as directed” (lagaye anaye ko kaam garne). Job descriptions for each staff member in the office are rarely spelled out, and performance evaluations reflect, not successful fulfillment of the terms of service, but success at assigned activities. The office becomes dysfunctional during even short vacancies at the top — during official leaves, for example, or between transfers. In a situation where officials rarely complete the mandated minimum two years in any post, the resulting instability and dysfunctionality of government offices can well be imagined.

**An opportunity to change:** As part of the state-building efforts underway since 2006, Nepal now has a rare opportunity to take a fresh look at the bureaucracy and consider its reform, taking into account the apparently overwhelming support for a federal system. Since devolution is, again, at the heart of the federal purpose — not ignoring, of course, the petty political interests that are also embedded — the state-building opportunity that Nepal has before it can be used to fundamentally restructure traditional institutions and expunge centralization once and for all. This is also an opportunity to look at the problem of reforming public administration with an emphasis on inclusion, to end the traditional predominance of the culture and values of certain groups, and restructure the bureaucracy in a manner that serves and facilitates rather than administers and controls. This restructuring of the bureaucracy can also create new opportunities, as the bureaucracies designed to serve the federal units can compete against each other in achieving efficiencies and effective structures.
This opportunity to restructure the bureaucracy is also a time to be watchful. Care must be taken that the provincial bureaucracies do not simply duplicate the structure of the centralized behemoth that now exists, and instead create multiple hierarchies to support effective devolution and create more opportunities for the state and citizens to interact and advance. In terms of implementation, it is opportune that the restructuring of the Nepali state is taking place in the 21st century, a time of tremendous new opportunities that the information economy has brought to society. Information technology promises new efficiencies and effectiveness in officialdom.

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8. The Civil Service Act 1956, and 1993
9. The Civil Service Regulations 2021 (BS1964) and 1993
10. The Financial Procedure Act BS2055 (English)
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B. Public Documents
1. Supreme Court, Annual Reports BS 2004/05 to 2008/09.
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Annexes

Annex 1: List of government agencies

Ministry of Agriculture and Cooperatives
- Agriculture Department
- Animal Services Department
- Department of Food Technology and Quality Control
- Department of Livestock Services

Ministry of Commerce and Supplies
- Department of Commerce

Ministry of Defense
- Office of the Defense Account Controller

Ministry of Education
- Center for Technical Education and Vocational Training
- Curriculum Development Center
- Department of Education
- Higher Secondary Education Board
- Janak Education Material Center
- National Center for Education Development

Ministry of Energy
- Department of Water Induced Disaster Prevention
- Electricity Development Board

Ministry of Environment
- Department of Hydrology and Meteorology

Ministry of Federal Affairs, Parliamentary Affairs, Constitutional Assembly and Culture
- Department of Archaeology

Ministry of Finance
- Department of Customs
- Department of Inland Revenue
- Department of Revenue Investigations
- Office of the Finance Controller General

Ministry of Foreign Affairs
- Department of Hospitality

Ministry of Forests and Soil Conservation
- Department of Botany
- Department of Forests
- Department of Forest Research and Survey
- Department of National Parks and Wildlife Conservation
- Department of Soil and Water Conservation

Ministry of General Administrations
- Civil Service Personnel Records

Ministry of Health and Population
- Department of Ayurved
- Department of Drug Administration
- Department of Health Services

Ministry of Home Affairs
- Department of Immigration
- Department of Prison Managements
- Police Headquarters

Ministry of Industry
- Department of Cottage and Small Industries
- Department of Industry
- Department of Mines and Geology
- Department of Nepal Bureau of Standards and Metrology
- Office of the Company Registrar

Ministry of Information and Communications
- Department of Information
- Department of Postal Services
- Department of Printing

Ministry of Irrigation
- Department of Irrigation

Ministry of Labor and Transport Management
- Department of Transport Management

Ministry of Land Reform and Management
- Department of Land Reform and Management
- Department of Survey

Ministry of Local Development
- Department of Local Development
- Agriculture Roads

Ministry of Physical Planning and Works
- Department of Roads
- Department of Urban Development and Building Construction
- Department of Drinking water and Sewerage

Ministry of Tourism and Civil Aviation
- Civil Aviation Authority of Nepal, Central Office

Ministry of Women, Children and Social Welfare
- Department of Women Development

(Source: Nijamati Kitab Khana, PIS, October 2010.)


Note: This list does not include offices of the Army and Armed Police Force.

