

## QUESTIONNAIRE

### Annex 1

#### EXECUTIVE

Indicators	Formal provisions	What actually happens
Can citizens sue Government for infringement of their civil rights?	Yes; on the basis of Civil Rights Act 1955; and Nepal's 1990 Constitution- Article 23, 88-1,2	Citizens seldom sue government; they fear high-handedness of the highly placed and the long time that litigation usually takes. However, public litigation is gradually becoming regular feature.
Are there procedures for the monitoring of assets, including disclosure provisions, for the chief executive, Ministers and other high level officials?	Yes; as per the Corruption Control Act 1960 clause 15	General disclosure is made by newly appointed ministers on an ad hoc basis but there is no monitoring system.
Are there conflict of interest rules?	Yes; in Civil Code Act 1963- official procedures No. 30	Not followed up at all in practice.
Are there rules and registers concerning gifts and hospitality?	Yes, under prevailing convention and code of conduct	Free acceptance; free receipt.
If so, are these registers kept up to do date? By whom?	Registers are supposed to be kept, but they are not.	
Have they legal powers to enforce disclosure?	Not applicable	
Have they staff to investigate allegations?	Not applicable	
What powers of sanction are in place against parliamentarians?	None	
Have they ever been invoked?	Not applicable	
Are members of the executive obliged by law to give reasons for their decisions?	Yes; as per series of judgements by the Supreme Court which are	Generally neglected in practice; they have been found to give reasons only in court cases

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	mandatory	
Do Ministers or equivalent high- level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?	No, they don't have (Contract Act 1968 specifically mentions provisions for final decision) No, it is not	But they exercise power by the influence of authority.  In actual practice ministers or high level officials take control of the mechanism of awarding contracts; they do not allow subordinates to exercise their power and discretion.
Are there administrative checks and balances on decisions of individual members of the executive?	Yes, there are. Rules related to the Council of Ministers apply.	The procedures are overlooked and too often highhandedness is applied

## LEGISLATURE

Indicators	Formal provisions	What actually happens
Is the legislature required to approve the budget?	Yes; in accordance with Article 77 under Part 10 of the constitution.	The government presents budget through finance minister in the joint session of two Houses of the parliament; it is discussed separately in the Houses; amendments or alternative propositions are rarely accepted(Accepting them means government failure); it is voted and adopted accordingly by majority vote; then it is sent to His Majesty for endorsement.
Are there significant categories of public expenditure that do not require legislative approval? Which?	No. But the expenditures chargeable on the Consolidated Fund under Article 76 do not need annual approval of Parliament. Expenditures related to Royal Family, Supreme Court Judges, Parliament Speakers and Deputy Speakers, Election Commission, Auditor General, Public Service Commission, CIAA.	
Are there conflict of interest rules for parliamentarians?	Yes; under unwritten but generally understood convention.	A code of conduct is under consideration at the moment.
Are there rules concerning gifts and hospitality?	No.	

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<p>If so, are these registers kept up to do date? By whom?</p> <ol style="list-style-type: none"> <li>1. Have they legal powers to enforce disclosure?</li> <li>2. Have they staff to investigate allegations?</li> <li>3. What powers of sanction are in place against parliamentarians?</li> <li>4. Have they ever been invoked?</li> </ol>	<p>No.</p> <p>Not applicable</p> <p>Not applicable</p> <p>Not applicable</p> <p>Not applicable</p>	
<p>If so, are there public registers for gifts and hospitality?</p> <p>Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?</p>	<p>No</p> <p>Yes; Article 103 of Part 15 of the constitution has provision for it. Election disputes are handled under a separate Act – Election (Offence and Punishment) Act 1991.</p>	<p>The Election Commission is actively functional and has presided over three parliamentary polls, two local body elections in ten years; updates voters' list regularly and issues voters' identity cards in selected constituencies. However, its performance often creates criticism, opposition. Disputes are settled in courts.</p>

