

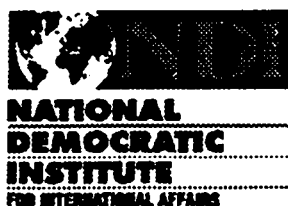


**NATIONAL**  
**DEMOCRATIC**  
**INSTITUTE**  
**FOR INTERNATIONAL AFFAIRS**

**Developing More Independent  
and Effective  
Constitutional Bodies:  
Problems and Prospects**

*December 1 -- 2, 1998  
Kathmandu, Nepal*

**Developing More Independent and Effective Constitutional Bodies:  
Problems and Prospects**



**A National Democratic Institute for International Affairs Seminar**

**December 1 - 2, 1998  
Kathmandu, Nepal**

## **Acknowledgments**

This report was written and revised by NDI Senior Program Officer Maryam Montague with assistance from Nepal NDI local staff member Deepak Khanal. The report was edited by Julie Harrod.

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1717 Massachusetts Avenue, NW  
Fifth Floor  
Washington, DC 20036  
(202) 328-3136  
fax: (202) 939-3166  
email: [demos@ndi.org](mailto:demos@ndi.org)  
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Working to strengthen  
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democracy worldwide

## NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

The National Democratic Institute for International Affairs (NDI) is a nonprofit organization working to strengthen and expand democracy worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to civic and political leaders advancing democratic values, practices and institutions. NDI works with democrats in every region of the world to build political and civic organizations, safeguard elections, and promote citizen participation, openness and accountability in government.

Democracy depends on legislatures that represent citizens and oversee the executive, independent judiciaries that safeguard the rule of law, political parties that are open and accountable, and elections in which voters freely choose their representatives in government. Acting as a catalyst for democratic development, NDI bolsters the institutions and processes that allow democracy to flourish.

**Build Political and Civic Organizations:** NDI helps build the stable, broad-based and well-organized institutions that form the foundation of a strong civic culture. Democracy depends on these mediating institutions—the voice of an informed citizenry, which link citizens to their government and to one another by providing avenues for participation in public policy.

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International cooperation is key to promoting democracy effectively and efficiently. It also conveys a deeper message to new and emerging democracies that while autocracies are inherently isolated and fearful of the outside world, democracies can count on international allies and an active support system. Headquartered in Washington D.C., with field offices in every region of the world, NDI complements the skills of its staff by enlisting volunteer experts from around the world, many of whom are veterans of democratic struggles in their own countries and share valuable perspectives on democratic development.

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**APPENDIX 1: SEMINAR AGENDA**

**APPENDIX 2: PARTICIPANTS LIST**

**APPENDIX 3: PRESS COVERAGE OF THE SEMINAR**

## INTRODUCTION AND EXECUTIVE SUMMARY

The National Democratic Institute for International Affairs (NDI), a nonprofit NGO based in Washington, DC, has been working in Nepal for the past four years with the objective of helping to strengthen democracy. Its mission in Nepal embraces two major areas: establishing accountable government, and promoting women's political participation.

As part of the mission to establish accountable government, NDI invited a delegation of international ethics specialists to Nepal in July and August 1998 to develop a series of recommendations to further the establishment of an ethics regime in Nepal. These recommendations were discussed at a seminar entitled *The Role of Government, Parliament and Independent Constitutional Bodies in Establishing an Ethics Regime*. The recommendations covered several areas, including the arrangements for elections, the way that staff are appointed to the independent constitutional bodies, and the need for these bodies to have permanent staff. They also covered prosecution in cases of corruption, and codes of conduct for those holding public office. Final recommendations covered the role of parliamentary committees in holding the Executive to account and the perceived need for a parliamentary research and information center.

The seminar reported here, entitled *Developing More Independent and Effective Constitutional Bodies: Problems and Prospects*, was organized as a follow-up to the recommendations about the constitutional bodies. This seminar had the following objectives:

- to identify the current problems faced by the constitutional bodies; and
- to find ways of making the constitutional bodies more effective.

To fulfil the objectives of the seminar, comprehensive discussions were held over a two-day period. These discussions stemmed from the presentation of five issue papers that looked at the constitutional bodies and their problems from various aspects. A political scientist explained the rationale that underlies the need for independent constitutional bodies, and the head of the Election Commission gave his view of the problems currently facing these bodies. A Government Minister explained how the government and the constitutional bodies should relate to each other, and a Member of Parliament spoke about a report on electoral malpractice. Finally, the President of the Society for Constitutional and Parliamentary Exercise showed how Nepal's existing legal framework might allow more transparency in the appointment process of staff to the constitutional bodies, as well as a separate division for such staff within the current civil service. Each issue paper was followed by comments from specified speakers, and there were three sessions of general discussion.

After long deliberation, the seminar agreed on five recommendations to improve the independence and effectiveness of the constitutional bodies:

1. The process whereby the heads and members of constitutional bodies are appointed should be made more transparent.

2. The government should provide the constitutional bodies with enough capable staff either by forming a separate service for these bodies or by adopting a standard and transparent system to send staff to these bodies on a permanent or semi-permanent basis from the pool of civil servants.
3. The government should provide the constitutional bodies with sufficient financial and physical resources and should develop a transparent system of reviewing the budgetary proposals of these bodies.
4. The remuneration, allowances and perks that the heads and members of the constitutional bodies receive should be reviewed and updated. The pensions for these office-bearers should also be reviewed.
5. There should be a provision to ensure women's participation in the constitutional bodies at all levels.

All the major daily and weekly newspapers covered the seminar. More than 20 articles appeared, including more than a dozen on front pages. The four major national newspapers all carried lead editorials on the issues of the seminar. Nepal Television and Radio Nepal also broadcast news on the NDI seminar. Appendix 3 gives details of the press coverage.

### **Participation**

The seminar was limited to sixty persons (not including journalists) to ensure maximum participation and discussion. Those attending included heads and members of the constitutional bodies, government ministers, members of parliament representing all political parties, representatives from government and non-government organizations, international donors and representatives from the media. (See appendix 2 for participants list)



## REPORT OF THE PROCEEDINGS

### Inaugural Session

*Chief Guest:* The Rt. Hon. Beni Bahadur Karki, Chairman, National Assembly  
*Chair:* The Rt. Hon. Santa Bahadur Rai, Chairman, Public Service Commission

#### Welcome Address

NDI South Asia Representative Maryam Montague welcomed all the participants. After giving the background of NDI and its mission in Nepal, Montague explained that NDI had recently organized an international ethics delegation to Nepal, comprising ethics experts from the United Kingdom, South Africa and the United States. This delegation had drafted a series of recommendations aimed at strengthening mechanisms to combat corruption and promote public sector ethics in Nepal. She stated that the recommendations focused on the following areas:

- election arrangements;
- appointment procedures to the independent constitutional bodies;
- the need for permanent staff for the independent constitutional bodies;
- prosecution of corruption cases;
- codes of conduct for MPs, ministers, and civil servants;
- the role of the parliamentary committees in holding the executive to account; and
- the need for a parliamentary research and information center.

(The term constitutional body is taken to mean the following: the Auditor General's Office, the Commission for the Investigation of Abuse of Authority (CIAA), the Election Commission, the Public Service Commission and the Attorney General's Office.)

Montague made clear that NDI has acted on these recommendations by drafting codes of conduct for members of parliament and ministers. She explained that the current seminar was designed to follow up issues discussed during NDI's last forum: appointment procedures to the independent constitutional bodies and the need for permanent staff for these bodies. As the seminar was privileged to have Nepal's finest minds gathered together, she hoped that it would find methods to increase the independence and effectiveness of the constitutional bodies.

Montague stated that many legal scholars had read Nepal's constitution, and had been impressed with its thoughtfulness and thoroughness. She said it was clear that the constitution envisioned constitutional bodies that were independent and effective, and political observers had agreed that good efforts had been made by the constitutional bodies, despite difficult and challenging circumstances. Areas for improvement were to be the subject of this seminar, especially the question of the independence of the constitutional bodies. This

was an issue of great concern for the international ethics experts that visited Nepal over the summer. Montague stated that greater autonomy would unquestionably lead to greater effectiveness of these bodies and that the task for those at the seminar was to consider and debate feasible options within Nepal's democratic framework for increasing the independence of the constitutional bodies.

Recalling the suggestions made by the recent ethics delegation, Montague stated that increasing the openness and accountability of the process whereby the constitutional chiefs and members are appointed, by means of parliamentary scrutiny of candidates or by having parliament confirm these appointments, might be beneficial. These two possibilities could be included in a wide-ranging list of options such as: institutionalizing the Constitutional Council; drawing up detailed job descriptions and qualifications required for each constitutional body post; considering a number of not less than three candidates for each post; releasing the names of possible candidates to the public; scrutiny by the relevant parliamentary committee; full parliamentary scrutiny of the candidates; or parliamentary confirmation of the appointments. She stressed that these processes are used in other countries to ensure proper scrutiny of appointments to important neutral bodies.

Bearing in mind the importance and power of the constitutional bodies, Montague said that it would benefit everyone if the best possible person is selected for each of the constitutional body posts. With more effective constitutional bodies, the Executive could work more effectively. She pointed out that the recent history of Nepal had proved how fluid government can be under a parliamentary system. Short term gains, at the cost of long term losses, were risks to be given serious consideration. She stated that more openness and accountability in the appointment process was something that all the current constitutional body heads should welcome. It would help ensure that those persons who replace the constitutional body heads when their terms expire would have the autonomy and strength to continue the work that they had begun.

Talking about the other recommendation made by the international ethics experts and supported by many in the Nepali community, including the joint parliamentary committee, Montague highlighted the need for permanent staff for the constitutional bodies. She explained that permanent or semi-permanent staff for the equivalent of the constitutional bodies is the *modus operandi* in many democracies around the world. Montague stressed that introducing a new secretary with each new government was a dangerous trend, for a number of reasons. Civil servants the democratic world over are intended to be politically neutral. This neutrality benefits the civil servants, as their consideration for promotion is based on merit, rather than less tangible factors. It benefits the independent bodies or government departments for which they work. And it benefits all the political parties.

Hoping the issue of permanent and professional staff for the constitutional bodies would be given serious consideration during this seminar, Montague said that it was sad when the reputation of the civil service was tarnished and the commitment of civil servants questioned. Indicating the pressure from all sectors of Nepali society for more accountability, more transparency and more efficiency, she noted that the international donors, too, were becoming increasingly interested in this issue, and this factor might be linked to continuing foreign aid to Nepal in the future. She stated that the constitutional bodies meant to play a vital role in Nepal's democracy. Every effort, therefore, should be made to ensure that these constitutional bodies

could operate independently and effectively. Hoping the seminar to be one step in this process, Montague emphasized that it was important for Nepal to find a homegrown solution to this problem.

#### **Address by Minister for General Administration Bimalendra Nidhi**

The Hon. Nidhi thanked NDI for organizing the seminar. He stated that since the restoration of democracy, he had served as the Minister for General Administration Minister for two terms. Despite the desire to enhance the independence and effectiveness of the constitutional bodies, Nidhi said that there were legal and practical problems in the relationship between the government and the constitutional bodies. He urged NDI to organize a specific forum on this issue to reach consensus to solve these problems.

Citing his experiences of working with the constitutional bodies as Minister for General Administration, Nidhi questioned the status of these bodies. He said that he was not clear where the constitutional bodies would lie in an organizational chart of state organs. On such a chart, the King would be at the top, with all the other organs -- the Executive, Legislature, Judiciary, *Rajparishad* and all the constitutional bodies -- at the same level below him. Nidhi said that according to the generally accepted principle of the structure of a state, three organs -- the Executive, the Legislature and the Judiciary -- were the only supreme bodies. However, in Nepal's system of constitutional monarchy, the Crown was in a special position. He asked how there could be any organs, apart from the Crown, above these three bodies. He also asked how the theory of *state* should be interpreted in the context of Nepal, and how the Nepali system of jurisprudence would correspond with this theory.

Nidhi stated that the constitutional bodies must unquestionably be autonomous, independent and free. As a member of the Executive, he said he was excited to find out how the Executive could help to make the constitutional bodies more effective and independent. He expressed his support for a system of parliamentary hearings or parliamentary confirmation of the constitutional appointments, as recommended by the ethics experts. The Minister also suggested that problems in the staffing process to the constitutional bodies needed be solved as almost all of the constitutional bodies' staff was provided by the government. He said that although the bodies were independent, the government sent civil servants to them, and the mobilization and management of the civil servants was solely the responsibility of the Ministry of General Administration.

Saying he favored the system of having a separate service provision for the constitutional bodies, Nidhi stated that such a system would reduce the constitutional bodies' belief that the government interfered with their jurisdiction. He said that he could convince the government on this matter if the seminar resulted in such a recommendation, and he asked the seminar participants to come up with ideas to minimize any negative consequences of such a change. Nidhi complained that in Nepal's current system, the government transferred its secretaries but that these secretaries preferred to work for particular ministries. As a result, when staff were transferred to the constitutional bodies, they would go on home leave. He believed that this was why a separate constitutional service provision would be such a good idea.

Nidhi explained that the government, especially the Prime Minister and the Minister for General Administration, held frequent meetings with government secretaries. However, the secretaries of some of the constitutional bodies were not permitted to attend these meetings, as there was a fear that these people might

be influenced and lose their independence. It was said that to preserve the dignity of the constitutional bodies, their secretaries should not attend. Nidhi asked the seminar participants to consider solutions to such practical problems so that the government could cooperate with the constitutional bodies.

Nidhi reminded his audience that all the constitutional bodies were meant to assist the Executive and that they should fulfil this responsibility independently and effectively. He also stated that the government should cooperate properly with these bodies and try to remove misunderstandings. Nidhi expressed his confidence that serious discussion of these issues during the seminar would lead to good recommendations that, when implemented, would increase the independence and effectiveness of the constitutional bodies as well as improving their relationship with the government. The Minister finished his remarks by saying that government was very positive about these issues and was committed to accepting the seminar's recommendations.

### **Keynote Remarks by Chairman of the National Assembly Beni Bahadur Karki**

The Rt. Hon. Karki stated that parliamentary democracy in Nepal was a result of tireless endeavors made by fighters for democracy. He expressed the belief that Nepal's neighbors, donor institutions, and the democratic countries of the world were watching Nepal's democratic exercises with deep interest and that if the country failed the test of democracy, it would be isolated from the world community, and its nationalism and sovereignty might also be considerably undermined.

Karki expressed unease at having to speak on the day's important issues, but he said he would relate his own experiences. As Chairman of the National Assembly as well as a member of the Constitutional Council, he could relate at first hand the obstacles faced by those making recommendations for appointments to the constitutional bodies. Karki stated that a study of the jurisdiction of the Executive, the Legislature, and the Judiciary under the 1990 Constitution of Nepal would reveal that there was no possibility of one organ dominating another, because the respective jurisdictions of these organs of the state had been clearly defined. The Legislature was equipped with powers as a representative body of the people. The Judiciary had not been created according to the arbitrary decisions of a single person. Likewise, the Executive was required to implement public opinion by remaining within the limits of the constitution and the law. There was thus a balance of power, which was in keeping with international standards.

Karki stated that the heads of constitutional bodies had an important role to play in ensuring their independence and effectiveness. The primary need for the heads of these organs was to demonstrate total impartiality and full political neutrality. He stated that some people who did not find decisions to be in their favor might give a political color to the constitutional bodies. But, even in such circumstances, the heads of constitutional bodies needed to continue fulfilling their duties, knowing that they had acted impartially.

Referring to the Constitutional Council, Karki said that its main objective was to make recommendations for the appointment of qualified, honest and politically neutral persons to the constitutional bodies. Even though the majority of the Council's members were political personalities, they were to clearly demonstrate impartiality while discharging their duties. Karki stated that the members of the Constitutional Council often faced political pressures when they made such recommendations, but they needed to strongly

counter such pressures. They should not establish a tradition of making recommendations on the basis of political quotas allocated among themselves.

