

Forms of Government

Nepal Participatory Constitution Building
Booklet Series
NO. 5



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Forms of Government	1
Introduction	1
Definitions	2
Basic concepts and principles	3
Nepal and Governance System	5
Possible topics of discussion for the Constituent Assembly	6
Constitutional Alternatives	7
Conclusion	8

Forms of Government

Introduction

What form of government should Nepal adopt through the new constitution? Many have firm views about it and others are simply confused. What should Nepal choose?

There are approximately 200 existing political systems around the world and each has its distinct features and characteristics.

Ancient Greek philosophers classified governments as monarchy, aristocracy, polity, tyranny, oligarchy and democracy. States can also be classified by whether they have a unitary or federal form of government, or whether they are democracies or dictatorships. Within democratic systems, there are many different models. Some systems place more powers in the parliament and are called parliamentary systems, and other systems place more powers into a directly elected president and are called presidential systems. Among parliamentary and presidential systems there will be different outcomes depending on other factors, such as the party landscape (number of parties), the electoral system, the availability of natural resources and the role of civil society.

Generally, constitutions do not expressly declare that they have adopted a presidential, parliamentary or mixed system. Each constitution designs its own specific balance between the different branches of government, and political scientists then categorize them as following a specific model. In drafting a new constitution, the choice is not necessarily between one model or another. The challenge is to find the appropriate setup of institutions and assign them with clear and appropriate powers. The goal should be to guarantee a political outcome for the country, such as stability, social harmony, good governance, and the rule of law.

It is sometimes assumed that countries in crisis or transition need 'strong' governments to develop successfully. However, it is not clear what constitutional arrangements lead to a 'strong' government. Concentrating all constitutional powers in one office-holder, such as the president, is no guarantee for establishing strong and effective governance. Rather, states which concentrate all powers

in the executive ("super-presidential systems") generally tend to be autocratic. Many are conflict-prone and not focused on its citizens' welfare. On the other hand, a strong political consensus among different parties can help overcome constraints and still result in effective and responsive government.

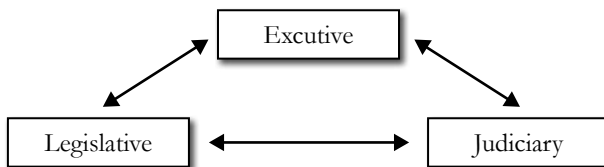
Definitions

General forms of Government	
<p>Monarchy (Absolute/Constitutional)</p> <p>A form of government in which supreme power is lodged in an individual, who is the head of state, and is set apart from all other institutions of the state.</p> <p>Hereditary rule is a characteristic.</p>	<p>Republic</p> <p>A state that is not led by a monarch.</p>
<p>Autocracy/Dictatorship/Single Party</p> <p>Autocracy is a form of government in which the political power is held by a single, self-appointed ruler.</p> <p>A dictator is an authoritarian ruler (e.g. absolutist or autocratic) who assumes sole and absolute power.</p> <p>A single-party state is a type of government in which a single party forms the government and no other parties are permitted to contest elections and are prevented from legally getting power.</p>	<p>Democracy</p> <p>A form of government in which power is held directly or indirectly by citizens under a free electoral system. It is derived from the Greek word for "people's government". Nowadays, democracy is also expected to have other qualitative attributes such as political pluralism, human rights and the rule of law.</p>
<p>Unitary State</p> <p>A country which is governed as one single unit and power is concentrated in the central government. The political power of government in such states may well be transferred to lower levels, to national, regional or local elected assemblies, governors and mayors (devolved government), but the central government retains the principal right to recall such delegated power.</p>	<p>Federal State</p> <p>A country comprising a number of partially self-governing states or regions united by a central ("federal") government. In a federation, the self-governing status of the constituent units is typically guaranteed in the constitution and may not be altered unilaterally by the central government.</p>

<p>Majoritarian</p> <p>A form of government adopting an electoral system which is based on a "winner-takes-all" principle. In the simplest majoritarian system, "first past the post", the winner does not even need a majority in a constituency.</p>	<p>Consensual</p> <p>Consensus democracy is characterized by a decision making structure which involves and takes into account as broad a range of political party opinions as possible. Consensus democracy also features increased citizen participation both in determining the political agenda and in the decision making process itself. Often it is based on a proportional representation (PR) electoral system.</p>
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Basic concepts and principles

Democratic government is characterized by the "separation of powers" between the three branches of government – the executive, the legislative and the judicial branch. This is also known as the system of "checks and balances". But no democratic system exists with an absolute separation of powers or an absolute lack of separation of powers. While constitutions rarely mention this separation of powers explicitly, this can be seen from an analysis of the relationships between the different constitutional organs i.e. the executive, the legislature and the judiciary. The manner and extent to which powers are separated vary in degree from one country to the other.



Parliamentary democracies do not have distinct separation of powers. The executive is drawn from the legislature. In such systems the government and the administration (executive branch) are nevertheless bound to act only within and on the basis of the laws adopted by the parliament. Even if the legislative and executive branches are more closely connected, in parliamentary systems there is usually an independent judiciary.