### POLITICAL PARTY FUNDING

Indicators	Formal provisions	What actually happens
<p>Are there rules on political party funding?</p>	<p>No</p>	<p>They accept donation, mobilize resourceful people and sometimes collect fund publicly. Sometimes workers or leaders themselves donate for the cause of the party.</p>
<p>Are substantial donations and</p>	<p>No</p>	<p>Such donations leak out to the press</p>

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their sources made public?		sometimes indirectly and some link them to some high appointments or issuance of party-poll- tickets. Such charges are always denied by parties concerned.
Are there rules on political party expenditures?	Yes; only for election purposes under The Code of Conduct 1997 enforced under the auspices of the Election Commission.	Internal organization of the political parties look after the expenditures affairs.They have their own rules but they are not made public. Some formal announcements are made on expenditures in their conventions occasionally- that too mostly not for public consumption.
Are political party accounts published?	No.	
Are accounts checked by an independent institution?	No	Some get their accounts audited internally for the sake of their own organizational purposes and not for public consumption.
Does that institution start investigations on its own initiative?	No	

### SUPREME AUDIT INSTITUTION

<b>Indicators</b>	<b>Formal provisions</b>	<b>What actually happens</b>
Is the national auditor general independent?	Yes. Article 99 of the Constitution provides for it and ensures its independence through Article 100.	Its observations, recommendations and findings rarely command prompt response from institutions concerned. They carry routine academic value.
Is the appointment of the general auditor required to be based on professional	Yes; under Article 99- 2-6 of the constitution	Constitutional Council (Article 117) members such as Premier, Chief Justice, Speaker, Upper House Chairman and

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criteria/merit?		opposition leader of the lower house often use their judgment; at times they consider government service background of the appointee
Is the appointee protected from removal without relevant justification?	Yes; through Article 91-3 of the constitution	
Are all public expenditures audited annually?	Yes, in a routine manner	Never on time
Is reporting up to date?	No	But regularity in publication of report is noticed every year.
Are reports submitted to a Public Accounts committee and / or debated by the legislature?	Yes, they are laid before parliament.	PAC debates it and pursues investigation in accordance with the indication of the report.
Are all public expenditures declared in the official budget?	Yes.	In practice the government undertakes some undeclared expenses under some excuses. Besides, a vast sum donated from abroad as foreign aid and including those through INGOs are not included.

## JUDICIARY

Indicators	Formal provisions	What actually happens
Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister's or other Ministers and their officials)?	No; in case of His Majesty. Yes; in case of all others including His Majesty's Government or any employee of His Majesty. Article 31 of the Constitution provides for this arrangement.	Courts on complaint by citizens investigate into government action. Several government decisions have been reviewed over the years through appropriate petition and subsequent court – judgment.

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Are judges / investigative magistrates independent? i.e.	Yes; under Article 84	They often use independence under constitutional provisions. But this is not felt by the public.
Are appointments required to be based on merit?	Yes; under Article 87 of the constitution.	His Majesty appoints Chief Justice on the recommendation of the Constitutional Council and judges on the recommendations of the Judicial Council.
Are the appointees protected from removal without relevant justification?	Yes; under Article 91 of the constitution and Judicial Council Act 1992	No arbitrary removal is exercised.
Are recruitment and career development based on merit?	Yes, to some extent.	Sense of political affiliation, nepotism, influence and indirect financial give and take play their own roles in practice.
Have there been instances of successful prosecutions of corrupt senior officials in the past three years?	Yes, a few prosecutions have taken place.	The accused get released mostly through courts.
Does the education system pay attention to integrity issues and corruption / bribery? Is it expected to ?	No, it doesn't. Some remote indication could, however, be found in general theme of morality.	The concept of civil society has brought about some sort of change in the mind – set in this regard in recent times.