Karki also expressed his concern regarding the role of the Executive in enhancing people's faith in the parliament. He said that the government must remain fully accountable to the parliament. It was essential for the appropriate members of the Council of Ministers to attend all parliamentary proceedings, which they were currently not doing. He also said that the tendency to undermine the importance of the parliament must be reversed. Praising the role played by the Judiciary in the past seven years, Karki stated that the Supreme Court had taken several landmark decisions. These had included the historic and courageous decision that the Tanakpur "understanding" with India was actually a treaty, and the judgment that the parliament could not be dissolved as long as the possibility of forming a new government from within it still existed.

Given the number of public complaints published in the media about parliamentary activities not being impartial and effective; about the Executive failing to check corruption, maintain law and order, and control inflation; and the accusations that some members of the Judiciary were indulging in unethical activities, Karki said that the way forward was for everybody to work impartially.

#### **Conclusion by Public Service Commission Chairman Santa Bahadur Rai**

The Rt. Hon. Santa Bahadur Rai remarked that the seminar was very timely as it was happening during a period when the administration was becoming rampantly politicized. Rai complained that the government did not implement the suggestions made by the constitutional bodies. He said that while constitutional bodies had the right to advise the government, they had no means of compelling the government to use or implement their advice. He hoped the seminar would discuss this issue.

Rai also stated that the parliament did not pay enough attention to the reports of the constitutional bodies. He said that had these reports been openly discussed, a cleaner system of governance would have been encouraged. Explaining the very poor financial condition of his office, Rai said that the PSC's budget did not cover even its basic expenses. Despite their reporting the problem to the government, Rai claimed that there had not yet been a response. Rai sought suggestions as to how to improve the government's treatment of the constitutional bodies.

## **Plenary Session One**

*Co-Chairs:*     The Rt. Hon. Bishnu Bahadur K.C., Auditor General  
                  The Hon. Madhu Nidhi Tiwari, Member, Public Service Commission

### ***The Separation of Powers and the Rationale for Independent Constitutional Bodies by Prof. Krishna Khanal***

Prof. Khanal said that the doctrine of the separation of state powers, which had become the basic foundation of a constitutional state, was established with the idea that the government should be limited, that it should represent the people, and that its powers and functions should be divided among different agencies. The concentration of state power in a single individual or institution gave rise to despotism, undermined civic freedom, and made impartial justice impossible. Thus, he stated that the basic functions of the state should be divided into three: legislative; executive; and judicial. These functions should be allocated to three separate organs, with a system of mutual checks and balances.

Khanal explained that dividing powers between three different organs had to be done in a way that allowed each organ to discharge its duties in an independent manner, free from interference from the others. In this way the state could thus be prevented from becoming despotic, and individual freedom could be maintained. However, Khanal stated that this did not mean that each of these three organs should remain isolated.

According to Khanal, the first task in the separation of powers was to clearly define and divide the respective functions of the three organs charged with the legislative, the executive, and the judicial functions of the state. He said that the main preconditions for the implementation of this doctrine were: a recognition of the fact that the people comprise the source of the state power; the existence of a responsible and representative government; and a constitution based on the concept of the rule of law. Khanal expressed his belief that there could be no question of a hierarchy of power once the citizens were recognized as the main source of the state's power, the question became rather one of the appropriate division and exercise of the state.

Khanal stated that the doctrine of the separation of powers related to the sharing of powers in government and the ruling process, and that checks and balances might be necessary to ensure that one state organ did not encroach upon the jurisdiction of another. Looking at the history of this doctrine, he said that political scientists had long discussed the various organs of the state. In South Asia, the Hindu state system had been based on state divisions since 1000 B.C. However, according to Khanal, it was Baron de Montesquieu who had propounded and defined the modern concept of the separation of powers.

Khanal stated that the constitutions of Nepal before the 1990 people's movement, and particularly the 1962 constitution, had recognized the King as the main source of state power. Separate provisions for the Legislature, the Executive, and the Judiciary had been made in each successive constitution but despite this, the nature of state power continued to be despotic. The 1990 Constitution of the Kingdom of Nepal, which was framed after taking into account the political change brought about by the 1990 people's movement, was

the first to recognize the Nepali people as the source of state power. As such, this constitution provided the main ideological ground for the division of power.

Khanal explained that the constitution had provided Nepal with a parliamentary political system under a constitutional monarch. As the concept of the rule of law was mentioned in the preamble to the constitution, the Judiciary had been established as the protector of basic civic rights and the final interpreter of the constitution. So far as the King was concerned, the present constitution had made the monarchy's role an integral part of the Legislature and the Executive. He added that the King's connection with the Legislature and the Executive was the outcome of long tradition. The Executive functioned in the name of the King, although the chief responsibility for executive functions lay with the Council of Ministers.

Khanal explained that the present constitution of Nepal established the King and the Council of Ministers as the Executive. Executive functions were discharged in the name of His Majesty's Government. The King enjoyed the power to use his discretion on limited issues, such as the framing of the law relating to succession to the throne, and the rules relating to the appointment and conditions of service of employees under the Royal Palace Service. All other executive functions that were performed in the name of the King were carried out on the advice and with the consent of the Council of Ministers. According to Khanal, the constitution had also made clear provisions, with respect to the formation, functions and duties of the Council of Ministers. He added that as far as the mobilization and use of the army was concerned, the King was to act on the recommendations of a National Security Council, headed by the Prime Minister and consisting of the Minister of Defense and the Commander-in-Chief as members. The Commander-in-Chief was to be appointed by the King on the recommendation of the Prime Minister. Thus the Prime Minister exercised direct control over the functions of the Security Council.

Khanal said that, as per the constitution, the chief functions of the Executive were to direct, control, and operate the polity of the nation, subject to the constitution and the other laws, while the parliament bore the responsibility of framing all laws needed for the Kingdom of Nepal, apart from the Royal Succession Act. The jurisdiction of the Judiciary had also been clearly defined: all judicial powers of the Kingdom of Nepal were to be exercised by the Judiciary according to the constitution, the law, and the recognized principles of justice. He emphasized that the constitution was the basic law, and the Supreme Court enjoyed the power to declare null and void any law or part of a law that conflicted with the constitution.

It could thus be seen, said Khanal, that the constitutional provisions had incorporated the doctrine of the separation of powers within the norms of a constitutional monarchy with a parliamentary system. After the promulgation of the constitution, and particularly after the 1991 general elections, all three organs of the state had become fully operational. He explained that, theoretically, under a parliamentary system the parliament should control the government, but in practice it was difficult for parliament to exercise sufficient control: the government could influence the Legislature in many areas. It was therefore difficult fully to implement the doctrine of the separation of powers in a parliamentary system. While there was no possibility of any law or resolution not desired by the government being passed by the parliament, experience had shown that the government did not always succeed in having all its resolutions approved by the parliament. Khanal said that, for example, it was ordinarily not possible for a single party to have the two-thirds majority needed

for certain special pieces of legislation such as treaties or impeachments; in such cases, the government and the parliamentary parties often had to reach a consensus.

Although it is believed that the parliament can exercise effective control over the Executive when there is a hung parliament, Khanal stated that events since 1994 had suggested otherwise. He claimed that there had been many cases where the government had used members of parliament in an unethical manner in order to maintain its majority. This situation was evidenced by the increase in MPs perks, and the unexpected increase in the size of the Council of Ministers.

Khanal expressed his belief that the Nepali Judiciary had fulfilled its role in an independent manner. Although individual experiences of the execution of justice might differ, he claimed it was beyond doubt that the Supreme Court's role had remained free from the Executive and the Legislature. In support of this view, Khanal stated that the Supreme Court had so far declared null and void several portions of different laws and rules that conflicted with the constitution. However, he admitted that many disputes had emerged at the political level in connection with the role of the Judiciary, particularly in connection with the 1995 dissolution of the House of Representatives. Comments had also been made to the effect that the Judiciary had entered into political issues unnecessarily.

Khanal pointed out that almost every country in the world made provisions that allow constitutional bodies to be properly independent. He explained that provisions for these bodies were made with a view to avoiding any possibility of misuse of power by those occupying public posts. Impartial appointments in the administration were ensured, and transparency in all state organs insisted upon. Khanal stated that this was the way in which constitutional bodies could check the ever-growing scope of the Executive, in particular.

Khanal said that while it was one thing to have constitutional provisions for bodies such as the Election Commission, the Public Service Commission, the Commission for Investigation of Abuse of Authority, and the Auditor General's office, it was another thing altogether to make these bodies effective. In particular, the procedure followed for appointing the office-bearers of these bodies had become a topic of discussion. In several cases, it appeared that these appointments were being used as rewards for long period of service in the administration or in other fields. Khanal said that the national interest appeared not to be an overriding consideration when these appointments were made. Under the current provisions, Khanal explained that appointments to these bodies were made by the King on the recommendation of the Constitutional Council, headed by the Prime Minister and consisting of the Chief Justice, the Speaker of the House of Representatives, the Chairman of the National Assembly, and the opposition leader in the House of Representatives. When a single party won a majority in the parliament, the government, or the Executive, was clearly in a position to have a strong hold over the Council with regard to constitutional appointments. Additionally, Khanal said that there did not appear to be any serious discussion of proposed appointments before they were actually made.

Khanal stated that an alternative system might be adopted with respect to the appointment of office-bearers of constitutional bodies. He said that it might be appropriate to have the names proposed by the Constitutional Council for appointment presented to a special Committee of the National Assembly for



endorsement. In Khanal's opinion, the issue was not whether or not any proposed candidate was approved or rejected, but rather that constitutional appointments should be presented as an issue of national significance, and that persons appointed to these posts should develop a feeling of public accountability.

Khanal pointed out that most of the constitutional bodies had complained that the laws needed for discharging their duties were inadequate. He said that the constitutional bodies also complained of insufficient resources. According to Khanal, the Executive was to blame for this state of affairs. In addition, the constitutional bodies had to depend upon the policies of the Executive for their allocation of manpower. These problems naturally limited the efficiency of the constitutional bodies.

Concluding his presentation, Khanal said that mere demarcation of the respective jurisdictions of the Executive, the Legislature, and the Judiciary was not enough to fully implement the doctrine of the separation of powers. The role of politically free and independent constitutional bodies was equally important, and he considered it essential to make the independent bodies established by the constitution effective.

#### **Comment by Member of the Public Service Commission Madhu Nidhi Tiwari**

The Hon. Dr. Tiwari expressed his belief that the separation of powers was irrelevant in a parliamentary system. Tiwari explained that the concept of the constitutional bodies post-dated the principle of the separation of powers: the theory of the separation of powers was introduced in the 1760s, while the concept of constitutional bodies was only developed about a hundred years later. He claimed that it was in fact the Executive that had realized the need for constitutional bodies to assist them.

#### ***Current Problems Faced by the Constitutional Bodies* by Chief Election Commissioner Bishnu Pratap Shah**

Talking about the role of the constitutional bodies under a democratic political system, the Rt. Hon. Shah said that the framers of the constitution had intended these bodies to prevent abuses of power and resources. According to Shah, without such provisions, the democratic features of the state polity would gradually disappear and the foundations of democracy would crumble. While the Panchayat Constitution of Nepal had also made provision for constitutional bodies, these bodies were only superficially independent. He claimed that the current, improved status of the constitutional bodies had enabled their office-bearers to take fearless decisions without succumbing to pressure or influence. However, Shah added that constitutional provisions alone were not sufficiently effective. He explained that a fearless decision which was never or ineffectively implemented had little meaning. Therefore, if Nepal was to use the constitutional provisions for their intended purpose, the resources and cooperation that are needed for their effective implementation must not be forgotten. He admitted that the constitutional bodies had not been very effective so far, but he said that the important question was whether the constitutional bodies were alone responsible in this regard. Shah said that little attention had been paid to finding an answer to this question.

Shah said that no constitutional body could become effective if there were inadequate laws, manpower and financial resources. He claimed that the constitutional bodies of Nepal were currently facing just such

shortages and weaknesses. But he stated that the biggest obstacle to the effective functioning of the constitutional bodies was the prevailing mentality or culture. Nepal had brought into force a democratic constitution, but had yet to develop a constitutional culture and it was therefore unable to identify the differences between the constitutional bodies and offices under the ministries of HMG. According to Shah, the attitude of the government and governmental machinery toward constitutional bodies was dominated by the culture of the previous partyless system. For this reason, he encouraged a change in mentality as a means of developing a constitutional culture, which would lead in turn to effective constitutional bodies.

Shah stated that the constitutional bodies would be strengthened once it was recognized at political and governmental levels that these bodies had an important role to play in a democracy. He pointed out that the office-bearers of constitutional bodies enjoyed fewer perks than those enjoyed by lower ranking office-bearers of the other organs of the state, who had over the past few years seen considerable increases in their salaries and perks. He said that the constitution stipulated that a retired office-bearer of a constitutional body would not be eligible for any governmental service other than a political post, but that no specific and adequate arrangements had been made for their pensions. Shah stated that inadequate pensions and bars to other governmental services had encouraged retired office-bearers of constitutional bodies to seek political appointments. He expressed his belief that such a situation could hardly promote the fearless discharge of duties, and was unhealthy for democracy.

Explaining another problem faced by the constitutional bodies, Shah stated that these bodies had to depend upon the government for manpower. The government performed all functions relating to the creation of posts and appointments, and dealt with transfers and promotion. In Shah's opinion, most of the employees deputed to constitutional bodies were not liked by their departmental heads, or were incompetent; they were deputed to these bodies as a form of punishment. As a result, he claimed that these employees lacked the will to work.

Shah pointed out that constitutional bodies were totally dependent upon the government for their budgetary arrangements. The budgets of constitutional bodies were drafted and approved by the Ministry of Finance, leaving the constitutional bodies with inadequate funding, which hampered their effectiveness. While constitutional bodies needed to maintain a policy of austerity in the routine expenses of their offices, he stated that programs that directly helped to consolidate democracy should not be governed by a penny-pinching attitude. Additionally, Shah said that it was not good for democracy if the programs of constitutional bodies had to depend upon the desires of the Executive or upon a favorable standing with the Executive.

Shah added that it was essential to draft new laws to enable the constitutional bodies to discharge their functions and duties. He said that there had been instances when the CIAA had not been able to work effectively because of the absence of adequate legal provisions. Since the 1997 general elections, several amendments to the election laws had been introduced on the recommendation of the Election Commission, but much still remained to be done. Shah believed that the provisions contained in several current laws had been framed in such a way as to tie the hands of these constitutional bodies instead of letting them free.

Shah said it was the duty of constitutional bodies to publicize their problems and demands when the Executive or the Legislature did not take interest in them. He pointed out that the Election Commission was not required to submit annual reports, so it kept the public informed about its activities through the mass media. As the Election Commission was not empowered to inflict punishment on any political organization or on the government if codes of conduct were violated, the Commission had no alternative but to make such violations public. However, Shah also said that without pressure from the mass media and those taking an interest in clean elections, the complaints raised by the Election Commission would prove nothing but a cry in the dark. Shah saw a similar situation with irregularities and misuse of financial resources: the efforts of the Auditor General could not prove effective until pressure for change was generated through public debate.

Making suggestions for the consolidation of the constitutional bodies, Shah stated that even though constitutional bodies enjoyed the freedom to take decisions, they had to depend upon the other organs of the state for their implementation. Shah said that he did not mean to imply that constitutional bodies had received no cooperation from the government or other agencies, but that all such cooperation had so far been based on the discretion and personal efforts of those involved.

Shah suggested that a separate employees service for constitutional bodies might be formed, as currently existed for the Parliament Secretariat and for the Auditor General's Office. He said that if it were not deemed possible to form a separate service, or until such a service could be formed, a definite and transparent working procedure relating to the posting or transfer, promotion and training of employees deputed to constitutional bodies be adopted.

