

The challenge of making democracy work is twofold: first, it is the challenge of setting up institutions - organisations, systems, and processes - that help society achieve the vision it sets for itself; the second challenge is to involve the people in the institutions.

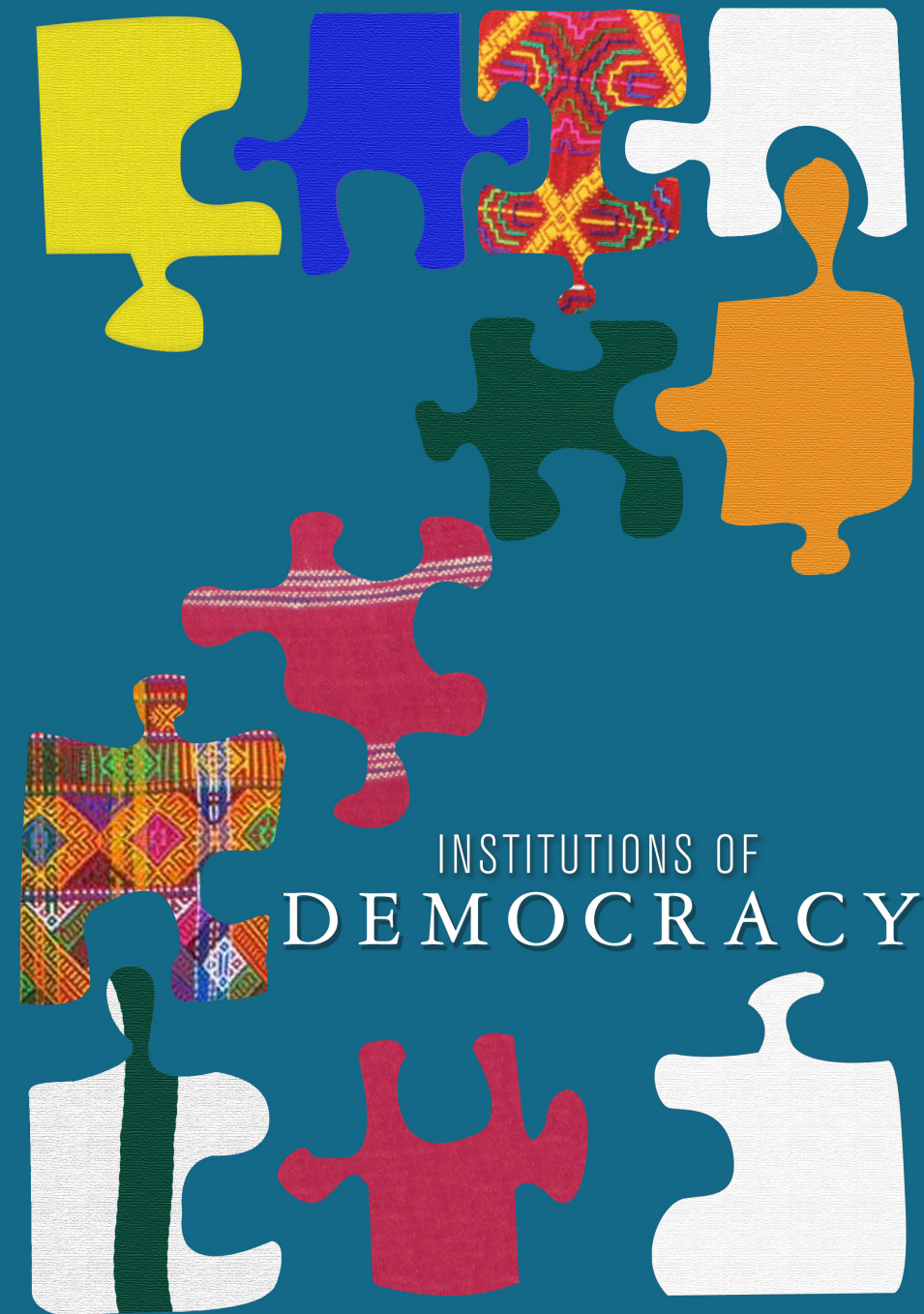
Bhutan's democratic institutions include the legislative, judicial and the executive parts of the government, as well as several "constitutional agencies." How do these systems actually work? What are their responsibilities? How do they relate to one another? And how do non-Constitutional institutions, such as the media and civil society, represent, and provide for, the needs of the people?

In this collection of essays, members of government, media, civil society, and academia critically examine some of these questions and help contribute to the reader's understanding of the institutions of Bhutan's nascent democracy.



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## INSTITUTIONS OF DEMOCRACY



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BHUTAN CENTRE  
for MEDIA AND DEMOCRACY

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BHUTAN CENTRE  
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## Preface

This book, an Introduction to the Institutions of Democracy in Bhutan, is intended to serve, as the title suggests, as a brief introduction to the different structures of the new constitutional democracy in Bhutan. It also discusses some specific areas of interest that are not part of the constitutional structure itself.

The book is divided into three parts. Part I contains articles about the three primary functions of government; the legislative, judicial, and executive. In Bhutan, these functions are lodged in the Parliament, the Judiciary, and the Government, which itself derives its legitimacy from the Parliament. That is why the Bhutanese system of government is called a “parliamentary democracy.” In addition to these three main bodies are the various “constitutional bodies” that are established by the Bhutanese Constitution. Each of these “constitutional bodies” has a specific function, indicated by the name of the body. They are no less a part of the Bhutanese state than are the primary organs of government. Part II contains three short essays that concern aspects of democracy in Bhutan that lie outside of the organs of government but that are no less essential to the growth of democracy in our Kingdom. The first concerns the media: newspapers, magazines, radio and television. Without these media, democracy would be impossible, because in a democracy the citizens must be informed in order to participate in their government. The second essay concerns “civil society.” Civil society consists of organisations that fulfill functions that society requires but that are organised and carried out by the citizens rather than by the government. The third essay in this section discusses some general ideas about the institutions of democracy themselves.

This book should serve as more than just an “introduction.” It should be used to raise questions, look for answers, and challenge assumptions. The Bhutan Centre for Media and Democracy welcomes your thoughts, your questions, and your feedback. Please feel free to communicate with the Centre at +2 327903 or to write to it at [bcmd@bcmd.bt](mailto:bcmd@bcmd.bt)



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# PART I





## CHAPTER ONE

### *The Bhutanese Legislature or Parliament*

- Sangay Khandu

**T**he new Bhutanese Parliament has two houses, i.e., the National Council and the National Assembly. The National Council consists of 25 members; 20 directly elected from the 20 districts and five eminent persons nominated by the King. The National Assembly comprises of 47 representatives, belonging to either of the two political parties left after the first round of elections. Representing 47 constituencies spread across the 20 districts, the National Assembly then forms the Government and the opposition. Parliament, however, is not complete without the Monarch, and the Bhutanese Parliament therefore comprises the King, the National Council and the National Assembly.

Bhutan is, however, not new to Parliament. The National Assembly, comprising of 36 members, was established in 1953 by His Majesty Jigme Dorji Wangchuck, the Third King of Bhutan. These members represented the Government (nominated by the King), and elected representatives of the monk body and the people. In 1965 the Royal Advisory Council was established and in 1968 the Cabinet, who were also members of the National Assembly. Over the years the number of representatives increased and the last session of the last National Assembly saw 130 members.

On May 8, 2008 the new Parliament under the democratic government had the inaugural session and on July 18 of the same year,

the Constitution of Bhutan was adopted in the Kuenray of Tashichhodzong in the presence of both His Majesty the King and His Majesty's predecessor, His Majesty the Fourth King of Bhutan. Thus the establishment of the legislature or the Parliament emanates from the throne.

### **What is Parliament?**

The Bhutanese Parliament consists of the His Majesty the King, or *Druk Gyalpo*, the National Council and the National Assembly.

### **What does Parliament do?**

The Parliament makes laws and is the only institution that can pass laws in the country.

Parliament ensures that the Government safeguards the interests of the nation and fulfills the aspirations of the people through a public review of policies and issues, Bills and other legislations, and the scrutiny of State functions.

### **How does Parliament work?**

The Parliament works through various parliamentary committees. Some committees are permanent (standing) while others are constituted for specific tasks (ad-hoc) only. These committees help discharge review functions in addition to the individual efforts of the MPs.

The proceedings of the Parliament are conducted in public, except under circumstances where it may be better for the interests of the nation and the people as a whole to exclude the Press from the proceedings.

The Speaker of the House presides over the proceedings of a joint sitting and the venue for the joint sitting of the Houses is the hall of the National Assembly.