### CIVIL SERVICE

<b>Indicators</b>	<b>Formal provisions</b>	<b>What actually happens</b>
Are there laws establishing criminal and administrative sanctions for bribery?	Yes; under corruption control Act 1960	Interpretation of words in laws specially bribery, corruption, and burden of proof varies and this often opens way to escape for

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		wrongdoers.
Are there rules requiring political independence of the civil service?	Yes; under civil service rules specially for the gazetted officials	Political affiliation and display of partisan faith are rewarded.
Are recruitment/career development rules based on merit?	Yes. Public Service Commission determines various criteria for this.	Merits are mostly overlooked. Nepotism and cronyism play key role in career development.
Are there specific rules to prevent nepotism? Cronyism?(note: rules discriminating positively in favour of marginalized or minority groups are not included in this description)	No.	Both are very much instrumental for securing one's interest.
Are there rules (including registries) concerning acceptance of gifts and hospitality?	Yes; civil servants' rules and code of conduct apply	They are not usually observed.
If so, are these registers kept up to date? By whom? 1. Have they legal powers to enforce disclosure? 2. Have they staff to investigate allegations? 3. What powers of sanction are in place against parliamentarians? 4. Have they ever been invoked?	No.	
Are there restrictions on post public service employment?	No.	Several persons have undertaken post public service employment from time to time.

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Are procedures and criteria for administrative decisions published (e.g. for granting permits, licences, bank loans, building plots, tax assessments, etc)?	Yes, in an ad hoc manner.	Not taken seriously, no binding on authority;
Are there complaint mechanisms for public servants and whistleblower protection measures?	Yes; for complaint mechanisms. No, for protection of whistleblowers.	They are not implemented in actual practice. Whistleblowers are penalised strongly if found out by commanding officials.
Are there means for complaints by members of the public?	Yes; through the complaint boxes of respective offices and reporting to the watchdog institutes.	The instruments are mostly not used because all complaints are considered motivated and therefore generally neglected. They often get wasted.

### POLICE AND PROSECUTORS

<b>Indicators</b>	<b>Formal provisions</b>	<b>What actually happens</b>
Is the commissioner of police independent? i.e.	No; the Commissioner has to obey Home Ministry as per the Police Act 1956	The IGP is virtually on the command of Government.
Are appointments required to be based on merit?	Yes.	They are made under the Police Act 1956. They are sometimes overlooked because of influence, highhanded command from "above".
Is the appointee protected from removal without relevant justification?	Yes; in accordance with part 3 – 10 of the Police Act 1956.	But this is not observed. In the past decade two IGPs had to quit because of the arbitrary decision of governments that wanted to have a "compatible" IGP under them. Similar instances have taken place in

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		other senior posts as well. Officials deny this point giving reasons which public find difficult to comprehend.
Are public prosecutors independent?	No.	They are part of the government
Are there special units for investigating and prosecuting corruption crimes?	No.	Government lawyers act as prosecutors and pleaders.
Is there an independent mechanism to handle complaints of corruption against the police?	No.	The police force can receive public complaint.
Does civil society have a role in such a mechanism?	No.	In building public opinion and making complaint public, civil society often plays important role.
In the last five years, have police officers suspected of corruption been prosecuted ( or seriously disciplined or dismissed)/	Yes, in a very small number.	
Are there any cases of corruption within the prosecuting agencies?	No, in official term.	People believe there could be many cases, but they have not been uncovered yet.
Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery? Is private to private corruption punishable by law?	Anti –corruption Act 1961 Article 97 of the Constitution. Yes; there are provisions under Company laws and regulations.	
Is the law applied?	Yes.	
How many cases of prosecution have been undertaken in the	The CIAA filed 31 suits of corruption in various appellate	Several instances of disciplinary action, official explanation, legal

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past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?	courts. Ten of them were successful; 21 could not be sustained at all. Weak investigation and lack of will could be the reason for low success. The other prosecutions have mostly similar story.	enquiries in the case of small "fries" are noticeable but the big ones escape comfortably.
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### PUBLIC PROCUREMENT