Regional offices

Agriculture Training Center
Agriculture Directorate
Account Controller Office
Administration Office
Animal Services Directorate
Animal Diseases Research Laboratory
Animal Diseases Prevention Laboratory
Animal Service Training Center
Appellate Court
Ayurved Health Directorate

Communication Centers
Educational Directorate
Forest Directorate
Forest Training Center
Food Technology and Quality Control Office
Health Services Training Center
Health Services Directorate
Irrigation Directorate
Medical store
Plant Quarantine Office
Plant Protection Laboratory
Postal Directorate
Public Health Laboratory
Roads Directorate
Revenue Legalization
Seed Laboratory
Tuberculosis Treatment Center
(Source: Nijamati Kitab Khana, PIS, October 2010.)
1. The change was triggered by a political movement that restored parliamentary political parties, which had been sidelined by the king in February 2005. The new government began negotiating peace with the Communist Party of Nepal (Maoist), which had been leading an insurgency since 1996 to topple the constitutional monarchy and multiparty democracy. After electing a Constituent Assembly in April 2008, Nepal began writing a new constitution. The constitution was still a work in progress at the end of 2011.

2. According to Agrawal (1976) and Shrestha (1989), the first group of advisors consisted of the sharbars, (caste families), who occupied important state and administrative positions. In a modern sense, they could be regarded as the members of the council of ministers headed by the king. The sharbar belonged to this group were Aryal, Bohara, Khanal, Pandey, Pandha and Rana Magar. These families had originally assisted King Draya Shah in the conquest of Gorkha, and they were given important positions in the state. King Prithivi Narayan Shah continued the practice in Gorkha, and later in Nepal. The system continued until 1907. A second group of advisors was made up of Bhardars. According to Kurpatrick, they comprised six officials: Chautari, (king’s kin), Kazi, Sardars, Khander, and Khatruanche (quoted in Agrawal, 1976). The term “Bhardars” means “bearer of burdens,” and they were the pillars of the administration. The Bhardars, according to historian Tulsi Ram Vaidya, also occupied the positions of Kazi, Sardars, and Subbas. Citing another historian, Francis B. Hamilton, Shrestha (1989) says some large field administration areas, comprising the districts of Kashi, Lumjung, Tanahu and Syanja, and the Kumaon region, were under the administrative and military control of Kazi Damodar Pandey and Bhakti Thapa (later Chautaria Bam Shah). The Subbas, or district officers, in the provincial areas were under the control of provincial officers or Sauk.

3. Some of the annexed territories were converted into districts and put under the administrative control of centrally appointed officers, known as Amaldar or Subbas, who later became Badabahini, or district governors.

4. There were ten districts: Bara, Parsa, Saptari, Mahottari and Rautahat in the Terai and Dhanusa, and Chimpunt, Dosi, Pohlaha and Palpa in the hills (Vaidya and Manandhar 1996).

5. The village was the lowest administrative tier according to Shrestha (1989); it had a large number of functionaries: katwaal, dvare, majumder chaoudary and patwarsi.


10. Article 153 of the Interim Constitution of Nepal empowers the government to set up a civil service, and also commits to making a law for determining the “operation and service conditions.” The law had not been promulgated by the end of 2011.

11. Failure to obtain approval of the year’s policies and programs continued to be a problem. The government to frame the rules. Article 43 (3) bars anyone from taking a case to court to inquire if the rules have been observed.

12. Failure to obtain approval of the year’s policies and programs continued to be a problem. The government to frame the rules. Article 43 (3) bars anyone from taking a case to court to inquire if the rules have been observed.

13. These developments were the outcome of the peace process that began in early 2006, and culminated in the CPA signed on November 21 the same year. The Maoists did not agree to the term “parliament” only because it would have been tantamount to accepting the system they had fought to overthrow since 1996; hence the new name.

14. In addition to these, other officials, including Teshari, Dharmadhikari, Bhikari, Ditha, Jetha Boodha and Subha, were also a part of the central administration, and all of these were grouped under the title Bhadari.

15. The Interim Constitution, Article 43 (2), allows the government to frame the rules. Article 43 (3) bars anyone from taking a case to court to inquire if the rules have been observed.

16. Nepal has had two administrative reform commissions to assess roles and functions and to bring about changes in government organizational structures and working procedures necessary to suit the new polity.

17. On 21 Kartik, 2014, the government amended the civil service regulation requiring officials who had served for 30 years to take compulsory retirement. The government also lowered the retirement age from 60 to 58 years; officials who had reached that age were also required to retire voluntarily.

18. Under the 20-year rule, the government could retire anyone who had completed 20 years of service, based on a memorandum (parcha) with approval of the Cabinet. The ARC 1991 had recommended the removal of the clause from the Civil Service Act because of the likelihood of its misuse. The provisions were part of the Civil Service Act 1956 (Clause 6.1 Kha) and Clause 7.3 of Civil Service Regulation 2021.


20. Article 153 of the Interim Constitution of Nepal empowers the government to set up a civil service, and also commits to making a law for determining the “operation and service conditions.” The law had not been promulgated by the end of 2011.