Both the National Council and the National Assembly are governed by the guidelines set forth in the ‘House Rules of Procedure’.

The Parliament sits twice a year. The first is a Summer Session and the second is a Winter Session. From time to time however, special or extraordinary sessions may be convened if urgent matters of national import arise for discussion. An Extraordinary Session of the Parliament needs the permission of the King, as in the case of a ‘joint sitting’ of the Parliament.

A “**Joint sitting**” of the Parliament occurs when both houses, i.e., the National Council and the National Assembly, sit together in the grand assembly hall.

**A few other things of note about the Parliament:**

Each Member of Parliament has only one vote. The Speaker or the Chairperson casts the deciding vote when votes cast are equal in number.

No one can be a member of the National Council or the National Assembly or the Local Government at the same time.

The members of Parliament or any Committee therefore shall be immune from any inquiry, arrest, detention or prosecution for discharging their duty except for acts of corruption.

**The Institution of Monarchy**

The Bhutanese State was founded with the institution of the dual system of government established by Zhabdrung Ngawang Namgyal, following his arrival in Bhutan in 1616. The Second Period of Political Stability arrived in Bhutan after Desi Jigme Namgyal, the father of Bhutan’s first hereditary monarch, embarked on another national consolidation effort amidst civil unrest in the country. On December 17, 1907 a historic *genja*<sup>1</sup> was signed with all 48 seals representing the

<sup>1</sup> A *genja* is a contract.

various chieftains and regions of Bhutan affixed to it. In effect this sacred document formalised the agreement of all parties and signatories to the establishment of the hereditary monarchy in Bhutan.

Today the Constitution has a separate article on Monarchy in Bhutan.

Bhutan's gradual transition to democracy has been an outcome of many years of deliberate aspiration by our great leaders. Article 2 of the Constitution talks about the Institution of Monarchy and the role this very important institution will continue to play in modern Bhutan. The King is the Head of State and the symbol of unity of the Kingdom for the people of Bhutan.

A unique and distinctive clause in the kingdom's Constitution is the one on the retirement of the Monarch.

Upon reaching the age of *sixty-five years*, the Druk Gyalpo shall ***step down*** and hand over the Throne to the Crown Prince or Crown Princess, provided the Royal Heir has come of age.

By tradition, the successor to the Throne receives sacred *dhar*, or silk scarves, from the *Machhen* of Zhabdrung Ngawang Namgyal in Punakha Dzong before being crowned and ascending to the Golden Throne.

One of the most important duties of the Bhutanese Monarch is to protect and uphold the Constitution in the best interests of the people of Bhutan. This makes our Monarch the ultimate custodian of the Bhutanese Constitution and the ultimate hope when all else fails.

**The Druk Gyalpo, in exercise of His Royal Prerogatives, may:**

- Award titles, decorations, *dhar* for *Lhengye* and *NyiKyelma* (grades of officials) in accordance with tradition and custom;

- Grant citizenship, land *kidu*\* and other *kidus*; \* *Kidu*: welfare
- Grant amnesty, pardon and reduction of sentences;
- Command Bills and other measures to be introduced in Parliament; and
- Exercise powers relating to matters which are not provided for under this Constitution or other laws.

In addition, the *Druk Gyalpo* may promote goodwill and good relations with other countries by receiving state guests and undertaking state visits to other countries.

### **The Two Houses**

The Parliament has two scheduled annual sessions. During these sessions the National Council and the National Assembly have separate sittings in their respective Houses. The Parliament may also convene for extraordinary sessions during the year. This happens if issues emerge that need urgent deliberation at the national level. Other than the opening and closing sessions of the Parliament, the two Houses also sit together for business at “Joint Sittings”. These proposed sessions, in addition to normal sessions, need the approval and command of the king before they can be convened.

The primary business of the Parliament is legislation. A law first takes the form of a draft Bill which if admitted into Parliament becomes a Bill. This happens when one of the Houses discusses the draft Bill and passes it. It is then forwarded to the other House where it is discussed and voted on. If it is passed, then it is submitted for Royal Assent or passage from the King, upon which it becomes a Law. If there are disagreements, the Bill returns to the original House for re-discussion with views from the second House. It may receive support and be passed, in which case it is submitted to His Majesty the King for approval. A simple majority vote is needed to pass a Bill into Law.

In case there is still disagreement, the bill is then submitted to the

king for a Joint Sitting of the Parliament. This is the last opportunity for the Bill to become a Law; if it fails to gain necessary support, it then becomes a 'Dead Bill'.

**Question Time** is an allocated time for MPs to question the Government on a wide range of issues. The Government is obligated to respond to these questions.

### **The National Council of Bhutan**

The National Council is a non-partisan house in the Bhutanese Parliament which probably distinguishes its mandate from others. The MPs to this House are either directly elected by the people as individual candidates or appointed by the King. This means that the National Council MPs do not (and cannot) belong to any political party. Thus, it is expected to have non-party centric views and opinions.

The National Council shall consist of **25 members** comprising:

- One member elected by the voters in each of the twenty Dzongkhags; and
- Five eminent persons nominated by the Druk Gyalpo.

With the exception of Monetary and Financial Bills, the National Council can perform all legislative functions. Besides making laws, the National Council also acts as the House of review on issues concerning the security and sovereignty of the country and the interests of the nation and the people that need to be brought to the notice of the Druk Gyalpo, the Prime Minister and the National Assembly. The National Council monitors and reviews the fiscal performance and position of the government in accordance with the principles of fiscal sustainability and transparency.

A member may secure an action sought by him through Parliamentary Devices.

## **Types of Parliamentary Devices**

- Parliamentary initiative;
- Motion;
- Resolution;
- Postulate;
- Calling attention;
- Interpellation;
- Adjournment Motion; and
- Motion of censure.

## **The National Assembly of Bhutan**

The National Assembly forms the Government and the Opposition after two rounds of national elections; the first voting on political party and the second the Government.

The National Assembly has 47 members currently. It can have a maximum of 55 members, elected from each *Dzongkhag* in proportion to its population. However no *Dzongkhag* can have fewer than two members, or more than seven members. These limitations may be revisited every 10 years.

The activities of the National Assembly are based on the principles of political pluralism, free discussion of issues and their settlement by joint efforts.

A member may, with the previous permission of the Speaker, call the attention of a Minister to any matter of urgent public importance.

The term of each National Assembly is five years. However, it can be dissolved earlier on the recommendation of the Prime Minister to the Druk Gyalpo or in the event of a motion of no confidence vote against the Government being passed in the National Assembly or when the National Assembly is dissolved under Article 15(12) of the constitution of Bhutan.



A motion of no confidence against the Government may be moved by not less than one-third of the total number of members of the National Assembly. A vote of no confidence against the Government, if passed by not less than two-thirds of the total number of members of the National Assembly, shall require the Government to be dismissed by the Druk Gyalpo.

A motion of no confidence against the Prime Minister shall be moved by not less than one-third of the total members of the National Assembly by a written notice to the Secretary General.

When the National Assembly is dissolved, an interim Government as stipulated in the Constitution, steps in to fill the vacuum until the reconstitution of the National Assembly. This interim Government however does not have the power to make any policy decisions. It also needs to ensure elections happen within 90 days.

## CHAPTER TWO

### *A Guide to the Judiciary of Bhutan*

- Lungten Drubjur

#### **A Crucial Element of Democracy**

**T**he Judiciary is one of the most important branches of government in any democracy.

The Judiciary conducts trials and decides cases under the nation's laws. Of the three main aspects of government in a true democracy, the Legislature enacts laws, the Executive implements those laws fairly and equitably, and the Judiciary interprets the Letter of the Law.

The separation of powers of the three main branches of government is a crucial element in a self-sustaining democracy. Each branch provides checks and balances on the others.

Article 1, section 13, of Bhutan's Constitution states that:

"There shall be separation of the Executive, the Legislature and the Judiciary and no encroachment of each other's powers is permissible except to the extent provided for by this Constitution."

The Rule of Law and an independent judiciary are the cornerstones of a democracy.

As stated in the Constitution:

“The Judiciary shall safeguard, uphold, and administer Justice fairly and independently without fear, favour, or undue delay in accordance with the Rule of Law to inspire trust and confidence and to enhance access to Justice.”