To address the budgetary problems Shah suggested an all-party parliamentary committee be formed, so that the program budgets of constitutional bodies could be submitted to this committee rather than to the Ministry of Finance, as was the current practice. Each constitutional body thus could justify its requests for program budgets, and the Ministry of Finance could do the same for any change proposed by it before the Committee. Shah said that the recommendations made by a committee on the basis of such discussions, could then be approved by the Ministry of Finance. Any decision to alter a program because of budget cuts should be made public, with explicit reasons.

Concluding his presentation, Shah said that there should be a periodic review of the service conditions and perks of office-bearers of constitutional bodies. He also suggested the setting up of a single powerful agency in the government that would be responsible for studying the problems of constitutional bodies, interacting with them, and initiating necessary measures for resolving their problems. Shah explained that the constitutional bodies currently maintained contacts with the government through different ministries and that it was therefore impossible for them to interact collectively with government. Such an agency could function under the Prime Minister. Shah's final suggestion was the formation of a separate parliamentary committee to study and monitor the problems of constitutional bodies and recommend various measures for reform.

**Comment by Auditor General Bishnu Bahadur K.C.**

Following on Shah's points, the Rt. Hon. Bishnu Bahadur K.C. stated that it was very important for the country to strengthen the constitutional bodies, as these bodies could help curb corruption, irregularities, and malpractice. K.C. said that wherever there was power or resources, misuse, embezzlement and malpractice were prevalent: the constitutional bodies were to act as "watch dogs" to avoid such abuse. He also added that the constitutional bodies and the government should work cooperatively for the good of the country, in the spirit of the constitution.

K.C. stated that in his experience, the government tended to view the Auditor General as its critic. K.C. said he had requested the then Prime Minister for measures to address this erroneous perception. He said that the Prime Minister had forwarded his suggestions to the Ministry of Finance, but that the ministry had rejected the proposals out of hand, despite the fact that they did not only concern budget

K.C. explained that in the current system, civil servants were sent to the constitutional bodies by the Ministry of General Administration. The constitutional bodies were thus powerless to deal with their workforce. K.C. said he realized that the constitutional bodies could not be given unlimited rights, but he believed that they urgently needed more freedom. He saw the need to develop a good service system for the constitutional bodies where their staff would be offered incentives and opportunities to develop expertise.

K.C. further stated that under the current system, the constitutional bodies received their budgets from the government. The Ministry of Finance could cut their budget proposals at a stroke without any consultation. Reinforcing Shah's suggestion, K.C. said that a parliamentary committee should approve the budgets for the constitutional bodies so that the Ministry could not cut them without debate.

K.C. warned that "white-collar crime" was on the increase in Nepal. Very well-concealed financial irregularities were happening. To investigate such crimes, he said that experts such as economists and chartered accountants would be needed, but he wondered how they could be paid for. K.C. stated that he had pointed out in the last Auditor General's annual report some areas where policy reform should be considered. These had included foreign aid, tendering and purchasing, and budgeting. In response, K.C. said that he had been accused of exposing the government, his report had led to the stopping of foreign grants and assistance.

K.C. reiterated that the constitutional bodies needed support and cooperation, and he said that this support need not bankrupt the economy nor harm the government.

## Plenary Session Two

*Chair:* The Rt. Hon. Badri Bahadur Karki, Attorney General

***The Relationship between the Government and the Constitutional Bodies*** by Joint Secretary, Ministry of General Administration, Shes Naryan Manandhar

Mr. Manandhar stated that the 1990 Constitution of the Kingdom of Nepal had been formulated in accordance with the desires and aspirations of the Nepali people. This constitution provided for good governance by making provisions for the rule of law, a multiparty democratic parliamentary system of government, human rights, and an independent Judiciary. He said that in addition to the Executive, the Legislature and the Judiciary, the constitution had made provisions for such independent bodies as the Commission for Investigation of Abuse of Authority, the Auditor General's Office, the Public Service Commission, the Election Commission, and the Attorney General's Office.

Manandhar said that conflicts had sometimes emerged between the Executive and the constitutional bodies, and that this was the result either of contradictions inherent in Nepal's political system or because of polarization between different ideologies. He believed that legal provisions alone were not sufficient to enable the constitutional bodies to discharge their functions, and that good organizational structures, as well as adequate manpower and other resources were necessary.

Talking about the dependency of the constitutional bodies on the Executive, Manandhar stated that a constitutional body could not establish offices until the government granted its approval, on the recommendation of the Ministries of General Administration and Finance. Because of this, some constitutional bodies had thus far not been able to establish regional or district offices. He also pointed out that most of the employees of constitutional bodies belonged to the General Administration Group of the Nepal Administrative Service, and that they were repeatedly transferred. Manandhar added that constitutional bodies were dependent on the government for their budgets, and that as a result of a general shortage of funds, the constitutional bodies had not been able to increase the scope of their operations, despite a desire to do so. He believed that the general procedures for obtaining funds prescribed by the government was not appropriate to the needs of these bodies.

Manandhar pointed out that none of the constitutional bodies had been able to work as they should have. He said that when the question of the limited powers of the CIAA was raised, the Supreme Court gave a verdict equipping it with powers, but that the Commission had remained ineffective. He also did not feel that the Public Service Commission had been able to promote the prestige of the civil service. He granted that the Election Commission had held elections, but he claimed that it did not seem capable of checking election-related irregularities even if it wanted to do so. He further commented that the constitutional bodies appeared to be excessively procedure-oriented, seeking small irregularities rather than assessing whether they were achieving their wider objectives.

Raising the question of the autonomy and organizational structures of the constitutional bodies, Manandhar made some recommendations for improvement. He suggested that the constitutional bodies' reports should be made public. Recommendations by the Constitutional Council for the appointments of the heads and members of the constitutional bodies should also be made more transparent by using clear criteria. Manandhar further suggested that constitutional bodies should be made self-reliant: an adequate budget and the simple procedure of budgetary sanctions would help these bodies to fulfil the duties and responsibilities entrusted to them by the constitution.

Manandhar said that the system of supplying manpower should be governed by definite rules and that the constitutional bodies should be able to participate in the management of their manpower. He pointed out that the legislature might need to frame new laws to achieve this. He also said that the Executive should also create an atmosphere in which constitutional bodies could function on a pro-active, rather than a reactive, basis.

Concluding his presentation, Manandhar stated that the government and the constitutional bodies shared the responsibility for running the state, and he suggested that the Secretariat of the Council of Ministers should encourage proper coordination between the constitutional bodies and the various agencies of the Executive. He also suggested the functions discharged by constitutional bodies be directly connected with the people, because he believed that public support would only be achieved by transparency.

#### **Comment by Attorney General Badri Bahadur Karki**

The Rt. Hon. Karki said that Manandhar's issue paper was based soundly on practical experience. Emphasizing Manandhar's views, Karki said that there was no need for debate on the status of the constitutional bodies as they and their roles and responsibilities were clearly identified and established in the constitution. He asserted that there could be no doubt that constitutional bodies were the safeguards of democracy. Karki said that each of the constitutional bodies had been established because it was necessary, and as those needs were increasing, this made the constitutional bodies all the more important.

Talking about the Office of the Attorney General, Karki stated that it had been given rights under the constitution to advise the government and to prosecute on behalf the state, but that it had not been able to exercise its second right. He claimed that the Attorney General and his Office had been limited to litigation or acting as counsel to the government, and he said that it was now important for the Attorney General's Office to expand its work area into prosecution cases. He believed that when the Attorney General was finally able to exercise all his or her rights and roles both as advisor and prosecutor, the withdrawal from cases where the government was alleged to be in the wrong would be minimized.

Karki agreed that none of the constitutional bodies seemed able to function effectively, and that it was important to rectify this situation. He said that apart from financial problems there were also conflicts of jurisdiction between the constitutional bodies themselves. Karki supported the idea of a separate service for the manpower to the constitutional bodies, so that only those candidates who preferred and decided to work for these bodies would be placed there.

## Group Discussion

From the Chair, Attorney General Karki opened discussion on the issue papers that had been presented the previous day:

- *The Separation of Powers and Rationale for the Independent Constitutional Bodies*, by Prof. Krishna Khanal;
- *Current Problems Faced by the Constitutional Bodies*, by Chief Election Commissioner Shah; and
- *The Relationship between the Constitutional Bodies and the Government*, by Joint Secretary, Ministry of General Administration, Manandhar.

### Mr. Chudamani Raj Singh Malla, President, Nepal Law Society

*Khanal said that the hierarchy of the constitutional bodies is less important than the sharing of powers. But he did not make it clear with whom these bodies should share powers and what sorts of power these bodies could share. Regarding the staff for these bodies, we must also consider how we could improve their expertise and loyalty if we were to compartmentalize the civil service as the issue paper presenters proposed. The constitutional bodies frequently complain that the government influences the bodies through their choice of staff. I think that even if the constitutional bodies started recruiting their own staff, they would not necessarily be free from outside influences. What we need most is a spirit of public service.*

### The Hon. Mohammad Mohsin, Member of Parliament

*Khanal talked about 'the sovereignty of the people', 'popular representation', 'the rule of law' and 'the role of constitutional monarch'. My first comment is that the institutions that we have in our political system are not based on our society. These all are transplanted from outside, and we did not evolve them ourselves. So to make these transplanted institutions work, we must first develop our society to reflect these institutions. Before we talk about popular representation or the separation of powers, we should first see if our societies reflect such institutions. Our present society does not. One dominant group has overshadowed all sections. Even our parliament does not reflect the country. Until and unless power is balanced among all the representative groups from different occupations, classes and ethnic groups of the country, these transplanted institutions will not work. Regarding the 'constitutional monarch', contrary to Khanal's assertion, the monarchy in our country has become a very powerful institution. It has become one of three political powers: the Nepali Congress, the Leftists and the King. If any two of these unite, the third would cease to exist. Since this is the state of affairs, we must not undermine the King's role and sideline him as a constitutional King.*

### Dr. Bharat Prasad Dhital, Former Vice Chairman, National Planning Commission

*There is no doubt that all three papers presented yesterday dealt with very practical aspects of our institutions. Chief Election Commissioner Shah has said that the constitutional bodies should be given the right to punish criminals. I did not understand what sort of punishment he meant. I support the idea of*

*establishing a separate service provision for the constitutional bodies. However, this service must not be separate for each body but should be combined so that checks and balances will be easier to maintain.*

*As far the question of the appointment process for the heads and members of the constitutional bodies is concerned, I reject the idea presented by Khanal of creating an Upper House Committee. I would rather support the concept of parliament's scrutinizing and reviewing the appointment process. This would make the process even more transparent.*

**Mr. Ram Lal Shrestha, Parliament Secretariat**

*The word freedom is such an exciting word. We have so much freedom that it may be impossible to exercise a corresponding sense of responsibility. The restoration of democracy meant unrestrained liberty for us, but no-one really thought about how much each person would be expected to contribute. We have had several bitter experiences of the misuse of freedom by people at all levels from the grassroots upwards. These range from the making and breaking of governments, to rampant corruption. With all this freedom, it is surprising that the constitutional bodies are not given the liberty and independence they undoubtedly deserve. From the Chief Election Commissioner's presentation, I realize that the constitutional bodies are the victims of the abuse of government resources, although these bodies are supposed to check such abuses. We must also think about the remuneration and other perks that the Constitutional Heads and Members receive. This has not been reviewed for a long time. However, we must not allow them [the Constitutional Heads and Members] to ever take up a government position, as the lure of such future opportunities could affect the functioning of the constitutional bodies.*

**Mr. Bidhyut Raj Chalise, Secretary, Ministry of General Administration**

*The Chief Election Commissioner stated that the Election Commission needs regional offices. My concern is whether we could realistically expect such regional offices to function effectively when even the central offices of the bodies do not function well. From my experience so far at the Ministry of General Administration, mobilization of staff to the constitutional bodies has been one of the toughest jobs. Given this situation, would it really be feasible to open offices elsewhere? I think we should solve our existing problems first.*

**Mr. Ram Pradhan, Freelance Journalist**

*My concern is about the status of the King. Khanal said that the King is the fourth organ of the state. However, I think that the monarch is a part of the Executive. We say His Majesty's Government but we never say His Majesty's Parliament or His Majesty's Judiciary or His Majesty's Election Commission. The Chief Election Commissioner said that credibility is not possible without effectiveness. I would like to add that effectiveness is not possible without transparency and accountability. From the appointment process to the dismissal of such constitutional or 'critical' positions, there must be more transparency, on which this credibility depends. I also strongly support the parliamentary ratification of constitutional appointments.*

**The Hon. Shanta Manavi, Member of Parliament**



*I think we have pinpointed the problems of making our democratic process effective. Listening to the experiences of the Chief Election Commissioner and the Auditor General, I think there are many aspects of our practices that we should correct. We must publicize our problems so that the people become aware of them and give their support. I hope that the government will follow the recommendations that this seminar makes, as they are the result of intensive brainstorming by respected thinkers.*

**Dr. Mohan Man Sainju, Former Vice Chairman, National Planning Commission**

*Our constitution is considered among the best in the world, so I don't think we need any constitutional reforms to make our democracy work. The challenge for us today is to act in the spirit of the constitution. There is a lot that we can do within the existing constitutional framework. It is obvious that the credibility of the constitutional bodies depends to a great extent on the persons appointed to the bodies, but it has been publicly remarked by authorized office bearers that political pressures and a "quota" system still exist in the appointment process. One can well imagine where the credibility and impartiality of such appointees must lie. The Constitutional Council, before appointing anyone, should first publish a list of potential candidates for public debate. If any candidate does not like public scrutiny, he or she should be dropped: as these are very public posts, appointment to them should be transparent to the public.*

*Most of the issue paper presenters have said that the constitutional bodies need sufficient money and manpower to be effective, but would these alone lead to effectiveness? I don't think so. We have seen a number of governments since the restoration of democracy. The first thing each new government does is to change and reshuffle everything according to its desire. Each has its own favorite staff and an adequate budget. But has any government been effective so far? I put the same question to the Finance Ministry. It has no shortage of money or manpower, but has it been effective? The economy of the country continues to slide. So from past experience, we see that simply supplying enough resources does not necessarily lead to effectiveness, independence and credibility. Efficient use of limited resources is more important in our context. We also need to develop parameters for selecting staff for the constitutional bodies so that only the most capable are appointed.*

**Mr. Maitalal Gurung, Central Committee Member, Green Nepal Party**

*Khanal talked about the separation of powers among the state organs. He said there is a threat to the Judiciary today. But I think the Judiciary is becoming more and more powerful. As a result of the failure of parliamentarians to use their privileges and the tendency to shelter the Judiciary, the latter has become increasingly powerful. Public office bearers abuse their positions of power. Transparency is also needed in the Royal Nepal Army, as it too suffers from corruption and irregularities.*

**The Hon. Bimalendra Nidhi, Minister for General Administration**

*Preceding speakers commented that the hierarchy of power and hierarchical ranking is not important. However, we face countless problems regarding protocol and hierarchical ranking when we come to the functioning of the constitutional bodies and their interactions with the government. That is why I strongly*

*think that this issue should not be skipped, and we must be able to spell out where in the hierarchy these bodies lie. Chief Election Commissioner Shah talked about a constitutional culture. I think we can develop such a culture only when all the state organs, including the constitutional bodies, start respecting each other's jurisdiction and limitations, and I think the current constitutional provisions are sufficient. I have no objection to developing a constitutional culture but if Shah could specify the exact nature of these improvements it would be easier for me, as a representative of the government, to understand the Executive's role in that process. Shah explained that the constitutional bodies exist to control the Executive from abusing public resources. But I think these bodies need to assist the Executive in checking abuse, because the Executive is itself responsible for avoiding such abuses. For example, holding fair and free elections is a responsibility of the Executive, as well as of the Election Commission.*