Indicators	Formal provisions	What actually happens
Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?	Yes; under financial laws, the principles of which are: to procure cheap in a competitive market and the purchase should be up to the full specification and quality. According to financial administration regulations, goods costing up to 5,000 rupees could be bought direct; construction goods costing up to 150, 000 rupees (other goods costing up to 50,000 rupees) should be procured through price-quotation papers, all others with value above that mark should be bought through competitive bidding.	Financial rules, regulations, ration contract rules 1961, regulations related to construction materials procurement, and other guidelines for buying public goods are often overlooked. Several ways to bypass them have been developed over the years. Detection of the irregularities, illegal excesses in this respect by the auditors is a regular feature, but of no value. They have been mentioned –reiterated for years together - routinely in the annual reports of the Auditor General ( for example in the latest 37th report of the AG) and as per Audit Act 1992.
Are the rules laid down in documents publicly accessible?	Yes.	There are some bureaucratic hurdles always in the way.
Are there strict formal requirements that limit the extent of sole sourcing?	No	
Are all major public	Yes; but not as widely as the private	They are advertised through select

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procurements widely advertised to the private sector?	sector expects.	media; the popularity of the media is ignored at times. Decision makers' preference plays key role in it.
Are procurement decisions made public?	No.	Sometimes decisions are made public through notice board.
Is there a procedure to request review of procurement decisions?	No.	The procedure reserves the right of the procurer in this respect.
Can an unfavourable decision be reviewed in a court of law?	Yes; through petition.	
Are there provisions for blacklisting of companies proved to have bribed in a procurement process?	Yes.	Since blacklisting might create additional burden, legal challenge, and social insult people generally avoid it. Actually the chance of the bribing companies to be rated good is high; and the question of blacklisting might apply to those companies that do not bribe and are therefore considered inept to compete.
Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?	Yes; under code of conduct concerned and Anti – Corruption Act 1961	But they are not observed.
Are assets, incomes and life styles of public procurement officers monitored?	No.	Backbiting takes place very often but in practice nothing is done. The assets, incomes and lifestyles of public procurement officers are often envied, though.

### OMBUDSMAN

Indicators	Formal provisions	What actually happens
Is there an ombud sman or its	Nonexistent.	CIAA is often referred to as Nepali

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equivalent ( i.e. an independent body to which citizens can make complaints about maladministration)?		version of Ombudsman.
Is the ombudsman independent? i.e.	Nonexistent.	
Are appointments required to be based on merit?	Nonexistent.	
Is the appointee protected from removal without relevant justification?	Nonexistent.	
Has an ombudsman been removed without relevant justification in the last five years?	Nonexistent.	
Can petitioners complain anonymously if they fear possible reprisals?	Nonexistent.	
Are reports of the ombudsman published?	Nonexistent.	
Does the government act on the ombudsman's recommendations?	Nonexistent.	

### INVESTIGATIVE/WATCHDOG AGENCIES (E.G. ANTI-CORRUPTION BUREAU)

<b>Indicators</b>	<b>Formal provisions</b>	<b>What actually happens</b>
Are there special investigative or watchdog agencies?	Yes; The Commission for Investigation of Abuses of Authority (CIAA), Special Police, some special investigation committees formed under Nepal Laws	Their functions do not come up to the expectation of the people

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Are they independent? i.e.	The Commission for Investigation of Abuses of Authority is; Special Police is not.	CIAA did not take aid from donors to preserve independence. Recently it has negotiated with ADB for help with special care to preserve the independence that it needs to perform.
Are appointments required to be based on merit?	Yes.	Not always observed.
Are appointments generally based on merit?	No.	
Are the appointees protected from removal without relevant justification?	Yes.	Not always.
Are their reports published (other than when criminal charges are pending)?	Yes.	
Do they report publicly to the legislature on the general scope of their work?	No. The CIAA - report gets laid down before parliament. Special police reports to the prime minister's office.	CIAA report is presented to the king every year.
Can people complain to the agency without fear of recrimination?	Yes; CIAA allows anonymous complaints.	People actually fear their secret complaint might get public.