### **Objectives of the Judiciary**

The judiciary of Bhutan must:

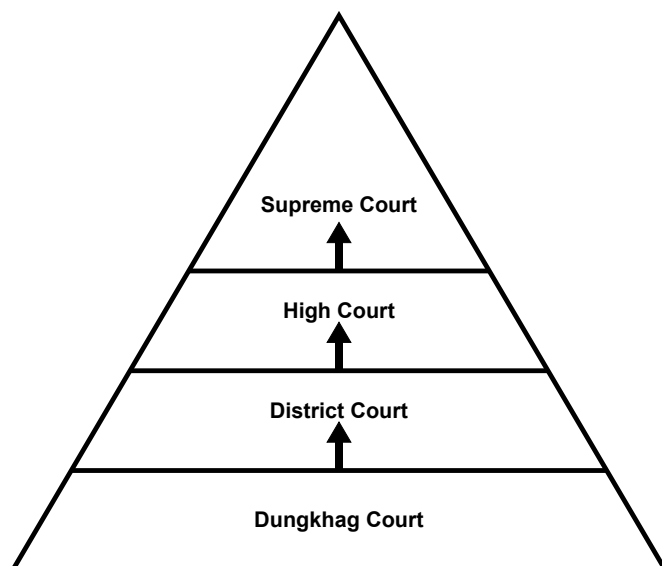
- Safeguard the sovereignty of the country and maintain peace and harmony among the population by rendering effective justice
- Continue to create a responsive, reliable, fair and efficient justice system
- Impart justice impartially irrespective of language, religion, race or social class
- Administer justice independently in accordance with the law
- Improve accessibility to Justice by making Courts user friendly
- Uphold and protect Due Process of Law, Fair Trial, Rule of Law and Review system
- Inspire and build public confidence by performing its tasks and executing its responsibilities with the highest degree of professionalism and integrity
- Improve legal language and retain Bhutanese legal terms that reflect Bhutanese values
- Use modern communication technology for efficient and cost effective delivery of justice

- Improve infrastructure and build capacity of legal institutions in the country
- Make judicial processes faster and more transparent
- Impart legal Education to the youth and general public.

### **Structure of the kingdom's Royal Courts of Justice**

The Courts in Bhutan include a four-tier system established in the following order of hierarchy: The Supreme Court, the High Court, the Dzongkhag Courts, and the Dungkhag Courts.

Other courts and tribunals may be established from time to time by His Majesty the King on the recommendation of the National Judicial Commission. The National Judicial Commission is composed of the Chief Justice of the Supreme Court as Chairperson, the seniormost Drangpon of the Supreme Court, the Chairperson of the Legislative Committee of the National Assembly and the Attorney General of Bhutan. This NJC also recommends the appointment of the Supreme Court and High Court Justices.



## Hierarchy of the Courts and Court Officials

- **The Supreme Court (Dzongkha term: Noenthoed Thrimgi Duensa):** *This is the highest court of justice in the land. There is only one Supreme Court and it is located in the nation's capital, Thimphu. It has four other Justices headed by the Chief Justice of Bhutan.*
- **The High Court (Dzongkha term: Chethoed Thrimgi Duensa):** *There is only one High Court, also based in Thimphu. It has eight Justices headed by the Chief Justice of the High Court.*
- **The District Court: (Dzongkha term: Dzongkhag Thrimgi Duensa):** *There are 20 District Courts, one for each Dzongkhag in the country, headed by a District Judge. Depending on the number of cases, the busier courts have more than one Judge serving under the chief district judge.*
- **The Sub-Division Court: (Dzongkha term: Dungkhag Thrimgi Duensa):** *There are currently 13 such Sub-Division Courts. Not all districts have Sub-Division Courts and they are only found in the larger districts where they help expand the reach of the legal system. Depending on the workload, the busier Dungkhag courts have more than one Judge serving under a chief judge.*
- **Justices and Judges: (Dzongkha term: Drangpons):** *The Supreme Court and High Court Drangpons are called Justices. The District and Sub-District Drangpons are called Judges. Assistant Judges are called as Drangpon Rabjams.*
- **Registrar General, Registrar and the Bench Clerks and their Dzongkha terms:** *The Registrar General is called Tshoepon Yongchab. Other regular Registrars are called Tshoeizin Gopoen. Bench Clerks are called Tshoeidrung.*

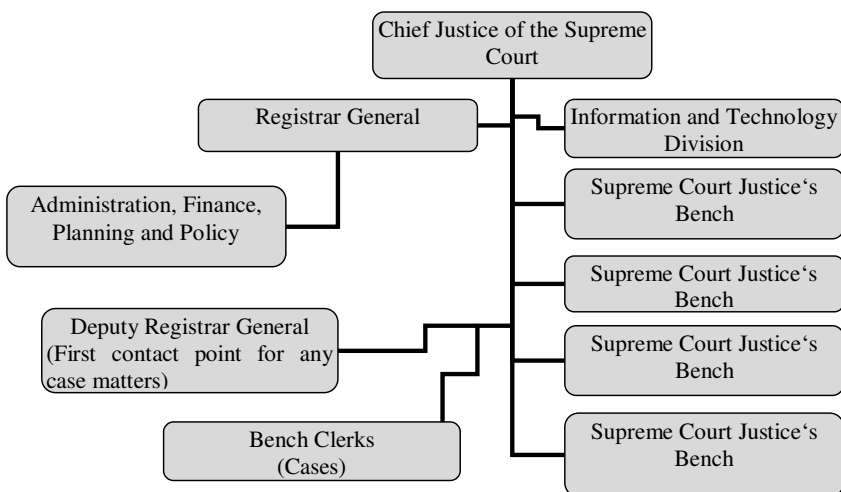
- **Public Notary Office:** *Currently there is just one in Public Notary Office in the Thimphu District Court. It is a specialised division for notary matters. The Notary Office attaches and certifies true copies of documents for authenticity and acceptance in legal courts of justice both in and out of Bhutan.*

## **Roles and Responsibilities of the Royal Courts of Justice:**

### **The Supreme Court**

The Supreme Court according to our Constitution is the final court of appeal. It also has an advisory role as it is mandated to give its opinion to His Majesty the King, if His Majesty refers the question of law or facts of public importance to the Supreme Court.

The Supreme Court is also the “guardian” of the Constitution and the “final authority on its interpretation.” This means that the Supreme Court’s say in the interpretation of the laws and the Constitution is final and must be respected by all. The Supreme Court is also the court of review where any executive or parliamentary action can be subjected to review as to whether their actions and laws made are in accordance with the provisions or in line with our Constitution.



Further, the Supreme Court shall also exercise its jurisdiction outside Bhutan on the basis of International Law principles.

### **The High Court**

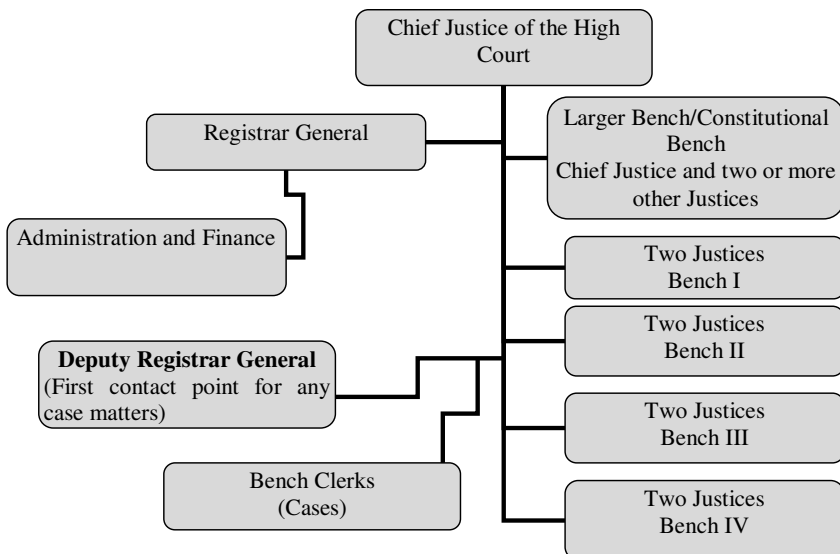
There are five Benches in the High Court. The Chief Justice's Bench is known as the Larger Bench. Other four Benches are presided with a minimum of two justices each.

The High Court hears all the appeal cases from the Dzongkhag Courts. It has also original jurisdiction (cases which can directly be filed to the High Court) as well as extra-territorial jurisdiction.

The High Court is also the first Court in all-Constitutional cases. An appeal from the decisions of the Tribunals also directly lie to the High Court.