*It is stated in the constitution that the government is responsible for staffing the constitutional bodies. When we think about reforming the staffing system of these bodies, we must make sure that we do not go beyond the limitations of the constitution. I must also repeat the issue here that Public Service Commission Chairman Rai raised earlier: how we can make it compulsory for the Executive to implement the recommendations and suggestions of the constitutional bodies?*

**The Hon. Madhu Nidhi Tiwari, Member, Public Service Commission**

*I agree with the Hon. Minister that the constitutional bodies exist to facilitate the Executive, but the Executive represents the people. So the constitutional bodies should certainly assist the Executive, but they should also watch whether the Executive functions in accordance with the public mandate. This is why, as the attorneys of the people, the constitutional bodies submit their reports direct to the people or the parliament. As far as suggestions from the constitutional bodies are concerned, the government has for many years taken only those suggestions that are politically favorable for it and ignored the ones that are not. If the government wants to work cooperatively with the constitutional bodies, the mentality that considers the constitutional bodies' heads and members equal to civil servants must be changed. Autonomy must be given to these bodies. Constitutional bodies should facilitate the government's activities but should not be dictated to by the government.*

**The Rt. Hon. Bishnu Pratap Shah, Chief Election Commissioner**

*I still insist that the staffing of the constitutional bodies is consciously made so that the government in power can benefit. Otherwise, why do they have to make so many changes on the eve of elections? This certainly obstructs free and fair elections. In terms of the hierarchy of the constitutional bodies, I think their functions should determine this. However, they must not be considered mere extensions of the Executive. They are constitutional creations with many vital responsibilities to carry out. I also insist that*

*the constitutional bodies were created to check the irregularities of the government. Their functions clearly demonstrate this.*

*I do not believe that the effectiveness and independence of any constitutional body lies solely with the credibility of the persons appointed there. Until and unless the system and mechanism is corrected, no one--no matter how ideal he or she might be--can improve the effectiveness. The character of the person matters, but personality alone is not enough. The constitutional bodies are not totally ineffective. The Auditor General has released a comprehensive report, and it has investigated cases of critical irregularities too. Had it felt intimidated by the government, it would not have done this. The Election Commission has also frequently made public cases of violation of the codes of conduct. It has taken actions against many violators including ministers, opposition leaders, and MPs. What constitutional bodies want and need now is essential infrastructure and maximum autonomy to make their work more effective. We must also experiment with a new system of separate service for the constitutional bodies. It is also a matter of urgency that some of the constitutional bodies, especially the Election Commission, have their own offices in the districts.*

**Mr. Shes Narayan Manandhar, Joint Secretary, Ministry of General Administration**

*We must reconsider our way of thinking. The constitution recognizes the vital functions of the constitutional bodies, but we must rethink their organizational status. These bodies do very different kinds of work. Our civil servants, except for a few technical people, do not get the chance to specialize. We should develop a system where the civil servants of all sectors can have such a chance.*

**The Rt. Hon. Badri Bahadur Karki, Attorney General**

*Each of the constitutional bodies is very important: they all are creatures of the constitution. In 1973, in India, a question was raised as to which, out of the Parliament, the Supreme Court and the Executive, was the supreme body. It was decided that "None of these bodies is sovereign: each of them is supreme in its own function and power as entrusted by the constitution." In the same way, our own constitutional bodies should not feel any inferiority complex as each of them is supreme in its own field.*

### **Plenary Session Three**

**Co-Chairs:** The Rt. Hon. Bishnu Pratap Shah, Chief Election Commissioner;  
The Rt. Hon. Madhusudan Prasad Gorkhali, Chief Commissioner, CIAA

***The Report of the Parliamentary Joint Investigative Committee Regarding Electoral Malpractice, as it Relates to the Constitutional Bodies*** by Member of Parliament Jagannath Poudel

The Hon. Poudel stated that this particular Parliamentary Joint Committee had been formed to identify measures that would ensure truly fair and impartial elections, as elections were the foundations upon which democracy rests. The framers of the constitution had been aware of this and had given constitutional status to the Election Commission. Poudel pointed out that India had simpler procedures for the formation

of an Election Commission than did Nepal, and that the Election Commission there had been found to be impartial and more effective. He said that directives issued by the Election Commission in India had to be complied with by political parties. Indian government employees are assigned election duties by the Election Commission through a lottery system that avoids complaints that those employees have adopted a partisan attitude or have been involved in irregularities. Poudel explained that in the UK, an Election Business Unit would be created, no matter which party was in power, to administer elections, and he said that he had never heard complaints of irregularities there. The British government played only a supplementary role in election-related activities.

Poudel wondered if Nepal's Election Commission was shifting the blame onto the government to cover up its own inactivity. However, he admitted that Nepal's government and political parties were not totally clean. In his opinion, the political parties had not been able to demonstrate high ethical standards, and some parties had violated the codes of conduct they themselves had endorsed. Poudel claimed that these distortions and inconsistencies could be checked, provided that the Election Commission refused to work as a shield for those in power. Sadly, he said that the Election Commission had not been able to do even that.

Poudel further asked whether the Constitutional Council always recommended qualified persons for appointment to constitutional bodies, or whether it was influenced by improper means. He said that the All-Party Parliamentary Joint Committee felt that the appointment process should be discharged in a transparent manner. For this, a system of debate on the proposed persons should be developed by the relevant parliamentary committee. The Committee felt that this would provide truly qualified persons with an opportunity to be appointed to different constitutional bodies.

Poudel pointed out that merely selecting qualified persons would not be enough. The heads of constitutional bodies could not be competent and efficient unless the staff working under them were also competent and efficient. The Parliamentary Joint Committee had reached the conclusion that a separate constitutional service should be formed by making the services of employees working in constitutional bodies independent and competitive and by broadening the opportunities for their promotion. This would put an end to the inferiority complex suffered by the employees of constitutional bodies.

Poudel said that both the Election Commission and the government had a duty to ensure that elections were free and fair. He said that a voter identity card system had been introduced in India: of the 600 million voters, 450 million had already been issued with identity cards. But Poudel said that Indian officials had expressed the fear that this system might prove counter-productive in a society in which the level of political consciousness is quite low. In Nepal, Poudel said that he believed that a proper use of identity cards could have a positive impact on the election system.

Poudel also pointed out a different problem: he said that the courts were currently indifferent to election-related cases. If they changed this attitude and became sensitive to the rights of the people, election-related cases could be disposed of quickly, which would discourage those who committed irregularities. He said that this was not happening at present, and the criminal attitude that one might do anything to win elections was developing instead.

Poudel reminded the seminar participants that it was essential to establish polling centers and sub-centers at appropriate places if elections were to be free, impartial, and fair. The law and order situation should also be improved. He explained that the current practice was to depute three policemen to each polling center. This arrangement for peace and security was inadequate, bearing in mind the pressure generated by large numbers of voters. Peace and security were the most important requirements during elections. If only a small number of policemen were available, Poudel said that elections should be held in different phases. In no circumstances should elections be held without making adequate arrangements for peace and security.

Concluding his presentation, Poudel said that it was essential for political parties to remain balanced and restrained. If they did not, the Election Commission and other independent constitutional bodies would have to safeguard Nepal's democracy from unnecessary political interventions

#### **Comment by Chief Election Commissioner Bishnu Pratap Shah**

The Rt. Hon. Shah, agreeing with Poudel's views, stated that both the government and the Election Commission had important roles to play to ensure free and fair elections. He also commended Poudel's concern over the time it took to settle election-related cases in the courts. Quick settlement of such cases should deter election-related offences. Shah also agreed security on election days should be properly managed.

However, he said that in his opinion there were no grounds for the Election Commission to be blamed for the insecurity in previous local elections. First of all, police manpower had been insufficient, and additionally, provisions for local government positions in the Local Government Ordinance created problems. Shah said that this ordinance, announcing 47 elected positions in a Village Development Committee (VDC), had come out only a couple of months prior to the elections. With so many positions to be filled, there would be a huge number of candidates. Shah pointed out that this huge number from a single village had meant that almost everyone would be a candidate. Under Nepali law, each candidate is allowed to depute one representative for him or her at the polling booth. Shah questioned how far this was manageable in terms of security, as there would be more than a hundred representatives of the candidates alone at a polling booth. He argued that Nepal's existing systems should be reconsidered before blaming any particular organization or individual. He also pointed to another factor that had caused security problems in past elections. The ballot, which previously had to be stamped in only one place, had become very complicated. Shah said that the new ballot took much longer to fill in and caused significant delays. This had irritated the waiting voters, and crowds had inevitably formed. Shah stated that in such situations it was difficult to maintain security.

Although Poudel's paper had dealt with the Parliamentary Joint Committee's Report, Shah said that it was difficult for him to talk about the report as he had not yet received a copy. He asked if the report was something to be kept from the Election Commission. Disagreeing with Poudel, he expressed the view that unless the system was corrected, no Election Commission Chief could do anything. Commenting on Poudel's citing of the Indian Election Commission as a good example, he said that systematic reform was needed there, too. Shah quoted a statement from the then Chief Election Commissioner of India, T.N. Seshan: "Thousands

of Seshans cannot do anything to reform unless the commitment of the political parties for fair elections and the neutrality of civil servants is achieved."

Shah also disagreed with Poudel's assertion that the Election Commission of Nepal was shifting blame onto the government to cover up its own inactivity. He asked Poudel to point out where and when the Election Commission had committed such mistakes that it had to blame the government. He said confidently that the Election Commission had developed several good ideas that Nepal's neighbors, including India, would like to adopt. Such ideas included: codes of conduct for candidates, political parties and government; political party laws; and voters identity cards. He claimed that the Election Commission had been active enough to develop better systems, but that the implementing body, the government, had turned a blind eye. Shah also pointed out that none of the parliamentarians who had unanimously passed the resolution on the need for voters identity cards had ever raised a single question later as to why the resolution had not been implemented.

***The Existing Legal Framework as it Pertains to the Concept of a Constitutional Service Provision and a More Transparent Appointment Process for the Constitutional Bodies*** by SCOPE President Surya Dhungel

Dr. Dhungel, President of the Society for Constitutional and Parliamentary Exercises (SCOPE), stated in his paper that it might not be easy for Nepal's constitution to bring about balance and harmony between the parliament and the judiciary. The reason for this, he asserted, was that the parliamentary system had developed on the basis of the supremacy of parliament in the UK, while the independent judiciary had developed under the concept of constitutional supremacy found in the US. He believed it would be difficult to find a solution to the problem without taking into account the social structure of Nepal. He further said it was difficult for the chief organs of the state -- the Legislature, the Executive, the Judiciary, and the Crown -- to face the challenges of the state polity in the absence of independent and strong constitutional bodies. As had been found in other countries, there was a need for strong and independent constitutional bodies to act as vigilantes in the quest for impartial and effective government.

Summarizing the recommendations proposed by preceding speakers, Dhungel said that it was essential to make the appointment procedure for the heads and members of the constitutional bodies transparent and based on public opinion. This would allow proper examination of the qualifications and competence of the candidates. The selection procedure could be done through a public hearing system or by parliamentary endorsement. He said there should be transparency in all activities of the constitutional bodies, as well as in the presentation of and debate on their reports. It was also essential to develop a public medium to examine the credibility of those reports. He also highlighted the need to create an independent service relating to constitutional bodies.

Dhungel stated that Article 117 of the constitution had made a provision for a Constitutional Council to work as a body making recommendations for the appointment of the heads and members of the constitutional bodies, apart from the Chief Justice of the Supreme Court and the Attorney General. He said that this provision brought the process of appointment under the powers of the Executive, and that the effectiveness as well as the importance of constitutional bodies would grow if their office-bearers were

appointed through the broad-based participation and consensus of members of parliament. Dhungel reported that in India recently, a bill relating to the appointment of Lokpal that sought to make a similar provision to Nepal's Constitutional Council had been presented at the Lok Sabha.

Despite this, Dhungel criticized the Constitutional Council, saying that he felt it was opposed to the doctrine of the separation of powers. He said he believed that it undermined the basic spirit of the parliamentary system, and that the collective participation of the Chiefs of the Legislature, the Chief of the Judiciary, the Chief of the Executive, and the leader of the opposition party morally devalued the basic role of each one of them. He explained this view by saying that the Chief Justice of the independent Judiciary would feel pressure to agree with the Prime Minister. The leader of the opposition party was under similar pressure. Dhungel continued his line of argument by saying that the leader of the opposition party, having agreed with the Prime Minister within the Constitutional Council, would have no moral grounds to voice his opposition in parliament. For the same reason the Supreme Court would not be able to work impartially. Dhungel said that if a motion of impeachment was presented at the House of Representatives, the Speaker had to play the role of judge. But since he was already involved in the process of appointment through the Constitutional Council, he would have no moral grounds to act as such. Dhungel reiterated his view that this process whereby the chiefs of all bodies worked together to arrive at decisions undermined the doctrine of checks and balances. However, as this system had been prescribed in the constitution itself, Dhungel said that ways should be found to improve it.

Dhungel claimed that an analysis of the appointments made by the Constitutional Council so far showed that a large number of persons had been selected more on the basis of personal influence than on the basis of their qualifications and competence. He said that there should be a fundamental change in the working procedure of the Constitutional Council in order to make constitutional bodies strong. Dhungel believed that the process of transparency should be initiated from the Constitutional Council itself, and that this would require only procedural reforms, not constitutional amendments.

Presenting his recommendations for these procedural reforms, Dhungel said that rules relating to the conduct of meetings of the Council should be drafted. Since meetings of the Constitutional Council provided the opportunity for chiefs of state organs to hold informal discussions among themselves, they could also become a medium for ensuring interactions and a place where consensus on issues of national interest could develop. Meetings of the Constitutional Council could be held at a definite place, if possible at the Supreme Court or somewhere within the parliament. The dates and venues of its meetings should be made public in advance.

Dhungel suggested that before selecting prospective candidates for appointment, the Constitutional Council could prepare documents relating to the qualifications, experience, and expertise of the candidates, discuss them, and form a Committee comprising four members of the National Assembly and one legal expert, perhaps the Chairman of the Bar Association. Alternatively, they could use a committee of the National Assembly to conduct informal enquiries into the qualifications and experience of candidates, and submit recommendations for these appointments to the King only after they had been endorsed by the Committee.

Dhungel also suggested that the Constitutional Council itself could make arrangements to publish the names of candidates for appointment to the constitutional bodies. If there were objections to any of these names, a parliamentary committee or a committee formed by the Council might obtain additional explanations from candidates against whom objections had been raised. Dhungel pointed out that Section 5 of the 1991 Judicial Council Act made a similar provision to be used in the appointment of justices of the Appellate Courts. Under this provision a list of proposed names may be prepared and a preliminary enquiry held. Dhungel said that there was thus clear legal provision for the formation of a committee to conduct preliminary enquiries into possible public appointees. The process of such public hearings or institutional enquiries could be used in the context of appointments and dismissals, and also in cases where any charge was framed. He said that other countries had similar procedures.

Regarding a separate service provision for the constitutional bodies, Dhungel stated that the 1996 Office-Bearers of Constitutional Organs (Remunerations, Conditions of Service, and Facilities) Act had started the process of making an integrated legal provision in this connection. This provision could legally be made, but Dhungel said it was essential to look first into the constitutional provisions and current practices relating to the framing of laws. He stated that Articles 101 and 103 of the constitution had made provisions regarding the formation of the Public Service Commission and its functions, mainly in connection with the Civil Service. This was substantiated by the sub-heading of Article 124 of the constitution. He further stated that Article 124 clearly gave the government power to make provisions for services necessary to run the country's administration. Constitutional services could not, however, be brought under the power of the government. Dhungel explained that by confining the powers of the Public Service Commission to make appointments to Civil Service posts only, Article 102 had limited the possibly extensive jurisdiction of the Public Service Commission, but that on the other hand Article 102 (6) could be utilized to increase its jurisdiction. Dhungel pointed out that the basis for broadening the currently limited meaning of the civil service as the traditional government service could be found in Section 3 of the 1992 Civil Service Act, in which the Nepal Judicial Service, the Nepal Parliamentary Service, and the Nepal Health Service had been included in the classification of the Civil Service. Dhungel said that there might be disagreement over its usefulness, but a separate 1996 Nepal Health Services Act had already been promulgated. The Civil Service Act could definitely be renamed the Public Service Act and presented in the form of an integrated act relating to employees by classifying public services into such services as the Civil Service, the Parliamentary Service, the Judicial Service, the Security Service, and the Constitutional Service. He said that the constitution provided for the Judicial Council and a Judicial Services Commission. The Civil Service Act had made a separate classification of employees working in the judicial service. In the same manner, Dhungel suggested, it would be possible to form a separate service for constitutional bodies under the constitutional service.