Types of democratic governments

Democratic forms of government can further be distinguished by the relative powers they invest in their highest offices. The most common systems are the parliamentary system and the presidential system, and there are a number of variations between the two. The presidential and parliamentary systems exist in both federal and unitary states and on the basis of different electoral systems.

The **parliamentary system** is the most widely practiced governance system in the world today. In that system, a prime minister is the head of the government, and chairs the council of ministers/cabinet which advises on government policy. The prime minister is elected by the legislature, most often on the basis of a majority vote. The government is collectively accountable to parliament and requires its continued confidence to stay in power. The legislature itself is elected on the basis of a multiparty system and adult franchise. Like the Prime Minister, cabinet ministers are also normally members of the parliament. In a parliamentary system the role of the Head of State is largely ceremonial (a monarch or a president elected by the legislature). In countries with a parliamentary system of government, political power is vested with the council or cabinet of ministers headed by the Prime Minister.

Another common form of democratic governance is the **presidential system**. It features an executive president directly elected by the people, who heads the state and the government. S/he cannot be removed by the legislature except in extraordinary circumstances through an impeachment process. Her/his constitutional term limit normally ranges from 4 to 7 years. Many such systems limit the number of terms a president can serve. The President appoints some members of her/his cabinet ("Ministers", "Secretaries") at her/his discretion. However some offices may need to be approved through parliamentary hearings. All cabinet members are accountable to the President, but are normally answerable also to the parliament. This is referred to as parliamentary oversight.

Some countries have adopted a **semi-presidential system**. In such a system the president is elected directly by the people. The prime minister is appointed by the president from the party in parliament that has the largest majority. The other members of the government are appointed by the president on the recommendation of the prime minister. Both the president and the prime minister play prominent roles in the day-to-day political life. Various countries have different traditions regarding the division of power between them. In

some semi-presidential systems the president chairs the meetings of the council of ministers. The ordinances and executive decisions made by the council of ministers are issued by the president. The president, along with parliament has the power to make laws. The President can request the parliament or a Constitutional Court to review legislation.

Similarly, in the rare and unusual **semi-parliamentary system** the supreme executive power of the country rests with a federal council consisting of a few members. One of the members of the council is elected as the president, but the member as the president does not possess any special rights. All the councilors of the federal council are equal to each other in status. The federal council is elected by the joint session of the parliament following the general election.

Nepal and Governance System

Historically, the predominant form of government in Nepal has been monarchical and unitary. Following the unification of Nepal's territory in the late 18th century, the Shah dynasty ruled the country from 1768 until recently. From 1846 to 1950 Nepal was ruled by a hereditary dynasty of Prime Ministers from the Rana family, which exercised absolute power while paying nominal allegiance to the Shah kings. After the king's return to effective rule in 1950, Nepal was governed by the king assisted by the leaders of political parties. In 1959, the king issued a constitution, and the first democratic elections were held. The leader of the victorious Nepali Congress Party formed a government and served as prime minister until 1962. Then, the king dissolved the government declaring parliamentary democracy a failure. He promulgated a new constitution instituting a "partyless" panchayat ("council") system. In that system the king played the key role in government. He constituted the source of all executive, legislative and judicial power.

In 1990, a popular movement forced the monarchy to accept constitutional reforms and to allow a multiparty parliament. In May 1991, Nepal held its second parliamentary elections. Claiming constitutionally reserved emergency powers, on 1 February 2005, King Gyanendra dismissed the government and assumed full executive powers, declaring a "state of emergency" to put down the Maoist movement. In April 2006, strikes and street protests in Kathmandu forced the king to reinstate the parliament. A seven-party coalition resumed control of the government and stripped the king of most of his powers.

As of 15 January 2007 Nepal has been governed by a unicameral legislature under an interim constitution, which initially vested many powers hitherto reserved for the king in the Interim Prime Minister. On 24 December 2007, the ruling parties agreed to abolish the monarchy and declare Nepal a Federal Republic. The decision was formally adopted on 28 May 2008 by the newly elected Constituent Assembly. On 11 June, 2008 ex-king Gyanendra left the palace. On 23 July 2008, Ram Baran Yadav became the first president of Nepal and is the new head of state until a new Constitution will be adopted. On 15 August 2008, Pushpa Kamal Dahal, Prachanda, was elected as the first Prime Minister. He has been heading a coalition government since.

The form of governance established by the Interim Constitution is a parliamentary system with some minor semi-presidential elements. The powers of the executive branch (council of ministers) are considerably significant while some elements of separation of powers and checks and balances exist.