### **The Dzongkhag Court**

The Dzongkhag Court is presided by a Dzongkhag Drangpon. Usually, the Dzongkhag Court is made up of one Bench though there

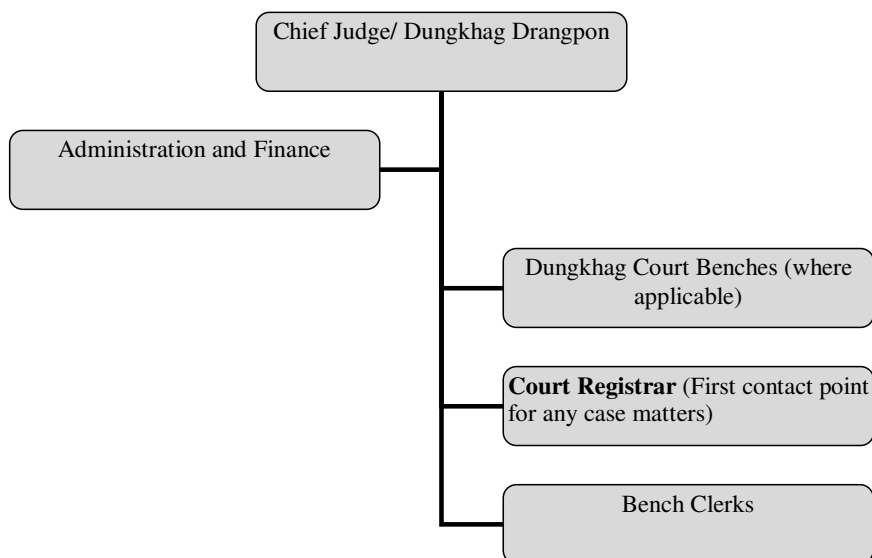


are some Dzongkhag Courts that have division Benches. Division Benches in Dzongkhag Courts are established from time to time depending upon the numbers of cases.

The Dzongkhag Court exercises original jurisdiction in all cases in its territorial jurisdiction. Appeals from an order or Judgment of a Dungkhag court are first made to the Dzongkhag Court before appealing to the High Court. Every Dzongkhag Drangpon is assisted by one or more drangpon rabjams.

### **The Dungkhag Court**

The Dungkhag or Sub-District Court is the lowest Court in Bhutan. It is presided over by a Dungkhag Drangpon.





**Some Rights & Freedoms Guaranteed under the Law**

The judiciary ensures through the interpretation of laws that the due process of law is followed at all levels of governance. Laws made by Parliament and the Rules made under the act of Parliament by different ministries, departments, and agencies should provide the most basic protection for rights of the citizens and obligation to enforce the rule of law. One of the most important elements of the rule of law is to ensure that the “Due Process of Law” is respected as the core values of a democracy.

Fundamental rights guaranteed in our Constitution form the basis of the protection of our human rights and dignity. Among others, one such important right under our Constitution is the right to due process of law. Article 7, Section 1 of our Constitution states that:

“All persons shall have the right to life, liberty and security of person and shall not be deprived of such rights except in accordance with the due process of law.”

The most important elements of the due process of law are “notice” and “hearing.”

**Right to “Notice” or Right to be “Informed”**

A person cannot be charged for criminal offense without telling (informing) him or her of the grounds of arrest. Also, the courts cannot condemn or punish the person without giving him/her the opportunity to be heard before or after the conduct of a fair hearing. In other words a person cannot be arrested merely on the grounds of suspicion of committing a crime.

The law generally refers to a person who is suspected of committing a criminal act as an “accused” or “defendant.” The defendant has the right to be informed of the grounds of his or her arrest, or be notified of the crime that one is charged with. A defendant cannot be

prosecuted without being informed of the specific charge or charges against him or her. The intention of these rights is to ensure that the accused or the defendant understands in advance the crime or crimes one is charged with. This will enable him or her to adequately defend himself/ herself before the court.

### **Right to “Hearing”**

The other essential elements of the due process of law as provided above are the right to a “hearing” or the right to be heard. The right of the defendant to be heard means that a fair trial must be guaranteed in a criminal case.

The elements of the fair trial under our criminal procedure and the Constitution include the following:

- Right to be represented by a Jabmi or a Legal Counsel (Lawyer);
- Right to Legal Aid if an accused is indigent (poor or cannot afford to pay);
- Public or an Open Trial (where people and media can watch the trial);
- Right to Cross-Examination of Witnesses (ask questions to the witnesses);
- Prosecution must prove the charge “beyond reasonable doubt;”
- Presumption of innocence until proven guilty; and
- Written reason decision by the Courts when pronouncing the judgement.

### **Right to Defense and Legal Aid**

Under our law an accused can defend himself or herself but have also the right to be defended by a Jabmi or a lawyer of his or her choice. The right to a Jabmi is a fundamental right in our Constitution. Article 7, section 21 states that:

“A person shall have the right to consult and be represented by a Bhutanese Jabmi of his or her choice.”

Right to a Jabmi or a lawyer is an integral part of a fair trial as it ensures that the defendant gets enough opportunity to be adequately defended by a person who is learned in law. If a person who is charged is poor and cannot afford to hire a lawyer, our law provides that he or she can be entitled to legal aid from the State. This means that the Government will have to bear the cost and expenses of hiring a lawyer on behalf of the defendant who is poor. Article 9, section 6 of our Constitution mentions that:

“The State shall endeavour to provide legal aid to secure justice, which shall not be denied to any person by reason of economic or other disabilities.”

### **Right to Public or Open Trial**

In order to ensure that there is transparency in the criminal trial, except in few cases (like in a rape trial), all hearing or trials must be conducted in public. It means that those who wish to witness the trial - both media and public - can attend court hearings and see that the defendant gets fair opportunity to defend himself. Moreover, the accused and his lawyer can also have the opportunity to ask questions face-to-face (cross-examination) with the witnesses and victim(s) who are brought before the court.

### **Duty of the State Prosecution**

An important element of a fair trial in criminal cases requires the prosecution (State or Government Lawyers) to prove the commission of crime by the defendant “beyond reasonable doubt” by producing concrete evidence. The Court and Judges will punish the defendant only when he or she is convinced without any doubt whatsoever that the defendant has committed the crime. Until then the defendant has the right to presume his or her innocence. If the Judges are in doubt the defendant will be acquitted or released. However, in all cases the Judge must give his or her reason in writing. The copies of such judgement must be given to the parties to the case. If the parties are

not satisfied with the decision of the particular court, one can even appeal to the Supreme Court, which is the highest Court of the Land.

### **Person's freedom is supreme**

The most important principle underlying the “due process of law” is that a person's or citizen's life and freedom are precious. This freedom of life must be safeguarded at all cost. And no one can arbitrarily arrest or detain a person without reason, charge or a trial.

The “due process of law” must be followed even if it means that sometimes a guilty person may escape punishment. It is so important to note that the price of not respecting the due process will lead to many innocent people being unjustly punished. That is why our founding father of the Constitution was so mindful to incorporate the right to “due process of law” as one of the most important fundamental rights of our people.

### **Impeachment**

Every person who commits a criminal offense or breaks the law must face trial in the courts. Constitutional Post Holders, however, unlike the general population, are tried by the Parliament through a special hearing called “Impeachment Proceedings.”

Constitutional Post Holders include:

- The Chief Justice of Bhutan and the Drangpons of the Supreme Court;
- The Chief Justice and the Drangpons of the High Court;
- The Chief Election Commissioner;
- The Auditor General;
- The Chairperson of the Royal Civil Service Commission; and
- The Chairperson of the Anti-Corruption Commission.

### **Grounds for Impeachment**

The grounds for impeachment include incapacity, incompetency or

serious misconduct. In all impeachment proceedings the Attorney General of Bhutan must submit a written report on the Articles of impeachment to the Speaker. The Chief Justice of Bhutan will preside or conduct all impeachment proceedings in the Parliament. If the Chief Justice of Bhutan himself is under impeachment proceedings, then such impeachment proceedings will be presided over by the senior most Drangpon of the Supreme Court.

### **Why does the Chief Justice preside over the impeachment proceedings in Parliament?**

The reason why the Chief Justice of Bhutan or the Drangpon of the Supreme Court needs to preside over impeachment proceedings is because the defendant or the Constitutional Post Holders should get all elements of a fair trial like in the courts. Such rights include the right to know the grounds of charges and the right to defense by himself or herself or representation by a legal counsel of his/her choice. All decisions must be passed with the concurrence of not less than two-thirds of the total number of members of Parliament. This means that Constitutional Post Holders can be removed only through a two-thirds majority voting. However, in the case of the Justices of the High Court and Supreme Court, the National Judicial Commission will first decide and recommend to His Majesty the King, upon proven misbehaviour, as to whether or not he or she must be censured or suspended if the Commission is of the opinion that one does not deserve impeachment.