22. The CA is also known as Legislature-Parliament when it undertakes lawmaking functions.

23. The Interim Constitution, Article 43 (2), allows the government to frame the rules. Article 43 (3) bars anyone from taking a case to court to inquire if the rules have been observed.

24. These are senior most officials of the civil service that has three regular classes of officers: first, second and third.

25. The other extensions were made on May 28, 2010 (for one year), May 28, 2011 (for three months), August 31, 2011 (for three months). (Kantipur daily, March 29, 2012; dates converted using tajan.com. page 1).

26. The House of Representatives, reinstated after the 2006 Movement, promulgated the Interim Constitution, following which the Communist Party of Nepal (Maoist) formally joined parliament and approved the interim constitution. These developments were the outcome of the peace process that began in early 2006, and culminated in the CPA signed on November 21 the same year. The Maoists did not agree to the term “parliament” only because it would have been tantamount to accepting the system they had fought to overthrow since 1996; hence the new name.

27. The other extensions were made on May 28, 2010 (for one year), May 28, 2011 (for three months), August 31, 2011 (for three months). (Kantipur daily, March 29, 2012; dates converted using tajan.com. page 1).

28. This was an outcome of privatization started in 2006.


30. Notification of appointment of civil service officers is published in Nepal Gazette, and thus they are called “gazetted” officers.

31. To inculcate a performance-based culture, the government is piloting a performance incentive fund in the Internal Revenue Department (IRD) and the Department of Civil Personnel Records (DCPR).


33. Defined by decision makers based on security related laws, directive principles of state, periodic plans, etc. There used to be a Rastriya Mool Niti (National Policy) before 1990, but a similar document does not now exist.

34. The Cabinet, an administrative, social, financial, infrastructure and legislation committee.


36. The House of Representatives, reinstated after the 2006 Movement, promulgated the Interim Constitution, following which the Communist Party of Nepal (Maoist) formally joined parliament and approved the interim constitution. These developments were the outcome of the peace process that began in early 2006, and culminated in the CPA signed on November 21 the same year. The Maoists did not agree to the term “parliament” only because it would have been tantamount to accepting the system they had fought to overthrow since 1996; hence the new name.

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38. Article 63 (3c), Interim Constitution of Nepal 2007. Article 63 (3c) with Clause 4 of the Civil Service Regulation 2021.


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44. The other extensions were made on May 28, 2010 (for one year), May 28, 2011 (for three months), August 31, 2011 (for three months). (Kantipur daily, March 29, 2012; dates converted using tajan.com. page 1).


47. Article 63 (3c), Interim Constitution of Nepal 2007.
41. Article 56 (3) of the Interim Constitution states: “No comment shall be made about the good faith concerning any proceeding of the Legislature-Parliament, and no publication and broadcasting of any kind shall be made about anything said by any member, intentionally distorting or misinterpreting the meaning of the speech.” Similarly, 56 (4) states, “No proceedings shall be initiated in any court against any person in respect of the publication under the authority of the Legislature-Parliament of any document, report, vote or proceeding.”

42. Lawmaking is also sometimes delegated to agencies that bring the bill to parliament, because some agency functions are highly technical, and the parliament lacks the time to debate every detail of complex legislation. Further, the functions of some agencies are too technical for parliament. So the bill itself will contain a section seeking authority to legislate rules within the framework of the bill. This empowers the executive or any other related body to enact subordinate legislation in the form of rules or regulations.


47. Ibid.


49. Interim Constitution, Article 135 (2).


Chapter 5


58. The fiscal year in Nepal begins in mid-July.


62. Kousi Toshakhana is responsible for distributing and managing the pensions and gratuities of retired civil servants; Kendriya Tahasil Karyalaya is responsible for collecting government dues from employees or other agencies, and has quasi-judicial power to take action against offenders.

63. Under the provision for virement in the Financial Procedure Act 1998, budgeted funds can be transferred from one head to another if there is sufficient reason to do so. But such transfers cannot exceed 25 percent of the allocated budget. The respective DTCO and the auditor’s office must be informed of virement decisions.


65. Value Added Tax was introduced in 1997 and is levied in lieu of sales tax, hotel tax, contract tax, and entertainment tax.

Chapter 6

66. The decision was taken following a CIAA order after it found that the APMs had misused public resources. These APMs had representatives of 25 political parties. Previously, civil servants had overseen these bodies. Also see: http://www.ekantipur.com/the-kathmandu-post/2012/01/03/top-story/civil-servants-to-replace-all-party-mechanisms/229982.html and http://www.ekantipur.com/the-kathmandu-post/2012/01/03/top-story/civil-servants-to-replace-all-party-mechanisms/229982.html

67. The election was last held in 1998.