Dhungel reminded the seminar that good governance could not flourish in the absence of ethical norms and that it was essential to prepare a code of conduct manual in order to lay the foundations for ethical governance. This manual should cover the Executive, the Judiciary, the Legislature, the constitutional bodies, the civil service, political parties, the security service, the communication service, and society at large. Dhungel thought it appropriate to suggest that NDI should take initiatives to prepare such an integrated manual and secure a general consensus for it. Such a manual could become the basis for providing a legal form to ethical norms.



### **Comment by CIAA Chief Commissioner Madhusudan Prasad Gorkhali**

The Rt. Hon. Gorkhali asked the seminar participants to consider the recommendations that had been made for reforms in both the appointment process of the heads and members of the constitutional bodies, and the separate service provision necessary for the bodies. He said that making the appointment process more transparent would not be against the spirit of the constitution. Laws could be made to bind this process with some standard criteria. In the meantime, until the law was developed, it was still possible to experiment with methods that would eliminate the growing public mistrust over these appointments. He said that, for example, vacancies for such positions could be publicly announced through the media, giving detailed terms of reference. Then those who thought themselves eligible could apply. The Constitutional Council could verify or scrutinize the applications and shortlist them on the basis of standard selection criteria. The Constitutional Council could adopt this method immediately. No law barred the Council from doing so. Gorkhali suggested using the methods that the Judicial Council adopted while appointing Judges.

Gorkhali expressed his beliefs that the idea of a separate service provision for the constitutional bodies was a good one. The constitutional bodies had a manpower crisis, and their secretaries were changed every two months. When such chief executives were in post for such a short time, it had a negative impact throughout the administration. Gorkhali pointed out that in a ministry, there were dozens of secretaries, but when one of them was absent, his absence was keenly felt. He could appreciate how much difficulty the constitutional bodies must face when they have even fewer officers and those they did have did not stay long. He warned that democracy did not mean unlimited freedom, and that there must be a system of checks and balances.

Gorkhali explained that it was not a lack of legislation that had caused problems in the fight against corruption and the abuse of power. He said that there were several laws which were supposed to avoid such distortions but he claimed they were being violated with impunity. He said that the CIAA alone could do nothing. He stated that the constitutional bodies needed good channels of communication between themselves, and that the collective effort would count. Gorkhali said further that the constitutional bodies were not like the ministries as they were much smaller, they would benefit hugely from even a little support.

Agreeing with Shah's statement, Gorkhali emphasized that the constitutional bodies needed at least a minimum infrastructure, otherwise one could not expect them to function effectively. He said that public power was being vested in individuals and he claimed that in some cases these people were taking illegal control of public powers. Gorkhali said that the integrity of organizations was damaged when their powers were vested in a small number of people and that this was not good for democracy.

### **Group Discussion**

*Chair:* The Hon. Bimalendra Nidhi, Minister for General Administration

**The Hon. Krishna Ballav Sharma Kafle, Commissioner, CIAA**

Poudel explained that it was not possible to bring about reform unless the state wishes it. This is very true. However, there were a few things mentioned that were not justified. By saying that the CIAA is quiescent, Poudel questioned the usefulness of the constitutional bodies. One should realize that one cannot expect very much from an organization that is deprived of even minimum facilities. I kindly request everyone to look at our (CIAA's) annual report to see how the CIAA has performed with very few resources. We have recommended several procedural reforms that have not been accepted by the government. Civil servants who we suggested should receive disciplinary actions received promotions instead. We are blamed that our cases are always defeated in the courts. But it should be remembered that intellectual crimes are increasing and that intellectual expertise is necessary to investigate such crimes. Judges also have to be experts. The court is the same for every case, no matter how serious the case is. But no one listens to our demand for a special court. To some extent the law also prevents us from working effectively. For example, we cannot investigate foreign people who work for Nepali projects with foreign assistance. Many irregularities are committed in partnership with foreigners. When we cannot conduct even a hearing with foreigners, how far can we investigate crimes only by scrutinizing Nepalis? The CIAA is not sleeping, but it is not able to function very effectively either.

**Mr. Govinda Adhikari, Freelance Journalist**

Preceding speakers, especially the office bearers of the constitutional bodies, said that they are not able to function properly because they lack support from several sectors. Why then do these office bearers not simply resign? Instead of thinking about special courts, we should try to strengthen our existing Judiciary. I disagree with Dhungel's proposal that foreign organizations should lead forums to strengthen our state organs. This is our job and the state itself should make necessary arrangements.

**The Hon. Jagannath Poudel, Member of Parliament**

No matter how effectively the CIAA thinks it is functioning, the public and parliamentary perceptions of its performance are very poor. The CIAA should therefore make its activities public. Everyone wishes it to be more effective. There is no doubt that it lacks resources rather than legal support: it is entitled to investigate anyone from a messenger to the Prime Minister. So the CIAA should publicly explain what it needs from the government to improve its performance. The Parliamentary Joint Committee on Election did find the Election Commission less effective than it should have been when it analyzed the electoral exercises in the 1997 local elections. There are grounds for stating that the Election Commission could also improve in the future. The Committee has already submitted its report on this to the parliament.

**The Rt. Hon. Bishnu Bahadur K.C., Auditor General**

We talked a lot about the appointment process of the heads and members of the constitutional bodies. Some of us also argued that criteria must be set to determine eligible candidates for these posts. However, there are already criteria for such positions set in the constitution. We should review these first and make sure that they are met in practice. I don't think we need any other prerequisites. There must be transparency to some extent. But we should also keep in mind how far transparency works in our context where every sector, including the media and the administration, is politically polarized. Making everything public may ruin an innocent person's character, too. The process of the appointment must be transparent but should not assassinate anyone's character.

**The Rt. Hon. Bishnu Pratap Shah, Chief Election Commissioner**

*Adhikari asked why the constitutional office bearers don't resign from their posts. But he should understand that nothing is going to be changed by just giving up. We want change and we have to change. All of us can and should struggle to develop a good system.*

**Proceeding From Here: Developing a Consensus on the Issues Raised During the Seminar**

*Chair: The Hon. Bimalendra Nidhi, Minister for General Administration*

From the Chair, Nidhi reviewed the recommendations presented by the issue paper presenters and participants of the seminar. He urged the participants to develop a consensus on the recommendations. Summarizing these, Nidhi proposed that the following points be agreed upon:

- the appointment process of the heads and members of the constitutional bodies should be made more transparent;
- the government should provide the constitutional bodies with enough capable staff either by forming a separate service for these bodies or by adopting a standard and transparent system to send staff to these bodies on a permanent or semi-permanent basis from the pool of civil servants;
- the government should provide the constitutional bodies with sufficient financial and physical resources and should develop a transparent system of reviewing the budgetary proposals of these bodies;
- the remuneration, allowances and perks that the chiefs and the members of the constitutional bodies receive should be reviewed and updated. The pensions for these office bearers should also be reviewed; and
- the constitutional bodies should be made further independent and autonomous from other organs of the state.

Speaking on behalf of the government, Nidhi asked for further help and suggestions to make the constitutional bodies more independent and effective. He stated that the government welcomed suggestions and comments.

Complementing these proposed recommendations, NDI Representative Montague reiterated and summed up the ideas discussed in the seminar. She stressed that there needed to be change in the staffing procedures for the constitutional bodies, given that the current method is inadequate. Speaking on another issue on which seminar participants had expressed their concerns, the appointment process for the heads and members of the constitutional bodies, Montague suggested that participants might consider the many ideas generated in the seminar. These ideas included:

- the Constitutional Council should make public what their procedures are for appointing constitutional bodies' heads and members;
- an Upper House committee should be developed to scrutinize the appointments;

- public hearings should be conducted on the appointments to the constitutional bodies;
- a list of suitable persons for such posts should be developed and made public;
- the Public Service Commission should pre-screen possible candidates for the constitutional bodies;
- names should be solicited from the public on whom would be the most suitable for filling constitutional bodies' posts; and
- detailed criteria should be developed for posts in the constitutional bodies.

Montague also stressed the idea of developing a "watchdog for the watchdogs," to oversee the constitutional bodies. She said that having a way of taking a broader look at the needs of the constitutional bodies might help to prevent their needs being rejected out of hand.

### **Group Discussion**

**The Hon. Narayan Man Bijukshe, Member of Parliament and President of the Nepal Workers' and Peasants' Party**

*Our history shows that democracy was achieved relatively easily compared with other countries. If we had not been forcibly changed, we would still be living in the Middle Ages. So we should not expect everything to be changed too quickly. Other countries have taken a long time to develop good systems.*

*Our society is still a feudal society. A few aristocrats control state power. This being the case, it is not surprising that people are frustrated by democracy. The leadership should encourage ethical reform. Fully-fledged codes of conduct should be introduced and effectively implemented. No-one has the right to point accusing fingers at others until we ourselves have mended our ways. MPs are not given enough time to discuss bills in parliament. Parliamentarians should have more serious and comprehensive discussions. Parliamentarians should take moral responsibility for the irregularities and corruption in the country. Blaming others does not help.*

**Mr. Kanak Bikram Thapa, Dean of the Faculty of Law, Tribhuvan University**

*We should be clear that the constitutional bodies are agencies separate from the three branches of state. This is why there should be a separate system for them in terms of staffing and budgetary arrangements. As for the appointment process of heads and members of the constitutional bodies, scrutinizing through an Upper House committee is not justifiable, as it will only lengthen the process. However, it is a good idea to make the process more transparent by making the deliberations of the Constitutional Council and the list of potential candidates public.*

**The Rt. Hon. Badri Bahadur Karki, Attorney General**

*Dhungel proposed an Upper House committee to scrutinize and confirm the appointment of the heads and members of the constitutional bodies. But we should not forget that these posts are very sensitive. These*

posts should be offered by the state to dignified persons as an honor. We should not make the mistake of viewing these appointees in the same way as any others. It is the Prime Minister, the head of the Executive, not a mere political figure, who heads the Constitutional Council. The Prime Minister represents an institution and the Prime Minister's decision is that of the institution. There should be trust in some areas. If we cannot trust the head of one of the supreme organs, whom can we trust? Is there any "super prime minister" whom we are looking for? The same applies to the leader of the opposition. He or she also represents the institution, not an individual. We should be cautious of the bitter outcomes that may be brought about by an Upper House confirmation system. Suppose the Constitutional Council recommended a person and asked the House for confirmation. If the House rejected the appointment, where would this leave the credibility of the Council? There must be a system of scrutiny, but it should be within the Constitutional Council itself.

**Ms. Indira Rana, Former Secretary, Judicial Council**

*There are so many officials from the constitutional bodies here, but none of them is a woman. It seems as if the Constitutional Council is biased against women. There must be provision for the representation of women in the constitutional bodies.*

**Mr. Mihir Kumar Thakur, Program Coordinator, Pro Public**

*Amendments to the constitution or changes in the law take time. In the meantime, we should take what practical steps we can. In terms of the appointment process, for example, the Prime Minister could issue a statement of public interest before recommending anyone to these posts. We often hear several undesirable things about potential candidates in the media. So those who are commented on or complained about should also give their side of the story before taking up such dignified posts. They should understand that they are deputed by the state, not by a prime minister or speaker or opposition leader. They should therefore be accountable to the state.*

**Mr. Rambabu Nepal, Deputy Auditor General**

*There is no doubt that the constitutional bodies are to serve the people. They do not exercise any other executive powers. Since they are accountable to the people, these bodies submit their reports to parliament every year. The significance of these bodies is only justified when parliament listens to their reports and insists the government implements recommendations as necessary. In addition to the need for adequate financial resources, manpower, protocol and a positive mentality, it should also be recommended that the parliament should discuss their reports and act on them. If there are any problems of implementation, they should be made public. An institution should be established under the leadership of the prime minister to develop an appropriate mechanism for better and more serious parliamentary review of the reports of the constitutional bodies.*

**The Rt. Hon. Santa Bahadur Rai, Chairman, Public Service Commission**  
*I support this recommendation.*

**The Hon. Madhav Dutta Bhatta, Commissioner, CIAA**

*The government should not only provide the constitutional bodies with enough financial resources, it should also ease the existing system of providing money to these bodies. The government freezes these bodies' accounts a week before the termination of each fiscal year. This trivial action of the government has restricted the CIAA from stopping millions of rupees-worth of corruption that take place during the last week of each fiscal year. As has happened to other constitutional bodies, the CIAA's advice has been ignored by the government. In 1996, 23 persons were sent to the United Nation's General Assembly when the law allows only five representatives and their necessary advisors. The CIAA investigated the delegation and found that it was not necessary for a country like ours to send such a big delegation as it cost so much: neither were so many advisors really necessary to support only five representatives. Despite the CIAA's advice to the government, in 1997 23 people were again sent.*

**Mr. Bidhyut Raj Chalise, Secretary, Ministry of General Administration**

*For good governance, a supervised and adequately paid civil service is necessary. Merely separating services by the nature of work will not work. Other recommendations have also been made by the Administration Reform Commission (ARC) to improve the existing civil service. We should review its recommendations, as they may contradict some of the ones we are now making. For example, an ARC recommendation says there should be reduced numbers of well-paid staff but we are saying today that there should be yet another service included in the civil service. Discipline in civil servants is essential, but this is lacking here. This is one of the results of allowing civil servants to form organizations.*

**The Hon. Rakam Chemjong, Member of Parliament**

*In the current system of appointing heads and members of the constitutional bodies, no matter how incapable the appointees may be, they become appointed if the Prime Minister wishes it. That is why there should be confirmation hearings in parliament to make the process more democratic. This would not only allow the appointee to clarify any accusations that he or she receives from her/his critics during the process of appointment, it would also give the public a better sense of what kind of person is being appointed. There should be a separate but combined service for all constitutional bodies that might also include the existing separate service for the Parliament Secretariat. That way, there would be more room for the workers to be transferred and to develop expertise. The idea of ratifying budget proposals for these constitutional bodies through a particular parliamentary committee to prevent any further cuts from the Finance Ministry is also very welcome. As the Public Accounts Committee currently takes increased interest in every issue apart from the reports of the constitutional bodies, these reports are in danger of*

*being completely ignored in the future. There must be a system where parliament is compelled to discuss the reports of all the constitutional bodies. In addition, ex-heads and members of the constitutional bodies should not be given political appointments.*

**Mr. Padam Lal Shrestha, Coordinator, Shelter and Local Technology Center**

*All the recommendations that Nidhi summarized for the further effectiveness and independence of the constitutional bodies are very practicable. However, we need some strategic planning to implement these recommendations. There must be provisions developed that would compel parliament to take actions on the reports of the constitutional bodies. Parliament should also make an annual public report on its activities. People deserve the right to be informed how their representatives are functioning.*

**Prof. Lok Raj Baral, Professor of Political Science, Tribhuvan University**

*The main component of good governance is good leadership. Many of the problems raised during this seminar could be resolved if the leadership behaved decisively. Although good governance requires effective administration, adequate resources and appropriate laws, the major requirement is a good example from the leadership. Materialistic values prevail these days in our society. Unless leaders of each of the political parties put real faith in democracy and aim for integrity-based polity, it will make no difference how many times we amend the constitution and laws. However, it is a very positive sign for democracy that we have all realized today that we are on the wrong track.*