Article 21, Section 15 of the Constitution states that:

“The independence of the Drangpons of the Supreme Court and the High Court shall be guaranteed, provided that a Drangpon may be censured or suspended by a command of the Druk Gyalpo on the recommendation of the National Judicial Commission for proven misbehaviour, which, in the opinion of the Commission, does not deserve impeachment.”

### **Supreme Court Chief Justice as the head of Interim Government**

Under the democratic structure and when at any time the National Assembly gets dissolved, the Supreme Court Chief Justice will have to take on the role of a Chief Advisor. The Chief Justice is the head of the Interim Government till the elections are conducted and the new government is formed within three months of the dissolution of the National Assembly.

This role has to be assumed each time that there is conduct of primary and general elections. The purpose of making the Supreme Court Chief Justice an Interim Advisor is to ensure smooth conduct of free, fair and democratic elections through an independent constitutional office of the Election Commission of Bhutan.

The Judiciary besides its traditional role of just deciding cases, has now a much bigger role. Not only ensuring a vibrant democracy through the supervisory role of ensuring the conduct of government affairs during the interim phase but it also maintains the just balance of powers of all organs of the government and other constitutional bodies. However, the more fundamental of all is its constitutional role to preserve and perpetuate personal liberty and freedom, peace, harmony and the maintenance of a just and orderly society.

### **Constitutional Case**

The Government was sued for imposing taxes without first passing the law in Parliament. The Petitioner - the Opposition Party claimed that the procedure of law-making, in imposing or revising the taxes, was not followed, as required by the Constitution. The Opposition Party argued before the Court that, therefore, the Government's action violated the Constitution. The High Court of Bhutan held that the Government had indeed violated the Constitution, as taxation was revised without passing the law. According to the Constitution, no taxes will be imposed or revised by any Government without the law being passed by Parliament. The case was appealed to the Supreme Court, which affirmed the decision of the High Court.

There are a few lessons that one can learn from this case. First and the foremost is that our Constitution is the Supreme Law of the State and everyone should follow it. Secondly, all laws should be made by our Parliament or Legislature. Thirdly, all laws should be implemented by our Government or Executive, and cannot violate any provision of the Constitution. And fourthly, the Courts are the final interpreter of the laws and have a duty to say what it finally means when such cases come before them.

### **Civil Case**

Pema borrowed Nu. 50,000 from his friend, Tashi. Being friends, they did not write down any agreement, nor was there any receipt of transaction. Later, Pema refused to pay back the money, despite several requests by Tashi. This infuriated Tashi, who decided to file a case before the Court. In Court, Pema, to Tashi's surprise, claimed that he did not borrow any money from Tashi, and asked for proof. Tashi could not produce any documents or witness.

The Court decided that Tashi could not prove whether or not Pema had actually borrowed the money. From this case, one should learn that any litigant, like Tashi, must produce a written agreement, or receipt or witnesses to get justice from the Court. One must also be aware that even though the transaction may have taken place, the Judge cannot decide cases based on suspicion or doubt. Our law requires that in such cases, there must be a written agreement or receipt, or other proof to convince the Court.

### **Criminal Case**

Tashi was arrested by the police, who suspected him of murdering his enemy, Pema. They believed that Tashi had not forgiven his former friend for cheating him. During their investigations, police recovered a blood-stained knife hidden in the bush near Tashi's house.

Tashi denied that he had murdered Pema. However, police viewed him as the main suspect in the crime and arrested him. Tashi was produced before the Court the day after his arrest, and



police asked the Court to grant them more time to investigate the case. The Court granted them one week to complete the investigation.

On investigation, the police found out the following:

- Tashi had bought the knife from a shop just few days before the murder;
- A day before Pema's murder, Tashi's neighbour, Aum Zam, saw Tashi sharpening the knife with a whet stone;
- A fingerprint left in the blood-stained knife matched Tashi's right-hand fingerprint, and a blood-test report from the forensic (medical) examination confirmed that the blood was that of the deceased, Pema;
- Police also confirmed that a few days before Pema's murder, Tashi was overheard in a bar saying that he would not forgive Pema for his prolonged enmity;
- It was also established from a family member that on the night of Pema's murder, Tashi came home very late and looked contented.

Based on the above evidence, the Prosecutor from the Office of the Attorney-General charged Tashi before the Court with the first-degree felony offence of murder, which carries a sentence ranging from 15 years' jail to life imprisonment.

The trial was witnessed by friends and family members of the late Pema, the general public and the media. When the public is allowed to witness a trial, the case is said to be conducted in the open or in public. All criminal cases must be conducted in the open, except where the identity of the victim needs to be protected, as in rape.

After following all the Due Process of Hearing, the Judge, or Drangpon, was convinced, without any slightest doubt, that

Tashi was in fact the murderer, and he was sentenced to life imprisonment.

Whenever the Court passes the maximum sentence, it has to establish the following four criteria:

- *Mens rea* (Guilty mind or bad motive): The Court has to determine what was the motive or the cause of the crime. In this case, the cause was that they had prior enmity.
- *Actus reus* (Criminal Action or Preparation): Here the Court established that Tashi had meticulously planned the murder by buying the knife and sharpening it.
- *Commission of the actual crime*: Tashi had actually caused Pema's death by multiple stabbing.
- *Delight*: Tashi was happy that he could kill his enemy, and did not regret what he had done.

In Dzongkha, the four elements of crimes are called གནོད་སྐྱོབ་ལྟར་ བསམ་པ། འབྱུང་བ། མཐར་འབྲུག་ས།

**Website link:**

[www.judiciary.gov.bt](http://www.judiciary.gov.bt) (for judiciary)

[www.oag.gov.bt](http://www.oag.gov.bt) (for Attorney General Office)

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## CHAPTER THREE

### *The Executive Branch of Government*

- Saamdu Chetri

The *Lhengye Zhungtshog* or Cabinet of Ministers leads the executive branch of government at whose head sits the Prime Minister of Bhutan. There are 10 ministers in the Cabinet entrusted with protecting and strengthening the sovereignty of the Kingdom, providing good governance, and ensuring peace, security, well-being and happiness of the people. The *Lhengye Zhungtshog* or Cabinet is accountable to His Majesty the King and the kingdom's national parliament. Cabinet members have the added responsibility of aiding and advising His Majesty the *Druk Gyalpo* in matters of national as well international importance when commanded by the king.

Bhutan's national constitution also states that the *Lhengye Zhungtshog* shall uphold and promote an efficient civil administration based on democratic values and principles.

In particular, the Cabinet shall:

- Assess the state of affairs arising from developments in the State and society and from events at home and abroad;
- Define the goals of State action and determine the resources required to achieve them;
- Plan and co-ordinate government policies and ensure their implementation; and
- Represent the Kingdom at home and abroad.

### **The Prime Minister of Bhutan**

The Prime Minister is the head of government. In addition to presiding over the *Lhengye Zhungshog*, the Prime Minister is expected to report periodically on important matters of state to His Majesty the King and the national parliament. The Prime Minister's report to the king includes his assessment of the state of the nation, including international affairs and any other issue deemed significant by the king. The Prime Minister's responsibilities to the parliament include an annual report on the state of the nation, concerning legislative plans, annual plans, and current and emerging priorities of the government. As the democratically elected leader of the government, the Prime Minister represents the aspirations of the people and the people's choice for their leadership. Thus, the Prime Minister's roles and responsibilities range from merely being the President of his Party to Member of Parliament (MP) to Leader of the Government. The Prime Minister's responsibilities include (but are not limited to):

- Chairperson of the Cabinet of Ministers responsible for taking all the major decisions of government
- Recommending appointments to His Majesty the King for such key government positions as the Governor of the Royal Monetary Authority (RMA), the Cabinet Secretary, Ambassadors and Councils, Secretaries to the Government and *Dzongdas* or district administrators who constitute the heads of local government. Other high officials whose appointments the Prime Minister can recommend to the king include the Chief Election Commissioner of Bhutan, the Auditor General of the Royal Audit Authority (RAA), the Chairperson and Commissioners of the Royal Civil Service Commission (RCSC), the Chairperson and Commissioners of the Anti-Corruption Commission (ACC).
- In rare and extreme cases, the Prime Minister may also recommend the dissolution of the National Assembly to the king. He

may also advise the king in writing to declare a State of Emergency, should the need arise, owing to negative impacts on the security, sovereignty and territorial and financial integrity of the country and/or any other matters of public emergency or natural calamities that may befall the nation.