### MEDIA

Indicators	Formal provisions	What actually happens
Is there a law guaranteeing freedom of speech and of the press?	Article 12 - 2 - a of the Constitution guarantees freedom of speech; Article 13 provides for press and publication rights	The press is considered free in practice as well.
Is there censorship of the media?	No; Article 13-1 ensures it.	But the government recently banned FM radio stations to air their

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		independent news programmes referring to conditions mentioned in the licenses given to them during registration. The point has been criticized seriously by all in the civil society.
Is there a spread of media ownership?	Yes; the media ownership spreads widely ranging from government, private companies, joint ownership, partnership to co-operative etc.	The spread does not actually represent poor financial situation affecting the media and media workers in several parts of the country.
Does any publicly-owned media regularly cover the views of government critics?	No.	Occasionally general opposite views are expressed
Does the media carry articles on corruption?	Yes.	The trend has witnessed increase in recent years.
Do media licensing authorities use transparent, independent and competitive criteria and procedures?	No.	They claim they follow criteria; but it is generally believed that they decide upon influence by some factors other than criteria.
Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?	Yes; indirectly.	Indirect pressure is built up as corruption stories are covered; over time the management is influenced to ask the reporters to discontinue. Corruption-sites are reported to have engaged in motivating the media not to be attracted towards corruption-stories.

### CIVIL SOCIETY

Indicators	Formal provisions	What actually happens
Does the public have access to	No; the right to information Act is	Public have access to information

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information and documents from public authorities?	under consideration in the parliament.	and documents of general type. Serious ones are guarded aggressively. The constitutional provision for people's right to information is not guaranteed in practice.
Do the public authorities generally co-operate with civil society groups?  Are there citizens' groups or business groups campaigning against corruption?	No. Civil society groups are considered obstacles in the path of public authorities.  Almost all stress campaigning against corruption; some have developed specific strategy to campaign against it. Citizens' groups including those of youths, women, lawyers and business groups are among those.	Civil society groups have to demonstrate and agitate or undertake some other means of expression for convincing the public authorities. First requests, polite appeals, or written call are generally ignored. The apex body of business and industry sector – Federation of Nepali Chambers of Commerce and Industry FNCCI clearly mentioned this point in its strategy for the new millennium (The Socio– Economic Summit, Nepal 1999). " The FNCCI and other professional groups should lead social movements against corruption."
Are there citizens' groups monitoring the government's performance in areas of service delivery, etc.?	General monitoring takes place occasionally; but the practice is neither established nor specific.	At the citizens' level particularly at the point where the service has to be delivered, monitoring is undertaken unsystematically.
Do citizens' groups regularly make submissions to the legislature on proposed legislation?	Yes, to some extent in recent times. Submissions reach the legislature through other channels of pressure group as well.	In recent times exchange of views between members of the legislature and citizens' groups take place frequently, but they have to go a long way to institutionalize the practice of counselling or guiding the proposed legislation.

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### LOCAL GOVERNMENT

Indicators	Formal provisions	What actually happens
Is there a legal requirement that meetings of city/town councils be open to the press and public?	No.	The press and public are usually invited for opening or concluding sessions. They are not expected to attend the meetings, but their decisions are usually published.
Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and public?	Nonexistent.	Discretion of the presiding officer holds the key to this point.

### PROGRESS WITH GOVERNMENT STRATEGY

Indicators	Formal provisions	What actually happens
Has the government announced an anti-corruption strategy and a timetable for implementation?	No. But the attempt to get three anti-corruption bills- CIAA, Special Court, Anti-Corruption Act- endorsed in the parliament is underway; move towards declaring property earned through unsourced means is in pipeline; making CIAA competent to prosecute even the Prime Minister, MPs and district judges independently is being targeted; words such as bribery, corruption and phrases such "as burden of proof," "beyond reasonable doubt" and " on the balance of probabilities" are being redefined in the prosecution literature; salary of officials and MPs has already been	The developments mentioned are the results of the civil society's increasing initiative. But the government's own initiatives are few and far between. The government has pledged to eradicate corruption. The present Prime Minister came to power with this point included prominently in his three point prime agenda. However, neither strategy nor timetable has been announced yet. The series of corruption scandals being reported in the media have been fully ignored.

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	augmented to assure them about minimum cost of living and enable them to avoid dependence on lubricating bribe.	
How much of the strategy has been implemented?	Not applicable	Efforts are underway in accordance with the convenience of the government.
Is the government meeting its own timetable?	Not applicable	The target is expected to be fulfilled during the upcoming meeting of the parliament that is convening its 19th session on Feb. 8, 2001.