*As far as the ineffectiveness of the constitutional bodies is concerned, parliament and the political parties should consider this issue very seriously and take initiatives to solve the problems. All the causes of ineffectiveness could be dealt with if only the parliamentarians and the leaders of all political parties would resolve to do so. A monitoring cell could be developed by the government to oversee the activities of these bodies. For the sake of good governance every sector, including the parliament, government and political parties, should also make sure their activities are transparent, accountable and committed to the people. They should really trust in the system we are adopting. We are running out of time but we can still contrive a revolution by changing our practices and making the parliament and other institutions of the state more effective.*

**The Hon. Deepak Prakash Banskota, Member of Parliament**

*All the recommendations put forward by the preceding speakers are very honorable. There is no doubt that the constitutional bodies should be independent. But as far as the question of their effectiveness is concerned, the supply of resources alone does not solve problems: the persons appointed there on the recommendation of the Constitutional Council should also take initiatives. There needs to be coordination*

*between the government and the constitutional bodies. It is obvious that free and fair elections are not possible without the government's active role and its commitment to this ideal. Together with the other constitutional bodies, the Election Commission needs to be strengthened so that it can ensure free and fair elections, upon which democracy rests.*

**The Hon. Bimalendra Nidhi, Minister for General Administration**

*It seems as if we unanimously support the recommendations that I summarized earlier to increase the effectiveness and independence of the constitutional bodies. I want briefly to reiterate those recommendations.*

- *The appointment process for heads and members of the constitutional bodies should be made more transparent.*
- *The government should provide the constitutional bodies with enough capable staff either by forming a separate service for these bodies or by adopting a standard and transparent system to send staff to these bodies on a permanent or semi-permanent basis from the civil servants pool.*
- *The government should provide the constitutional bodies with sufficient financial and physical resources and should develop a transparent system of reviewing the budgetary proposals of these bodies.*
- *The remuneration, allowances and perks that the chiefs and members of the constitutional bodies receive should be reviewed and updated. The pensions rights of these office bearers should also be reviewed.*

*Additionally, one more recommendation came up during the previous discussion about women's participation in the constitutional bodies. I therefore propose one more point to be included in the recommendations of this seminar :*

- *There should be provisions to ensure women's participation in the constitutional bodies at all levels.*

*To demonstrate our support and agreement with these recommendation, I would like to request your applause.*

*(Participants applauded to demonstrate their support and agreement with the recommendations.)*



### **Closing Remarks by Minister for General Administration Bimalendra Nidhi**

Saying that the seminar had been very productive and thought-provoking, Nidhi expressed the hope that the findings of this seminar would help lead to the establishment of good governance. Speaking on behalf of the government, he stated that the government wanted autonomy, efficiency and effectiveness for all the constitutional bodies. He said that the election process was a vital democratic exercise, so strengthening the Election Commission helped to strengthen democracy. Similarly, it was the CIAA's responsibility to investigate corruption and abuses of authority. The Public Service Commission was instrumental in creating and sustaining a competent and committed civil service selected on the basis of merit. The Auditor General fulfilled a vital role in tracking government finances. Accordingly, all the constitutional bodies were equally important and all were necessary for Nepal's democracy. He again reiterated that the government took a positive attitude in developing these bodies as more independent and effective. The government always welcomed suggestions on this matter.

Finally, thanking NDI for organizing the seminar and every participant personally, and on behalf of NDI, for his or her participation, Nidhi adjourned the seminar.

## **APPENDIX 1: SEMINAR AGENDA**

## APPENDIX 1: SEMINAR AGENDA

### DEVELOPING MORE INDEPENDENT AND EFFECTIVE CONSTITUTIONAL BODIES: PROBLEMS AND PROSPECTS

December 1-2, 1998, Kathmandu

#### Agenda

##### *Day One*

9:00           **Registration**

9:30           **Inaugural Session**

*Chief Guest:*   The Rt. Hon. Beni Bahadur Karki, Chairman, National Assembly  
*Chair:*           The Rt. Hon. Santa Bahadur Rai, Chairman, Public Service Commission (PSC)

- Maryam Montague, NDI Representative: welcome and highlights of the program
- Remarks from the Hon. Minister for General Administration, Bimalendra Nidhi
- Inaugural remarks from the Chief Guest  
       Remarks from the Chair

10:30         **Tea and Snacks**

11:00         **Plenary Session One: The Separation of Powers and the Rationale for the Independent Constitutional Bodies**

*Co-Chairs:*     The Rt. Hon. Bishnu Bahadur K.C., Auditor General  
                  The Hon. Madhu Nidhi Tiwari, Member, PSC

- Issue Paper Presentation by Prof. Krishna Khanal, Professor of Political Science, Tribhuvan University
- Comments on the Issue Paper by The Hon. Madhu Nidhi Tiwari, Member, PSC

#### **Current Problems Faced by the Constitutional Bodies**

- Issue Paper Presentation by the Rt. Hon. Bishnu Pratap Shah, Chief Election Commissioner
- Comments on the Issue Paper by the Rt. Hon. Bishnu Bahadur K.C., Auditor General
- Question and Answer Period

- 13:00**            **Plenary Session Two: The Relationship between the Constitutional Bodies and the Government**  
*Chair:*            The Rt. Hon. Badri Bahadur Karki, Attorney General
- Issue Paper Presentation by Shes Narayan Manandhar, Joint Secretary of the Ministry of General Administration
  - Comments on the Issue Paper by the Chair

**Lunch**

*Day Two*

**9:15**            **Tea and Snacks**

**9:30**            **Question and Answer Period**  
*Chair:*            The Rt. Hon. Badri Bahadur Karki, Attorney General

- Discussion on the issue papers presented the previous day

**11:00**            **Plenary Session Three: The Report of the Parliamentary Joint Investigative Committee Regarding Electoral Malpractices, as it Relates to the Constitutional Bodies**

*Co-Chairs:*      The Rt. Hon. Bishnu Pratap Shah, Chief Election Commissioner  
The Rt. Hon. Madhu Sudan Prasad Gorkhali, Chief Commissioner,  
Commission for Investigation of Abuse of Authority (CIAA)

- Issue Paper Presentation by the Hon. Jagannath Poudel, Member of Parliament
- Comments on the Issue Paper by the Rt. Hon. Bishnu Pratap Shah, Chief Election Commissioner

**The Existing Legal Framework as it Pertains to the Concept of a Constitutional Service Provision and a More Transparent Appointment Process for the Constitutional Bodies**

- Issue Paper Presentation by Mr. Surya Dhungel, President, SCOPE
- Comments on the Issue Paper by the Rt. Hon. Madhu Sudan Prasad Gorkhali, Chief Commissioner, CIAA
- Question and Answer Period

**12:30**            **Proceeding from Here: Developing a Consensus on the Issues Raised During the Seminar**

*Chair:* The Hon. Bimalendra Nidhi, Minister for General Administration

- **Group Discussion** ,

**13:30**            **Closing Remarks from the Chair**

**Lunch**

(The program will be conducted in Nepali.)

**APPENDIX 2: PARTICIPANTS LIST**

**PARTICIPANTS' REGISTRATION LIST FOR THE SEMINAR ON  
"DEVELOPING MORE INDEPENDENT AND EFFECTIVE CONSTITUTIONAL BODIES:  
PROBLEMS AND PROSPECTS"  
DECEMBER 1-2, 1998, KATHMANDU, NEPAL**

S. NO.	NAME	DESIGNATION	ORGANIZATION
1	Achut Narayan Rajbhandari, Hon	Commissioner	Election Commission
2	Badri Bahadur Karki, Rt Hon	Attorney General	Office of the Attorney General
3	Bharat Prasad Dhital, Mr	President	Bhaibhav Consultant
4	Bidut Raj chalise, Mr	Acting Secretary	Ministry of General Administration
5	Bimilendra Nidhi, Hon	Minister	General Administration
6	Birendra Prasad Mishra, Hon Dr	Commissioner	Election Commission
7	Bishnu Bahadur K. C., Rt Hon	Auditor General	Office of the Auditor General
8	Bishnu Dutta Upreti, Mr	Joint Secretary	Parliament Secretariat
9	Bishnu Pratap Shah, Rt Hon	Chief Election Commission	Election Commission
10	Chin Kaji Shrestha, Hon	Member of Parliament	House of Representatives
11	Chuda Raj Malla, Mr	President	Nepal Law Society
12	Dan Bahadur Sahi, Mr	Secretary	Public Service Commission
13	Deepak Prakash Banskota, Hon	Member of Parliament	House of Representatives
14	Devendra Raj Pandey	Intellectual	South Asia Study Center
15	Ganesh Bhurtel	Lecturer	Society for Constitutional and Parliame
16	Gahendra Lal Malla	Lecturer	Tri-Chandra Campus
17	Govinda Adhikari, Mr	Journalist	
18	Hiranya Lal Shrestha, Hon	Member of Parliament	House of Representatives
19	Indira Rana, Ms	Former Secretary	Judicial Commission
20	Indra Bahadur Sherchan, Hon	Commissioner	Commission for Investigation of Abuse
21	Jagannath Poudel, Hon	Member of Parliament	National Assembly
22	Jan Sharma, Mr	Senior Journalist	Media Support Centre
23	Kanak Bikram Thapa, Prof	Dean	Tribhuvan University - Law Faculty
24	Kapil Shrestha, Mr	Associate Professor	Tribhuvan University - Political Scienc
25	Keshav Poudel, Mr	Editor	The Spotlight Weekly
26	Krishna Ballav Sharma Kafle	Commissioner	Commission for Investigation of Abuse
27	Krishna Prasad Khanal, Prof	Professor	Tribhuvan University - Political Scienc
28	Kundan Aryal, Mr	Editor	Budabar Weekly

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29	Krishna Man Pradhan	Executive Manager	Nepal Law Society
30	Lok Raj Baral, Prof	Professor	Tribhuvan University - Political Scienc
31	Madhav Dutta Bhata, Hon	Commissioner	Commission for Investigation of Abuse
32	Madhu Nidhi Tiwari	Member	Public Service Commission
33	Madhusudan Pd Gorkhali, Rt Hon.	Chief Commissioner	Commission for Investigation of Abuse
34	Mahadev Pd Yadhav, Hon	Member of Parliament	National Assembly
35	Mihir Kumar Thakur, Mr	Coordinator	Pro Public
36	Mohammad Mohsin, Hon	Member of Parliament	National Assembly
37	Mohanman Saiju, Dr	Former Vice Chairman	National Planning Commission
38	Maitilal Gurung, Mr	Member	Green Nepal Party
39	Moti Kaji Sthapit, Mr	Former Attorney General	
40	Narayanman Bijukshe, Hon	Member of Parliament	House of Representatives
41	P. L. Shrestha, Mr	President	Team Nepal
42	Prakash Chandra Lohani, Hon Dr	Member of Parliament	House of Representatives
43	Purna Man Shakya, Mr	Professor	Nepal Law Campus
44	Pushpa Gautam, Ms	Advocate	
45	Rakam Chemjung, Hon	Member of Parliament	House of Representatives
46	Ram Bahadur K. C., Mr	Secretary	National Assembly
47	Ram Lal Shrestha, Mr	Personal Assistant to Preside	National Assembly
48	Ram Prasad Shrestha, Mr	Former Chief	Commission for Investigation of Abuse
49	Ram Pradan, Mr	Senior Journalist	Media Support Centre
50	Rambabu Nepal, Mr	Deputy Auditor General	Office of the Auditor General
51	Rishikesh Upadhayay, Mr	Lecturer	Tribhuvan University PG Program
52	Sahana Pradhan, Hon	Member of Parliament	House of Representatives
53	Sailendra Sigdel, Dr	Consultant	DFID, UK
54	Sesh Narayan Manandhar, Mr	Joint Secretary	Ministry of General Administration
55	Shanta Bahadur Rai, Rt Hon	Chairman	Public Service Commission
56	Shanta Manavi, Hon	Member of Parliament	National Assembly
57	Sher Bahadur K. C., Mr	Advocate	
58	Subodh Singh	Observer	American Embassy
59	Sindhunath Pakyurel, Mr	Senior Advocate	
60	Surya Dhungel, Dr	President	Society for Constitutional and Parliame



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61	Tank Panth, Mr	Editor	Ajako Samarchapatra
62	Tirtha Man Shakya, Mr	Secretary	Ministry of Law and Justice
	<b>NDI STAFF</b>		
63	Maryam Montague, Ms	South Asia Representative	National Democratic Institute (NDI)
64	Ram Guragain, Mr	Senior Program Officer	National Democratic Institute (NDI)
65	Naveen Subba, Mr	Office Manager/ Program Of	National Democratic Institute (NDI)
66	Deepak Khanal, Mr	Program Officer	National Democratic Institute (NDI)
67	Anamika Rai, Ms	Office Secretary	National Democratic Institute (NDI)
	<b>REPORTERS</b>		
68	Kiran Pokharel, Mr	Reporter	Himalaya Times
69	Hari Bahadur Thapa, Mr	Reporter	Kantipur Daily
70	Rajendra Aryal, Mr	Reporter	Chalfal/ Sambodhan Weekly
71	Shital Prasad Mahato, Mr	Reporter	National News Agency
72	Jagat Nepal, Mr	Reporter	Bimersha
73	Navraj Bhattra, Mr	Reporter	Khabar Kagaj
74	Salikram Tiwari, Mr	Reporter	Janastha
75	Sabindra Bogate, Mr	Reporter	The Kathmandu Post
76	Binaj Gurubacharaya, Mr	Correspondent	Associate Press
77	Milan Karel, Mr	Reporter	The Everest Times
78	Navraj Phokarel, Mr	Editor	NTV
79	K. K. Budhathoki, Mr	Reporter	National News Agency
80	Chandra Bariyer, Mr	Reporter	Radio Nepal
81	K. C. Wagle, Mr	Associate Editor	Gorkhapatra
82	Ramesh Kumar, Mr	Reporter	Nepalipatra
83	Nirmala Sharma, Ms	Reporter	Radio Nepal
84	Prakash Adhikari, Mr	Executive Editor	Deshantar Weekly
85	Yash Pahadi, Mr	Reporter	Jagaran
86	Rajendra Pratap Shah, Mr	Chief Reporter	Ghatana Ra Bichar
87	Binod Dhungel, Mr	Producer (Ghatana Ra Bichar)	Radio Nepal
88	Bipin Niraula, Mr	Reporter	Pakampar Weekly
89	Ajaya Bahadur Khanal	Editor	Patrika
90	Mahendra Bista	Editor	Hindu

**APPENDIX 3: PRESS COVERAGE OF THE SEMINAR**

**Gorkhapatra Daily, December 3, 1998**  
Front Page

**TRANSLATED FROM NEPALI**

Gorkhapatra Reporter  
Kathmandu, December 2.

**Heads of the Constitutional Bodies are not Khomeinis**

"The Heads of the Constitutional Bodies are not Ayatollah Khomeinis, and the Election Commission does not rule autocratically from the *Bahadur Complex*." These are the words of Chief Election Commissioner Bishnu Pratap Shah.

He was speaking today at a two-day seminar, which started yesterday on "Developing More Independent and Effective Constitutional Bodies: Problems and Prospects." The *Bahadur Complex* is the name of the building in which the Election Commission is housed.

In the concluding session of the seminar, organized by the National Democratic Institute (NDI) and chaired by Minister for General Administration Bimalendra Nidhi, Chief Election Commissioner Bishnu Pratap Shah commented, "Good results cannot be achieved from organizations or constitutional bodies unless they are given necessary infrastructures."

The recommendations made by the seminar to make the constitutional bodies independent and effective included: setting criteria for the appointments to the constitutional bodies; creating a separate constitutional service and facilities for the constitutional bodies; supplying sufficient financial resources to these bodies; parliamentary committees discussing the annual reports of the constitutional bodies (such as that of the Auditor General's Office); arranging for post-retirement facilities (pensions) for constitutional appointees to dissuade them from seeking other political posts; and finding capable women candidates for these posts.