- Chairperson of several national-level entities such as the Gross National Happiness Commission (GNHC), the Royal Education Council (REC), the Tourism Council of Bhutan (TCB), and the President of Druk Holdings and Investments (DHI).

The current Prime Minister of Bhutan, Jigmi Y. Thinley, is a much sought after global speaker for his eloquence in spreading the message of Gross National Happiness (GNH) around the world. As a result of the Prime Minister's efforts, human happiness has now been adopted by UN as an important consideration for achieving sustainable development around the world.

### **Government Ministers**

There are 10 ministers in the Royal Government of Bhutan who report to the Prime Minister, who are chosen by him from among the Members of Parliament representing his party. The names of these 10 ministers are submitted to His Majesty the King before their formal appointment by the king.

In the same manner, the 10 government ministers can be removed from office at the recommendation of the Prime Minister.

Each minister advises and oversees his ministry in policy matters. They juggle a complex set of daily responsibilities because, in addition to being government leaders, they are also Members of Parliament who have to champion the needs of their constituencies. Their portfolios include a number of other roles as Chairpersons of various

other agencies in the country that seek their support and patronage. The ministers are supported in their daily tasks by government Secretaries. For further information on each ministerial portfolio please visit [www.bhutan.gov.bt](http://www.bhutan.gov.bt).

### **Local Government**

Tshogde, or city and town municipalities. Local government leaders are elected like MPs. Unlike MPs, however, Gewog and Thromde leaders are apolitical (not affiliated to any party). They receive bipartisan support from both parties within the constitutional system. The Gewogs are administered by their respective Dzongkhags and the Dzongkhags report back to the Ministry of Home and Cultural Affairs in the central government.

Member of the Regency Council exercising his powers jointly with other members of the council. Local Government in each of the 20 districts or Dzongkhags comprise of such bodies as the Dzongkhag Tshogdu or District Assembly, the Gewog Tshogde or sub-district committees, and the Thromde The Royal Bhutan Police, as a trained uniform force is under the Ministry of Home Affairs. They are primarily responsible for maintaining law and order and prevention of crime, and is also considered an important part of the nation's security force.

Laws passed by the parliament define the roles and responsibilities of local government which are staffed by civil servants. The primary function of local government is to ensure that local interests are taken into account when shaping national policies. They provide a forum for public deliberation of issues affecting the local territory. The local government must stand accountable to local communities, provide service to communities in a sustainable manner, encourage and involve communities and organisation in matters of local governance, be responsive, transparent and accountable, and have the right to receive annual grants from government and levy or collect taxes, tolls,

duties and fees. They must be self-reliant and self-sustaining in order to promote holistic and integrated area-based development planning. As such, they own assets and incur liabilities according to the laws set by the Parliament.

Like the roots of a tree, the main trunk of which forms the ministries of the central government, the *Dzongkhag* or district sectors report to the *Dzongdag*, or District Administrator, but ultimately carry out plans and programmes set by their parental ministries at the local level, establishing a sound foundation for development in the country.

A *Gewog* functions under a *Gewog Yargay Tshogchung* (GYT) or *Gewog* development committee headed by the *Gup* or local representative. The GYT deliberates on and approves local development policies and plans and executes them through a *Gewog* Administrative Officer (GAO).

At the top level of local government, the development policies and plans are deliberated upon and approved by the *Dzongkhag Yargay Tshogdu* (DYT) or the District Development Assembly. In keeping with the truly democratic spirit of local administration, the Chairperson of the DYT is not the *Dzongdag* or District Administrator but a *Gup* or local representative elected from among all the *Gups* of that particular district. All other *gups* and local village representatives such *Maagmis* are important members of this local decision-making body that channels the wishes and aspirations of the people at the deepest grassroots level.

To facilitate the direct participation of the people in the development and management of their own social, economic and environmental well-being, the Royal Government of Bhutan has decentralised and devolved power and authority to the elected Local Governments.



## CHAPTER FOUR

### *Constitutional and Autonomous Agencies*

- Saamdu Chetri

**C**onstitutional Bodies are organisations empowered by the constitution to oversee various functions of government. These bodies are self-governing and operate independently under their specific Acts and Laws. Although they form a part of the overall government system, they are not the branches or any particular arm of government. The heads of these Constitutional Bodies and their commissioners are appointed by the king from a list of eligible candidates recommended jointly by the Prime Minister, the Chief Justice of Bhutan, the Speaker of the Parliament, the Chairperson of the National Council and the Leader of the Opposition Party. The heads and commissioners of Constitutional Bodies can hold office for five years or until they attain the age of 65.

The Constitutional bodies submit their annual report to the Druk Gyalpo and the Prime Minister. Their removal from office can be only through impeachment by the Parliament.

#### **Election Commission of Bhutan**

The Election Commission of Bhutan is an independent constitutional body. It functions in accordance with Electoral Laws. The Commission is responsible for the preparation, maintenance and periodic update of electoral rolls. It also maintains the election schedule and supervises, directs and controls the process of electing candidates for seats in the Parliament and Local Governments. It holds National

Referendums in a free and fair manner and are also responsible for the delimitation of constituencies and parliamentary and local government elections.

### **Royal Audit Authority**

The Royal Audit Authority audits and reports on the economy, efficiency, and effectiveness in the use of public resources. Without fear, favour, or prejudice, it audits the accounts of all departments and offices of the Government including all offices in the Legislature and the Judiciary, all public authorities and bodies administering public funds, the police and the defence forces as well as the revenues, public and other monies received and the financial advances and reserves of Bhutan.

The Annual Audit Report to the Parliament and or any other reports presented by the Auditor General is reviewed by a five-member Public Accounts Committee representing the parliament.

### **Royal Civil Service Commission**

The role of the RCSC is to promote and ensure an independent and apolitical civil service that will discharge its public duties in an efficient, transparent and accountable manner. In the interest of promoting merit, productivity and equity, it ensures application of uniform rules and regulations on recruitment, appointment, staffing, training, transfers and promotion throughout the civil service.

The Administrative Tribunal is a body for civil servants to appeal for their grievances. Any civil servant has the right of access to the Royal Civil Service Commission for any administrative action taken against him or her.

### **Anti-Corruption Commission**

The ACC takes the steps necessary to prevent and combat corruption in the Kingdom. The prosecution of individuals, parties or organisations on the basis of the findings of the Commission is undertaken expeditiously by the Office of the Attorney General for adjudication by the courts.

### **Other Constitutional Bodies**

The following subsidiary constitutional bodies are directly linked to the government of the day.

### **Office of the Attorney General**

The Office of the Attorney General is headed by the Attorney General who is appointed by the Druk Gyalpo by warrant under His hand and Seal, on the recommendation of the Prime Minister. The Attorney General is accountable to the Prime Minister and holds Office for a term of five years.

It is the duty of the Attorney General to aid and advise the Royal Government upon legal matters, prosecute and defend the cause of the State, and discharge other functions in pursuit of justice. For this purpose, the Attorney General has the right of audience in all Courts of Law in Bhutan and represents the Royal Government in any Court of Law outside the Kingdom of Bhutan. The Attorney General also has the right to appear and express opinion on any legal question in Parliament or any committee thereof, but does not have the right to vote. The Attorney General may institute, initiate, or withdraw any case in accordance with the law. The Attorney General must submit annual reports of the activities of the Office to the Druk Gyalpo and the Prime Minister.

The Attorney General is required under Chapter 5 of the Office of the Attorney General Act to conduct himself properly. To enlist a few, the Attorney General must be loyal and dedicated to Tsa-Wa-

Sum, honest, fair and diligent, selfless, and transparent. The Attorney General shall not be influenced in any manner whatsoever by any individual or body of individuals in the discharge of his official duties.

The Attorney General may be removed by the Prime Minister on the grounds of:

- Physical, mental, or other incapacity of a permanent nature; or
- Violation of any provision of the Office of the Attorney General Act; or
- Conviction under any other law.

Bhutan's Armed Forces and Militia are entrusted with the responsibility to protect the security and well being of the nation. Jointly considered a constitutional body, it has at its head, His Majesty the King of Bhutan as its Supreme Commander in Chief. The Attorney General is appointed by Druk Gyalpo on the recommendation of the Prime Minister. He, as the chief legal officer, is the legal advisor to and legal representative of, the Government. The responsibilities are within the domain and authority of the Government and such other legal matters as may be entrusted to his office. The Attorney General has the power to institute, initiate, or withdraw any case in accordance with the law and shall have the right to appear before and express opinions on any legal questions in the Parliament.