Possible topics of discussion for the Constituent Assembly

The organizational structure of the new governance system is likely to be one of the most hotly debated subjects for the Constituent Assembly. The key issues that need to be determined in this context relate to the following issues:

- » What kind of organizational structure should be chosen for the centre and provinces in Nepal - i.e. parliamentary, presidential, a mixed system, or any other type? What are the advantages and disadvantages of each system for Nepal?
- » If a mixed system is chosen what should be the executive relationship between the President and the Prime Minister, or how should power be divided between the two under the chosen organizational structure?
- » What should be the criteria for the election of the President/the Prime Minister, their qualification, term of office, accountability, removal from office?
- » Formation of the council of ministers, the approaches to make it inclusive, division of ministries and necessary arrangements to run the ministries.
- » What should be the functions, duties and rights of the council of ministers laid out in the constitution?
- » What kind of relations should be there between the government and the legislative and the judiciary; checks and balances; separation of powers?

- » What type of relations should there be between the government and the special constitutional bodies, in view of the need to establish and preserve their independence.
- » Role and responsibility of the head of the state or the head of the government (if different) in the formation, organization, mobilization, and control of the armed forces.
- » Mutual relations, checks and balance between the central federal government, constituent federal units and local self-governments

Constitutional Alternatives

Nepal should study the various options and consider their implications and appropriateness in the context of Nepal. Outlined below are the main options available and the salient features of each systems is also highlighted.

Options	Strengths/Advantages	Challenges
1. Parliamentary Government	<ul style="list-style-type: none"> » Possibility of creating a broad and inclusive government in the deeply divided society » Possibility of removing the Prime Minister (who loses the confidence of the parliament) at any time » Possibility for the prime minister to call for a fresh election at any time » Stronger role for federal units possible through representation in federal government 	<ul style="list-style-type: none"> » Possibility of repeated dissolution of government owing to division in the coalition » Government could collapse by a simple majority vote » Parliament may not be critical of the government owing to the intimate relationship » Inability on the part of the government to introduce bold policies and programmes for the fear of being ousted
2. Executive Presidential Government	<ul style="list-style-type: none"> » Because the President cannot be removed by a simple majority of the legislative tenure of executive ensured; This may create stable environment to implement programs » Direct election will enhance the link with the people 	<ul style="list-style-type: none"> » Risk of the President becoming autocratic due to lack of controls and balance » President can not be removed even if s/he loses all support » Lack of checks and balances of the executive » Less chance for a member of a small minority community to be elected as the Head of the Executive

3. Semi- Presidential Government	<ul style="list-style-type: none"> » The President is elected by voters and the council of ministers is formed with the confidence of the parliament » The council of ministers is accountable to parliament even if it is formed by the president » Possible to create political consensus if president and Prime Minister are from different parties 	<ul style="list-style-type: none"> » It could be difficult for the President and the Prime Minister to reach an agreement if the Prime Minister is from another party » Disputes could arise regarding the division of functions, duties and powers.
4. Semi- parliamentary government	<ul style="list-style-type: none"> » Adoption of pluralistic leadership and collective decision- making approach by the federal council » The members of the Executive can participate and express their view in the parliament 	<ul style="list-style-type: none"> » Weak executive owing to the lack of single leadership » Complicated, expensive, time consuming » Lack of accountability due to inability to pass the vote of no confidence and no provision of impeachment a(removal from office)

Conclusion

All four alternatives discussed above as well as variations based on these models are democratic options that Nepal could consider. However, the appropriate choice must fit with Nepal political culture, its aspirations and what it can afford and effectively manage. Elements from all these alternatives could be considered and be adapted to suit the new federal model of Nepal.

About this booklet series

This series of papers is intended to provide a basic background for Constituent Assembly members and the interested public on issues related to the constitution building process. They are not position papers, proposals or intend to preempt any constitutional outcome in any other way. They are the result of a cooperative effort of Nepali and international constitutional experts, coordinated by UNDP's Support to Participatory Constitution Building in Nepal project.

These papers are living documents, and feedback and comments are strongly encouraged. The more they will lead to informed, engaged and constructive discussion and exchanges, the more will their objective be attained. As comments are received further versions of this document or additional issues may be prepared.

In translating them into some of Nepal's major national languages, all effort has been made to achieve a high level of quality standards and the correct terminology, which will be understood by a majority of the speakers of those languages. However, future debates within the various linguistic communities on the proper and correct use of terms can be expected. CCD did not want to preempt that discussion in any way, but rather sought to maximize the reach and inclusiveness of this effort by including those languages.

This booklet is part of a series of documents to be developed by the Centre for Constitutional Dialogue (CCD) on themes relevant to the constitution building process in Nepal.

The objective of this series is to engage Constituent Assembly members as well as the interested public with key constitutional concepts and issues. Each document is available in the major languages used in Nepal – Nepali, Maithili, Bhojpuri, Tharu, Magar, Tamang, Newar and English. Each document is also available in audio format as well as online.

In the first phase it is envisaged that the publication series will include the following themes: State and Religion, Federal System, Human Rights in the Constitution, Rights of Indigenous Peoples, Minority Rights, Systems of Government, Independent Judiciary, Local Self-Governance, Diversity and Social Inclusion, and Participatory Constitution Making Process.

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