However, these concluding recommendations were not free from debate. Many recommendations were debated at the seminar. At the seminar, attended by politicians, constitutional heads and other senior intellectuals, the argument was also made that the names of the appointees and the process for the appointment of these persons should be made public. Dr. Mohan Man Sainju expressed his opinion that the criteria for the selection of the appointees for these Constitutional posts must be made public. His view was supported by other participants at the seminar.

The President of the Society for Constitutional and Parliamentary Exercises (SCOPE) and an issue paper presenter at the seminar Dr. Surya Dhungel stated that, "The Constitutional Council should arrange for making the list of potential Constitutional appointees public." "The date and venue for the meetings of the Council should be made public in advance." he added.

Chief Commissioner of the Commission for Investigation of Abuse of Authority (CIAA) Madhusudan Prasad Gorkhali, commenting on Dr. Dhungel's issue paper, expressed his opinion that the qualifications for the constitutional heads must be well defined and that the appointment process must also be made transparent.

*Appendix 3: Press Coverage of the Seminar*

"The bureaucracy has been distorted because of its involvement in various political organizations. Freedom has been misused by the bureaucracy. A third class non-gazetted official, in the name of his affiliated organization, tries to unnecessarily interfere in the administration. If this present situation continues, it would be better to dissolve the CIAA," said Mr. Gorkhali.

Putting forward his objection to making the constitutional body appointments public and allowing transparent public debate, Auditor General Bishnu Bahadur K.C. stated that setting certain limitations and criteria for these appointments would be reasonable but holding public debate might not be the right step. "In the country's present environment where press and intellectuals are divided, if we create a public appointment system, the process will be further complicated as the appointees may be unnecessarily and falsely blamed," he added, to justify his statement.

Commenting on the statement of the Chief Election Commissioner Bishnu Pratap Shah about the retirement pensions for the constitutional office bearers, MP Rakam Chemjong urged that the constitutional body heads must not be appointed to any political position after their retirement but that simply providing pensions would not by itself solve this problem of biased behavior by constitutional body heads.

While the constitutional heads were arguing that their inefficiency was due to the lack of sufficient resources and expert manpower and that they suffered too much government interference, Journalist Govindra Adhikari counter-questioned how many chiefs had resigned as a result. He added that blaming others and ducking their responsibilities would only further support wrong practices. Disagreeing with Adhikari's views, Chief Election Commissioner Bishnu Pratap Shah explained that the constitutional appointees should not resign but should face the difficulties and try to improve the situation.

Dr. Lok Raj Baral stated that such problems would be common until the institutionalization of the concept of good governance takes place. He expressed his opinion that open thinking on the issues of the independence and effectiveness of the constitutional bodies was a positive step and should be taken as one of democracy's achievements.

In the seminar, which concentrated on the roles, independence and limitations of the rights of the constitutional bodies, other speakers included journalist Ram Pradhan, MP Shanta Manavi, Member of Public Service Commission Madhu Nidhi Tiwari, Joint Secretary of the of the Ministry of General Administration Shes Narayan Manandhar, CIAA Commissioner Krishna Ballav Kafle, NDI's South Asia Representative Maryam Montague, Indira Rana and Mihir Thakur.

During the seminar, which concluded with agreement on the need for arranging a separate constitutional service for the constitutional bodies, MP and President of Nepal's Workers Peasants' Party Narayan Man Bijukshe stated that the feudal attitude of society had brought about vices and malpractice. Although every part of society had a role to play, the political sphere must first be ethical, which would have a beneficial effect on the other parts of society, Mr. Bijukshe added.

Similarly, MP Deepak Prakash Banskota stated that the appointment of particular individuals to the constitutional bodies would not enhance their effectiveness, as improved infrastructure was even more necessary. Saying that unless the government was committed, elections could not be free and fair. Mr. Banskota added, "The report of the Joint Parliamentary Committee is an example."

Presiding over the concluding session of the seminar, Minister for General Administration Bimalendra Nidhi remarked that the government was sensitive about the issue of autonomy for the constitutional bodies. Explaining that the transfers of staff from constitutional bodies without the permission of the bodies had been stopped, Mr Nidhi added that the organization of such seminars aimed at increasing the effectiveness, independence, and status of the constitutional bodies by making practical recommendations was very important.

Mr. Nidhi further said, "A constitutional culture can be established through the autonomous coordination, cooperation and goodwill of these bodies." Chief Election Commissioner Bishnu Pratap Shah also discussed the need for a constitutional culture in his paper.

*Saptahik Vimarsha, December 4, 1998*  
Front Page

**TRANSLATED FROM NEPALI**

## **Constitutional Bodies Start Raising their Voices**

Although it is accepted that the constitutional bodies are not able to function smoothly because of insufficient financial resources and other obstacles, the question still remains whether these bodies are discharging their responsibilities properly. This question was again raised during a two-day [NDI] seminar organized in Kathmandu on "Developing more Independent and Effective Constitutional Bodies: Problems and Prospects."

The Supreme Court is one example of how the constitutional bodies discharge their responsibilities. A contempt of court case filed three years ago against former Prime Minister Manmohan Adhikari has still not been settled. Is this—a three-year old unsettled case—not an example of how constitutional body members themselves are making these bodies ineffective? The constitution of the country has given the Supreme Court the sole responsibility of determining the qualifications of the Members of Parliament. A case that was filed at the Court four years ago about an MP's lack of qualifications has still not been decided, even though his tenure is now almost over. Nonetheless, the constitutional body heads concluded at the seminar that MPs are to be blamed, too. Here are some details from the seminar.

The seminar recommended that appointments to the constitutional bodies be carried out in an independent, impartial and procedural manner that is based solely on the appointees' qualifications. Provisions for a separate constitutional service, the provision for sufficient budgets and physical facilities to the bodies, and the representation of women on the Constitutional Council were also recommended during the seminar.

Although the Constitution of the Kingdom of Nepal 1990 gives the constitutional bodies the right to work independently and effectively to benefit the people, the constitutional body heads at the seminar cited examples of political interference causing problems in their work. Pointing out the need to make public the annual reports of the constitutional bodies, the seminar participants urged a change in mentality in order to increase the effectiveness of these bodies.

*Appendix 3: Press Coverage of the Seminar*

Auditor General Bishnu Bahadur K.C. said that the lack of resources, interference from politicians and a lack of facilities for their staff were the main causes for the ineffectiveness of the constitutional bodies. Bitterly telling a story of his experience, K.C. stated, "The Auditor General has to go to the Ministries of Finance and General Administration just to fill the position of a low-level gopher. To combat corruption and malpractice, capable manpower is a must. If the government does not give us adequate resources, what can I, the Auditor General, do alone?"

Auditor General K.C. stated that if these bodies were still not able to function smoothly even if a proper working environment was created for them, then the parliament, with the necessary two-thirds vote, should remove the office holders of the bodies.

Chief Election Commissioner Bishnu Pratap Shah, recalling that under the partyless system the rank of constitutional heads was only slightly higher than that of senior government officers, said that the prevailing old mentality has barred the effectiveness of these safeguards of democracy.

Shah said that the Election Commission could do nothing more than publicize through the media cases of violation of the codes of conduct by the political parties or the government. In his opinion, only those civil servants who could not be promoted, who were disliked by their bosses, or who were considered incapable were sent, as a punishment, to the constitutional bodies. "Given this situation," he added, "how can a constitutional body function effectively?"

Professor Krishna Khanal stated that the party holding a majority in parliament could hold a majority in the Constitutional Council and could, therefore, appoint its own men to the constitutional bodies, and this would lead to questions about the independence of the bodies. Dr. Surya Dhungel, President of the Society for Parliamentary and Constitutional Exercises (SCOPE), expressed his opinion that the Constitutional Council should list the names of potential appointees and make them public before appointing anyone to a Constitutional body. He said that only those people against whom there are no serious complaints should be recommended to His Majesty the King for appointment.

The seminar, during which issue papers were presented by Member of Parliament Jagannath Poudel and Joint Secretary of the Ministry of General Administration Shes Narayan Manandhar, was organized by the National Democratic Institute. At the seminar, inaugurated by National Assembly Chairman Beni Bahadur Karki and concluded by Minister for General Administration Bimalendra Nidhi, issue papers were commented upon by Auditor General Bishnu Bahadur K.C., Public Service Commission (PSC) Chairman Santa Bahadur Rai, Attorney General Badri Bahadur Karki, Chief Commissioner of the Commission for Investigation of Abuse of Authority Madhusudan Prasad Gorkhali, Chief Election Commissioner Bishnu Pratap Shah and PSC Member Madhu Nidhi Tiwari. Office bearers of the constitutional bodies, MPs, senior government officers, lawyers, professors and journalists took part in the program.

*Himalaya Times Daily, December 2, 1998*  
Front Page

**TRANSLATED FROM NEPALI**

**Constitutional Body Heads Dissatisfied with the Present System**

Times Reporter  
Kathmandu, December 1.

Constitutional bodies are considered necessary for democracy. But undeniable complaints have been raised about the effectiveness of these bodies. Who is responsible for this? The constitutional body heads believe that outdated culture and mentality is responsible for their ineffectiveness.

Chief Election Commissioner Bishnu Pratap Shah claims that the attitude of the government and its machinery towards the constitutional bodies is dominated by the culture of the former Partyless system. He says, "The old undemocratic culture of considering constitutional bodies as lower than ministries and constitutional office bearers as lower than government senior officers still exists. This is still the opinion of elected representatives and political party members. With respect to the constitutional bodies, everything is decided by the government, including the creation of constitutional posts, and the appointment, transfer and promotion of the constitutional bodies' staff. Only those with whom departmental bosses are dissatisfied, or those who are considered incapable are sent to the constitutional bodies and it is seen as a form of punishment. Thus these persons do not have the appropriate work ethic or mentality to work in the constitutional bodies," says Mr. Shah.

Head of another constitutional body, the Auditor General, has no kinder words for the Executive and its interference. He says, "In the current situation when economic irregularities, corruption, unnecessary interference in staff transfers and promotions, and overall degeneracy is on the increase, the responsibilities of the constitutional bodies should increase correspondingly. But the Auditor General is still perceived only as a critic by the Executive. Although the Executive should cooperate with the constitutional bodies, we have the bitter experience of their distinct lack of cooperation with us."

"The elites are committing white-collar crimes. Given this situation, I need specialist staff. But the government has not given me sufficient resources. While corruption is rising, I have to work with staff who have limited capabilities," says Auditor General K.C.

Attorney General Badri Bahadur Karki, stating that the constitutional bodies and the Executive conflict in the course of their work, says, "We are having hard time meeting not only the 'qualifications' of a democratic culture but also the 'prequalifications' of such a culture. Although the Constitution has given the Attorney General the independent right to file cases against criminals on behalf the State, the Attorney General is confined to a role as the advisor to the government only. I have the right to file cases but the government can withdraw these cases at any time without even examining the information in my possession."

Similarly, Public Service Commission Chairman Santa Bahadur Rai is weary of the politicization in the administration. Complaining that the government has not provided them with financial resources to cover

*Appendix 3: Press Coverage of the Seminar*

even basic needs, he asks, "When the constitutional bodies have to rent an office, doesn't the landlord ask for favors?"

Prof. Krishna Khanal not only disagrees with the present system for staffing the constitutional bodies, he also says that the appointment process for the heads of these bodies is defective. In his opinion, the bureaucracy is at the root of corruption. He says that representatives of Nepal's bureaucracy are incapable of appointing Constitutional Heads fairly. Constitutional body heads, who are envisioned as independent by the constitution, expect ambassadorial positions upon their retirement. Although Prof. Khanal does not disagree with the need for providing adequate legal rights to these bodies, he is also of the opinion that such legal provisions are inadequate; he also says that practices that must also change.

Speaking at the inaugural function of the two-day seminar, "Developing more Independent and Effective Constitutional Bodies: Problems and Prospects," organized by the National Democratic Institute today, Minister for General Administration Bimalendra Nidhi questioned whether the concept of a State allows for any bodies above or at the same level of the three State organs: the Executive, the Legislature, and the Judiciary. "This issue must be clear", he added. Minister Nidhi stated that on the one hand, these bodies have accepted the fact that they are under the Executive branch of the State and are demanding to be free from political interference, but on the other hand, they claim that they are separate organs, as they submit their annual reports to the king directly through parliament. This controversy must be resolved, Mr. Nidhi emphasized.

Chairman of the National Assembly Beni Bahadur Karki expressed his view that the effectiveness of the constitutional bodies depends on the role played by the heads of these bodies. He said the primary need now is for the heads to be politically neutral. During the seminar, various speakers also expressed their opinions, including NDI South Asia Representative Maryam Montague and Public Service Commission Chairman Santa Bahadur Rai.

*Kantipur Daily, December 2, 1998*  
Front Page

**TRANSLATED FROM NEPALI**

### **Constitutional Bodies Paralyzed by the Government's Lack of Support**

Kantipur Reporter  
Kathmandu, December 1.

The heads of the constitutional bodies have come to the conclusion that the bodies, although adequately empowered by the constitution, are handicapped by the government's lack of support. The staff of these bodies feel depressed as a result.

At a two-day seminar to seek ways to increase the independence and effectiveness of the constitutional



*Appendix 3: Press Coverage of the Seminar*

bodies, organized in the Capital by the National Democratic Institute (NDI), the international wing of the American ruling party, the Democratic Party, the heads of the constitutional bodies assertively presented their experiences of the government's uncooperative attitude towards them. They stated that the government did not view the constitutional bodies as mechanisms to help the government, but instead considered them to be opponents.

"Constitutional bodies cannot perform their roles effectively if they face inadequate and defective laws and shortages of manpower and financial resources," stated Bishnu Pratap Shah, Head of the Election Commission, one of the constitutional bodies.

Although the Election Commission, the Commission for Investigation of Abuse of Authority, the Auditor General and the Public Service Commission were envisioned by the constitution as independent bodies to control the misuse of the Executive's power, over the past few years there had been many complaints of the dysfunctional nature of these bodies. There had also been complaints that, in the name of exercising constitutional rights, vices have become more deeply rooted and there has been any even greater misuse of power.

The Chiefs have themselves asked the question, "How can we function effectively when our offices are filled with staff who not been recommended by their former senior officers, have had former departmental bosses who have been dissatisfied with their work, and who are generally considered incapable and are thus sent to the constitutional bodies as a form of punishment?" "How can the Constitutional Bodies be effective when they have only discouraged staff to work with?" asked Auditor General Bishnu Bahadur K.C.

Mr. K.C. also said that if these bodies were to work effectively in the spirit of the constitution, they must be equipped with appropriate laws, sufficient resources and the right to appoint manpower as they see fit. Minister for General Administration Bimalendra Nidhi also disclosed the fact that most of the government's employees hesitate to work for the constitutional bodies, for these bodies do not offer any "attractions." According to Minister Nidhi, capable and 'dynamic' officials want to go to such Ministries as Finance, Water Resources, and Works and Transport. When they are transferred to the constitutional bodies, they prefer to take home leave instead. So even though the government wants to send staff to the constitutional bodies, it is unable to.

Chief Election Commissioner Bishnu Pratap Shah complains, "Even though these bodies are envisioned by the constitution to be independent and powerful, they are fully dependant on the government for their effective functioning and, as they lack government support, these bodies are not able to work effectively, despite wishing to."

Despite Nepal's democratic constitution, Mr. Shah stressed that a political culture had not emerged, and Nepal continued to suffer from the old, pre-democratic mentality. He explained his belief that this old mentality was the main barrier to the effective functioning of the constitutional bodies. He said, "The behavior of the government towards the constitutional bodies is dominated by the old party-less political culture. Consequently, the chiefs of the constitutional bodies are considered lower in rank to senior government officers. Elected representatives and political parties have a similar attitude toward the constitutional bodies."