### **Pay Commission**

From time to time, an autonomous body shall be constituted on the recommendation of the Prime Minister. The Pay Commission shall recommend to the Government revisions in the structure of the salary, allowances, benefits, and other emoluments of the Royal Civil Service, the Judiciary, the members of Parliament and Local Governments, the holders and the members of constitutional offices and all other public servants with due regard for the economy of the King-

dom and other provisions of this Constitution. The recommendations of the Pay Commission shall be implemented only on approval of the *Lhengye Zhungtshog* or Cabinet and is subject to such conditions and modifications as may be made by Parliament.

## **Autonomous Bodies**

There are of several kinds of autonomous bodies, namely Councils, Commissions, Corporations, Authorities and others. Their mandates and tasks are specific to their institutions. They function independently and report to the Prime Minister or the Cabinet. Included among such commissions are bodies like the Gross National Happiness Commission (GNHC), the National Land Commission (NLC), the National Environment Commission (NEC), the Dzongkha Development Commission (DDC), and the National Pay Commission. Included under Councils are such bodies as the Royal Education Council (REC) and the Tourism Council of Bhutan (TCB). Under Corporations are bodies like the Bhutan Power Corporation (BPC), Druk Green Power Corporation (DGPC), Food Corporation of Bhutan (FCB), National Housing Development Commission (NHDC). Authorities include such institutions as the Royal Monetary Authority, Bhutan Narcotic Control Agency (BNCA), Bhutan Aviation; and others such as the Royal University of Bhutan (RUB) and the Druk Holdings and Investments Group (DHI). Further information about these organisations and their functions can be found on their respective WebPages listed on the Bhutan portal web site: [www.bhutan.gov.bt](http://www.bhutan.gov.bt).

## **Autonomous Agencies**

**Gross National Happiness Commission:** The GNHC is a government body which acts as the planning commission. Its mandates are five-year planning, allocation of resources, monitoring, donor coordination, and screening of the projects through the lens of GNH, in

addition to spreading the knowledge of GNH. The Commission is chaired by the Prime Minister and executed through its Secretariat.

**Royal University of Bhutan:** All colleges in the country are federated to this university. It looks after the Tertiary Education in Bhutan, while the Ministry of Education looks after the education up to high school graduate level and non-formal education program.

**Druk Holding Investment:** The DHI has many companies and corporations federated with it, such as the power corporations, Banks, and the Natural Resources Development Corporation Limited (NRDCL). It is the investment body of the government. It invests in profitable organisations to earn good dividends for the government. It works in close cooperation with Ministry of Finance. The Prime Minister is the President of the DHI.



## PART II





CHAPTER FIVE  
*Media in a Democracy*

- Kinley Dorji

The media play a vital role in governance, broadly meaning the administration of a country and the functioning of society. They enable communication among all sections of society and create a shared national consciousness. Their role is to ensure transparency within government and accountability of its leaders. They play a watchdog role on officialdom and society. They are the force that educates citizens and shapes national values. They are recognised as an informal but powerful factor in governance.

**Media in traditional Bhutan**

During the early stages of national governance in Bhutan, from the time Zhabdrung Ngawang Namgyal unified the country in the 17<sup>th</sup> century to the mid 20<sup>th</sup> century, the written medium comprised religious texts, seen in the scriptures, prayer flags, and as carved messages on stone and wood. Information, including official communication, was disseminated through official and community messengers. Public information was exchanged by word of mouth in a strong oral tradition of communication, often mixed with rumour and gossip.

As the court of the Kings evolved into a formal government, official media were introduced with a youth radio station developed into a national news broadcasting station, the Bhutan Broadcasting Service, in 1986 and an official bulletin, Kuensel, developed into a government newspaper in 1986. Media was seen as the means to dis-

seminate government information to the people as a tool of governance. Bhutan entered the age of information and, in 1992, Kuensel and BBS were delinked from the government to make them independent and objective news services. The oral tradition remained a powerful medium during this period.

The development of the Bhutanese media was driven by political and socio-economic development and the media expanded their reach with the acceleration of political evolution. Foreign television was legalised in 1999 and, soon after the fourth King, His Majesty Jigme Singye Wangchuck, announced the democratisation of Bhutan, the government liberalised the licensing of private Bhutanese news organisations to ensure free media in the electoral and political process. With the establishment of a Westminster-style government, the print media and radio quickly multiplied in a market dominated by government advertising.

### **Media in a modernising Bhutan**

Traditional Bhutan modernised at a rapid pace in the second half of the 20<sup>th</sup> century and the modern media evolved with the process of globalisation. While the oral tradition was still an important element in the information culture, the conventional news media – radio, newspaper, television and film – quickly assumed a significant role in the transition of society. In 1999, with the introduction of the Internet, came the so-called new media and the culture of online discourse. Now we also have the “social media,” with the spread of mobile phones and computers.

Like most other aspects of development, the Bhutanese media adopted the accepted role of media in the developed world, declaring the mandate promoted by journalism educationists, to “inform, educate, and entertain”. The media consciously assumed the mandate to report and comment on activities of the government. Around the turn of the century a number of Bhutanese media professionals were

trained in India and abroad, in journalism, some returning with undergraduate and graduate degrees.

With the film and music industry also picking up and gaining dominance of the entertainment industry, Bhutanese media had a major impact on the Bhutanese mind, or the “shared national consciousness”. The print, broadcast, audio visual, and online media had a combined effect in shaping national values. The modern media overwhelmed social traditions like community, regional, and even national festivals. Studies revealed that Bhutanese youth were being “brought up” by the media, in the sense that young Bhutanese were adopting the culture promoted by media, in their speech, dress, and lifestyle, and thinking.

This trend triggered growing concerns that, the media were being dominated by foreign media, mainly television channels carrying Bollywood and Hollywood content. The Internet and online media, and the phenomenal expansion of the mobile telephone reach, evolved into the social media that became a new global force by 2011, influencing political as well as socio-economic trends.

### **Media and democracy**

The Bhutanese system of governance evolved from the reign of the Kings from their royal courts to the practice of adult franchise in a “democratic constitutional monarchy”. Adopting the system of governance that evolved from the Westminster model, Bhutan’s Constitution, adopted in 2008, established the three arms of government: the Executive, the Legislature, and the Judiciary. In the same interpretation of democratic governance, the media are expected to be a societal or political force whose influence is recognised but not formalised as an institution. They strengthen the role of civil society.

About 200 years ago, western democracies described the media as the “fourth estate”, based on the belief that transparency and public-

ity is the best check on people in public office to prevent them from abusing power or indulging in excesses and corruption. Journalism is expected to hold public personalities and institutions, whose functions impact social and political life, accountable. Media came to be described as the “watchdogs” to make leaders and official institutions uphold their oath to office.

To give media legitimacy and independence, three specific rights relevant to the media are enshrined in the Constitution of Bhutan: freedom of expression; freedom of media; right to information. The premise of such rights is that they are given, not for the media, but for the people, and that rights come with responsibilities.

Ideally, democracy means that people must be in control of government. As citizens, people exercise the power of governance in two ways: by electing the leaders and by keeping them accountable. They elect their leaders through the formal process of voting and keep a check on them informally through the media. It is through the media that citizens can consistently question and convey their views to the leaders. In this sense the media are the public space for national discourse that is critical for a healthy democracy. Media provide this space that is open and accessible to all, regardless of gender, race, ethnicity, age or socio-economic status.

By empowering society, the media enhance democratic values. Media have the mandate to promote democracy and, to achieve this, the media themselves are expected to be democratic in their own ownership structure and their functioning. Monopolisation of the media must be discouraged. The force of the social media today comes from the belief that they enable a wider representation of the private and public interest and are, therefore, a more effective role of the “watchdog” on government and society. Thus the term “citizen journalism”, citizens being given the reach by technology but often lacking the objectivity required of journalism.

The media play such an important role in a democracy that democracies are judged by the independence of the media and professionalism of journalists in that society.

### **Media in a GNH society**

Bhutan is a small country with big ideals, having identified Gross National Happiness (GNH) as a higher goal for human development at a time when much of the world pursues material development. The government, civil society, citizens, and media share the responsibility to give GNH the clarity to be a real vision for development. Journalists play an important role in the experiment to help make GNH a coherent vision, and media, as the public space for national discourse, must initiate and nurture discussions on GNH.

The vision of Gross National Happiness must not be just a declaration or a manifesto, but clearly defined social, economic, and political goals. GNH must be reflected in policies and institutions. The media must understand and help citizens understand the aspirations of a society that pursues happiness as its basic quest, a society that sees the contentment of the people as the goal of economic, political and social development.