"In order to meet the responsibilities that are demanded by the constitution, constitutional provisions

*Appendix 3: Press Coverage of the Seminar*

alone will not suffice." Mr. Shah added, "To make these provisions meaningful, we must not forget the importance of the proper resources and cooperation during the implementation of these provisions."

Auditor General K.C. explained that he had been criticized in his annual report for telling the truth about financial misconduct. According to Mr. K.C., the annual report had critically examined the rampant financial irregularities taking place in the utilization of foreign loans and grants. But the government had accused the Auditor General of creating an unfavorable environment for foreign loans and grants by making these facts more transparent. "The government thinks of the constitutional bodies as its critics. We don't criticize for the sake of doing so. We criticize to improve the government," Mr. K.C. stated.

Professor of Political Science Krishna Khanal expressed his view that a transparent appointment process for the heads of the constitutional bodies alone might not be able to control misconduct. According to Mr. Khanal, there was very little possibility of controlling misconduct by the heads of the constitutional bodies who come from the bureaucracy, as the bureaucracy was at the very root of misconduct and corruption.

Khanal commented that the appointees of the constitutional bodies, afraid of offending anyone, could not exercise their rights because they cherished dreams of ambassadorial or political posts after their retirement. Khanal suggested adopting an alternative system for the appointments to the constitutional bodies. The appointment of the heads of the constitutional bodies is made upon the recommendation of the Constitutional Council, which comprises the Prime Minister, the Chief Justice, the Speaker of the House of Representatives, the Chairman of the National Assembly and the Leader of Main Opposition.

National Assembly Chairman Beni Bahadur Karki, a member of the Constitutional Council, speaking at the program's inauguration, stated that the heads of the constitutional bodies must show their the following qualifications: political neutrality, morality, respectability, honesty, ability to tolerate pressure, and the ability to discharge their responsibilities under difficult circumstances.

"These constitutional bodies, when passing judgements that might negatively affect the accused, may find that the accused may criticize the constitutional bodies as politically biased. However, one should make decisions based on the facts and call a spade a spade. Good should be determined as good, and bad determined as bad." Chairman Karki added.

**Khabarkagaj Weekly, December 3, 1998**

Front Page

**TRANSLATED FROM NEPALI**

**Attempt to make Constitutional Bodies Effective**

Khabarkagaj Reporter  
Kathmandu.

The National Assembly Chairman stated that vice and misconduct had been increasing in the country for some time, leading to public frustration with democracy, and harming the country's reputation among its neighbors, donors and international communities.

Chairman Karki expressed this view at a seminar on "Developing more Independent and Effective Constitutional Bodies: Problems and Prospects," organized by an American NGO named the National Democratic Institute for International Affairs.

To solve the current problems faced by the constitutional bodies, the two-day seminar concluded that there should be a constitutional service provision for the staffing of the constitutional bodies and pension facilities for constitutional appointees after their retirement.

The speakers of the seminar expressed their views that misconduct and corruption are rampantly increasing in the country because the Executive and the Legislature have failed to work honestly, and because their watchdogs, the constitutional bodies (the Election Commission, Office of the Auditor General, Commission for Investigation of Abuse of Authority (CIAA), Office of the Attorney General and the Public Service Commission (PSC)) have been more or less defunct, as a result of legal, budgetary and manpower problems.

Minister for General Administration Bimalendra Nidhi said that the country's constitutional culture could only be established when the Executive, Legislature and Judiciary developed a system that respected the rights and limitations of the constitutional bodies. Speakers, including the Chief Commissioner of the CIAA Madhusudan Prasad Gorkhali, the PSC Chairman Santa Bahadur Rai, Attorney General Badri Bahadur Karki, MPs Deepak Prakash Banskota, Jagannath Poudel, Dr. Mohammad Mohsin, Narayanman Bijukshe, Rakam Chemjung, Shanta Manabi, economist Dr. Bhaarat Prasad Dhital, Dr. Mohanman Sainju, and former ambassador Professor Lok Raj Baral, expressed their views at the seminar.

At the seminar, chaired by Minister for General Administration Bimalendra Nidhi, an issue paper was presented by Tribhuvan University Political Science Professor Krishna Khanal on "The Separation of Powers and the Rationale for the Independent Constitutional Bodies," which was commented on by PSC Member Dr. Madhu Nidhi Tiwari. Additionally, the issue paper presented by the Chief Election Commissioner Bishnu Pratap Shah on "Current Problems Faced by the Constitutional Bodies" was commented on by Auditor General Bishnu Bahadur K.C. Society for Constitutional and Parliamentary Exercises (SCOPE) President Dr. Surya Dhungel presented an issue paper on "A Constitutional Service Provision and the Existing Legal Framework as it Pertains to a more Transparent Appointment Process". Five issue papers were presented at the seminar.

**Kantipur Daily, December 3, 1998**  
Editorial

**TRANSLATED FROM NEPALI**

## **The Effectiveness of the Constitutional Bodies**

The constitutional bodies, for which the constitution has provided in order to conduct special tasks of the State, have themselves commented that their activities have not been effective. While we can comment about the persons appointed to the constitutional bodies, this is a separate issue. However, what is clear is that the Executive cannot depend on the qualifications of those appointed to such constitutional bodies as the Election Commission, the Public Service Commission, the Commission for the Investigation into Abuse of Authority and the Auditor General's Office. We now realize that the qualified persons that the constitution envisioned have not been appointed to the constitutional bodies. And now we have no alternative but to make them function effectively.

The heads of the constitutional bodies have expressed their opinion that the Executive's attitude towards them is confrontational. But the public has lost faith in these constitutional bodies and considers these bodies, including the CIAA, mere ciphers. It is not appropriate for the constitutional bodies to criticize the Executive, and put forward demands that the government is pressurized to fulfil. The chiefs of the constitutional bodies have not been restricted by law and could accomplish their appointed tasks as dictated by the constitution. And we all realize that all sectors of the nation lack sufficient resources -- not only the constitutional bodies.

Constitutional bodies are solely dependent on the government for necessary laws, manpower, and financial resources. The constitutional bodies have blamed the government for the existence of defective laws, the lack of financial resources and the supply of inefficient manpower. In this regard, we agree that the Executive's approach to the constitutional bodies has been inappropriate. The people of Nepal also object to the government's poor attitude towards the constitutional bodies. However, the lack of government cooperation is not the only reason for the ineffectiveness of these bodies. Nepali society has become accustomed to blaming others for personal weaknesses rather than taking charge of the situation and accomplishing appointed tasks. This is true of the constitutional bodies, as well. The working style and the effectiveness of the Constitutional Council, the appointing body of the constitutional bodies, has also been a matter of debate -- we need to keep this issue in mind also, or any discussion of the effectiveness of the constitutional bodies is meaningless.

*Aajako Samacharpatra Daily, December 3, 1998*  
Front Page

**TRANSLATED FROM NEPALI**

## **Constitutional Heads Dissatisfied with the Working Style of MPs**

Samacharpatra Reporter  
Kathmandu.

Chief Election Commissioner Bishnu Pratap Shah has stated that, according to the constitution, the constitutional bodies could give directives even to the Prime Minister and the Commander in Chief. Nonetheless, the government tended to treat these bodies as its playthings.

Mr. Shah said it was worrying that the government did not realize the importance of the constitutional bodies. He was speaking on the second day of a two-day seminar on "Developing more Independent and Effective Constitutional Bodies: Problems and Prospects."

At the seminar, organized by the National Democratic Institute (NDI), Mr. Shah raised a question about whether it would be possible to employ judges as election officers, given the nation's concerns about appointing Chief District Officers as election officers.

MP Jagannath Poudel, presenting an issue paper on "The Parliamentary Joint Committee and the Context of Fair Elections," accused the Election Commission and the Commission for Investigation of Abuse of Authority (CIAA) of blaming the government in an effort to hide their own incompetence. He also blamed the Election Commission for not being strong enough to handle undue pressure from the government.

### ***It is not like speaking in parliament***

Commenting on MP Jagannath Poudel's issue paper, Mr Shah stated that the paper unjustifiably accused the constitutional bodies and was unable to point out specific cases of incompetence by the constitutional bodies. He urged the MP to pinpoint specific instances of incompetence if the constitutional bodies were to improve. "Otherwise," he added, "it will be just like a speech delivered in parliament."

Mr. Shah further added that the Royal Address of the Government had mentioned the implementation of a Voters Identity Card (VIC) system in the Terai districts. As per this directive, the Election Commission proposed a VIC program and requested the ministry for necessary resources. But the ministry's officers replied that they did not have any budgetary provisions for such a program. In such a situation, Mr. Shah asked how one could blame the Election Commission for incompetence. He also commented on the working style of the MPs, citing as an example the parliamentary resolution motion on the implementation of the VIC system, which was passed unanimously, but afterwards, the parliament had raised not a single voice about the implementation of the resolution.

Chief Commissioner of the CIAA Madhusudan Gorkhali stated that if the CIAA's status did not improve, it would better to dissolve it. Stating that the Constitutional Council which appointed the

*Appendix 3: Press Coverage of the Seminar*

constitutional heads was not impartial and that laws needed to be made for the functioning of the Constitutional Council, he further said that an institution should not be blamed because of the involvement of one specific person in such an institution. Commissioner of the CIAA Krishna Ballav Kafle blamed the government for disregarding the CIAA's reports.

Auditor General Bishnu Bahadur K.C. said that the appointment process of the Heads and Members of the Constitutional Bodies should be made transparent. Similarly, President of the Society for Constitutional and Parliamentary Exercises (SCOPE) Dr. Surya Dhungel, presenting an issue paper on "The Existing Legal Framework as it Pertains to the Concept of a Constitutional Service Provision and a More Transparent Appointment Process for the Constitutional Bodies," questioned why these bodies were provided for in the constitution if there was no will and ability to make them competent and effective.

Dr. Dhungel further asked the following question of the government and the parliament, "Are not any direct or indirect activities to make the Constitutional Bodies incompetent and useless, unconstitutional?"

At the closing session of the seminar, chaired by Minister for General Administration Bimalendra Nidhi, views were also expressed by Dr. Mohammad Mohsin of RPP, President of the Nepal Workers and Peasants' Party Narayanman Bijukshe, Prof. Kanakbikram Thapa, and Lawyer Indira Rana.

***Kantipur Daily, December 3, 1998***  
Front Page

**TRANSLATED FROM NEPALI**

### **Constitutional Bodies Affected by Political Quota System**

Kantipur Reporter

Kathmandu, December 2.

Specialists state that the constitutional bodies are not able to function smoothly because of political pressure and a political seat-sharing system in the appointment process for constitutional heads.

The constitutional heads complain that despite being provided with adequate rights by the constitution, the bodies are not able to function properly because of insufficient financial and other resources. However, specialists claim that the real reason for the inadequate functioning of the constitutional bodies is a desire to escape from responsibilities.

On the second day of the seminar on "Developing more Independent and Effective Constitutional Bodies: Problems and Prospects," the specialists commented that the constitutional heads did not properly utilize their rights. An American NGO, the National Democratic Institute, with the objective of seeking solutions to increase the effectiveness of the constitutional bodies, gathered specialists and constitutional heads

in a forum. Former Chairman of the National Planning Commission Mohan Man Sainju asked the constitutional heads, "Are the Ministries of Finance and General Administration, which have enough manpower and financial resources, able to fulfil their roles effectively?" Suggesting that the constitutional heads need not be confined within limited objectives, he said that focusing only on budgetary and manpower issues was not enough, and that the constitutional bodies had the potential to work more efficiently even within their existing rights and resources.

Constitutional specialist Dr. Surya Dhungel expressed doubts about whether the proper persons were appointed to positions because of the lack of transparency in the appointment process for constitutional heads. "Constitutional heads should be appointed after a public hearing," he said. Appointment of the heads of the constitutional bodies is based on the recommendations of the Constitutional Council. But Dr. Dhungel stated that this process was against the principles of the separation and balance of powers. The Constitutional Council comprises the Prime Minister, the Chief Justice, the Speaker of the House of Representatives, the Chairman of the National Assembly and the Leader of the main opposition party. "Constitutional heads are appointed with the consensus of the ruling and opposition party leaders. Therefore, those persons who are appointed to the constitutional bodies, no matter their past or qualifications, are never criticized. Moreover, now that it has been disclosed that the constitutional heads are appointed on the basis of a quota system and political pressure, it is clear that a more transparent appointment system must be introduced." Dr. Dhungel urged. He also suggested that the list of possible appointees be made public for debate, and that such appointments be confirmed by the parliament with reasonable justification for their appointments.

The Chief of the Commission for Investigation of Abuse of Authority admitted that those persons who are appointed in the constitutional bodies are not necessarily experts in the field. Stating that the Constitutional Council lacked expertise in the area of requirements for the constitutional bodies, he stressed the need to verify the qualifications and backgrounds of possible candidates before their being appointed to constitutional positions. Participants in the seminar also expressed the view that more persons were appointed to the bodies than was really necessary. Former Vice-Chairman of the National Planning Commission Dr. Bhaarat Prasad Dhital remarked that more people were appointed to the constitutional bodies than required because of a 'quota system' and because of political pressure, which has damaged the system.

Chief Election Commissioner Bishnu Pratap Shah complained about the appointment of unnecessary commissioners to the constitutional bodies. He said, "The Members of the Constitutional Council are unaware of the small fact that when they appoint a commissioner, he or she will need an office, a personal secretary and a vehicle, and for that adequate financial resources are necessary." Chief Commissioner Shah added, "When six commissioners are appointed to the Election Commission, the Commission has a hard time arranging for necessary offices, personal secretaries and vehicles."

*Desantar Weekly*, Sunday December 6, 1998  
Page two, Opinion Column

**TRANSLATED FROM NEPALI**

**A VERY FRUITFUL SEMINAR - by Govinda Adhikari, Desantar Reporter**

Kathmandu has a bad reputation for holding seminars. However, the seminar on "Developing More Independent and Effective Constitutional Bodies: Problems and Prospects" organized by the National Democratic Institute (NDI) in Kathmandu can be described as a very fruitful seminar, well able to justify its rationale and purpose. Many leading newspapers gave good coverage, highlighting the importance of the seminar. The attendance of the participants and their participation was remarkable. We may never have had such an experience before -- heads and members of high level bodies present and participating sincerely in one place for almost two days.

The real value of such seminars depends on the implementation of its findings. During the seminar, the constitutional bodies claimed that the government had not equipped them with necessary rights and resources, and that this had led to their ineffective functioning. On the other hand, seminar participants expressed doubts about the appointment process for the heads and members of constitutional bodies; they claimed that the process was defective and led to incompetent people being appointed, as the Constitutional Council members appoint people on the basis of a political party quota system. Both these arguments have some truth. The Executive does not seem pragmatic and objective when providing financial and other resources to the Constitutional Bodies. The Ministry of Finance and the National Planning Commission, which are involved in the process of budget formulation, do not seem to rely on practical wisdom. And this fact has quite seriously affected all sectors. Naturally, the Constitutional Bodies also suffer in this regard. Because of the defective and opaque appointment process, these Constitutional Bodies are not discharging their responsibilities effectively and independently. The people are now criticizing judges of the courts with not discharging their duties honestly. Similarly, the Constitutional appointees are widely blamed for not performing their duties in an ethical manner and are no longer respected. If a man who was charged with corruption in his previous position gets appointed to the office of the Commission for the Investigation of Abuse of Authority, how can we expect corruption control from such a person? People have raised such issues but nobody dares to resign from their posts -- instead they are ready to negotiate within the existing situation, further demonstrating their lack of ethical character. Although appointment procedures and budgetary factors matter, Constitutional Body heads should realize that their courage and commitment is what matters most.

We all should realize our limitations and yet strive to make necessary improvement. For this, we need courage.