In a GNH society, the media need to take on the responsibility to educate the citizen – to develop the citizen. From a GNH perspective, therefore, an important role of the media in governance is the empowerment of the citizenry through information so that citizens make informed decisions. The purpose of a mass media system is that it informs and empowers all members of society. This is particularly critical at a time when society depends on information and communication to keep moving in the right direction – when information is necessary for work, entertainment, health care, education, personal relationships, travel and all aspects of life. Media must be constructively critical and highlight problems and alternative solutions to encourage good discourse. They must be accessible and open

to the public.

The rights and freedoms given to the media are translated into responsibilities and, because of their powerful impact on society, media must be accountable to society. Media in a GNH society need to make a commitment to society. Just as well-functioning media must hold government accountable, media themselves must be accountable to their readers, viewers, listeners. This is achieved through a combination of laws, regulations, professional codes, training, and self-regulation.

The concept of “social responsibility” suggests that the media have obligations to be truthful, fair, objective and relevant. Media houses can express their commitment to society by establishing their media visions, content policies including advertising, written codes of ethics, and codes of professional conduct for journalists. These must be made public so that the public can hold media accountable to their commitments. Media houses must be ready to correct the mistakes they make, to carry the voices of those who are wronged. Journalist associations, associations of editors and press clubs can help ensure the standard of professionalism in media and prevent media from sliding into the sensational and material driven culture that is often described as the lowest common denominator.

The news media construct public opinion and, therefore, have the power to set a nation’s agenda, to focus public attention on key public issues. They identify the problems of society. They should also have a mobilisation function, campaigning for societal purposes and the achievement of valid societal goals. All this becomes an immense and documented responsibility because media professionals are not elected. While elected leaders must earn their credibility, the media must be their own source of credibility.

The social responsibility theory also requires the state to play a

role in attempting to ensure that media fulfill their social obligations, at the same time protecting the independence of journalism and the right to freedom of speech, not only from external threats and pressures but from the state itself. This means preventing monopolies like the dominance of business houses and proprietors that seek maximum revenues at the cost of good content. Professional journalists are required to stand by their principles, against their employers or high officials. Professionalism also means respecting the right to privacy of other people, avoiding corruption to be able to report corruption, understanding the difference between what people want and what people need. This theory requires that the state itself must be committed to these values and must safeguard the role of the media.

Media are known to reflect the society in which they function. Therefore, a GNH society needs a media model embedded in GNH values and principles. Bhutanese media must be different from the global media that are contributing to unhappiness, characterised by consumerism, commercialism, sensationalism, corruption, lack of professionalism. They must treat citizens as people and not consumers.



## CHAPTER SIX

### *The Role of Civil Society in a Democracy*

- Siok Sian Pek Dorji

**B**hutan, as the world's youngest and possibly smallest democratising nation, is in a state of rapid change. As our democracy develops, Bhutanese society will also continue to evolve to ensure that the country not only survives change but thrives through the process of change.

After Bhutan embarked on the path to modernisation and, eventually, democratisation, it began to draw on its traditions and on the experience of other societies to fashion institutions and practices it needed to move toward its national objectives. With the devolution of the mandate to govern from the hereditary “absolute” Monarch to the institutions established by the Constitution, the Kingdom also had to begin defining the responsibilities of the people, who were formerly subjects and are now citizens. In a democratic or “democratising” society, the duties and responsibilities of the people may be defined in the Constitution (see Articles 7 and 8), but now they need to be defined in practice, not just in theory.

#### **Transitioning from monarchy to democracy**

In the past, the Bhutanese population existed as small interdependent communities described as villages. Individuals and families functioned within their communities largely because all members had roles that were defined by the pragmatism of the need to survive in a society in which there was relatively little governing superstructure.

What did exist above the community level often failed to penetrate into the daily lives of the villages except in times of warfare/conflict or the collection of taxes in kind or in labour. The community had to assume the responsibility of governing itself through the definition of responsibilities to be fulfilled and roles to be played by each of its components for the well-being of all its members. That is changing, and the formerly interdependent community is breaking down as a result of modernisation and development. The modern Bhutanese “citizen” has a new role in a scenario of an urbanising society, just as the “subject” did in the rural community that was the primary social formation in Bhutan’s pre-modern society.

There is now a growing gap between the changing structure of a democratic government and the people, between the state and the family. All sections of Bhutanese society are now defining their roles in the evolving system. The role of civil society is also changing from that of an informal, voluntary space to a more organised and regulated environment.

Traditional Bhutanese society functioned as small interdependent communities. There were clearly established practices in terms of all aspects of farm work, irrigation, sharing of forest resources and grazing land, and the bartering of labour to work on the farms and build houses. The community was self-contained with its builder, weaver, tailor, healer, monk, singer, and other skills needed for the functioning of a healthy community. Every individual had a responsibility, with the elderly and the young given lighter responsibilities like fetching firewood and water, baby-sitting, tending to livestock. People assisted and supported each other in times of need. Spiritual, cultural, and social occasions involved the entire community.

The essence of governance in traditional Bhutan in the 20<sup>th</sup> century was the bond between the Monarch and the people. The King was a father-figure who was responsible for the well-being of the peo-

ple, the architect and guardian of a welfare society, which meant free essential services like health and education. The people responded with their allegiance to the Tsa-Wa-Sum – the King, country and people. The King personified government and ruled from the royal court with a retinue of attendants who performed administrative duties and conducted basic mediation between litigants who appealed to the King. This is perhaps best illustrated by a copy of the identity card of the third Druk Gyalpo which described his profession as government service\*.

As the system of governance evolved, the people were represented by locally elected leaders, from village headmen to National Assembly members, who conveyed the needs of the communities to the government and interpreted and implemented official policy in rural Bhutan.

In the half-century between 1960 and 2010, Bhutan saw a dramatic change from Monarchical rule to the institutions of Westminster-style democracy. The royal court evolved into a modern administrative system and society transformed from the rural subsistence community into a 21<sup>st</sup> century “modern” populace. The world declared this period an era of development and Bhutan entered the post-World War II culture of modernisation, defining the development philosophy of Gross National Happiness as a goal for human development.

Although the private sector was recognised as an important driver for economic growth, the royal government, structured into ministries, departments, government-owned corporations, was the main driver of development in all sections of society. With the dominance of the government, society functioned as an extended civil service. The democratisation of Bhutan by the fourth King, His Majesty Jigme Singye Wangchuck, expanded the government structure to introduce

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\* A picture of this ID is in Bhutan through the lens of the King, Roli Books.

the democratic concept of the three arms of government: the judiciary, the executive, and the legislature.

The news media have become more independent since the transition to democracy and has taken on the role of being the “watchdog” or the “fourth estate”. This is generally defined as an independent media that will help hold those in power and authority accountable to the people.

By the turn of the century, Bhutan recognised that the modernisation of society had resulted in the breakdown of traditional society, particularly the interdependent community. A visible result of modernisation was the rural-urban migration and the new urban community grew without the socio-cultural cohesion that kept traditional society together. Like other developing societies, there was a critical need for an active civil society to fill a rapidly growing gap between officialdom and the people. Emerging social and cultural problems related to youth, women, and other groups were beyond the mandate or capacity of government, weakening the progress of democracy and threatening the basic functioning of society. Traditional and spontaneous civil society groups, represented by the community associations, soon gave way to more regional and national efforts to address specific needs – hence the beginnings of civil society organisations such as the National Women’s Association of Bhutan, and the Royal Society for the Protection of Nature.

### **The emergence of organised civil society**

Civil society has been described as the presence, association, and activities of an array of individuals and non-governmental and non-profit organisations and groups that play a public role in this society outside the ambit of government and business. This space will allow for the sharing of voices and the exchange and contest of ideas crucial to a democracy so that people are able to make informed decisions.

The United Nations defines civil society as “all groups outside government, such as community groups, non-governmental organisations, labour unions, indigenous people’s organisations, charitable organisations, faith-based organisations, professional associations and foundations.”

The global definition of civil society acknowledges that a healthy democracy requires many voluntary associations and local activity. These are often not formal, registered organisations. In fact, one of the characteristics of civil society is that it is a free, unregulated space, one that is separate from state authority, and from the pursuit of self-interest and the imperatives of the market.<sup>1</sup> Civil society is often made up of persons who share a common ideal, or purpose, people who care about each other, and about the well-being of the community as a whole.

The active interaction that civil society represents enables people to commit themselves to each other, to build communities, and to knit the social fabric. When we strengthen civil society, we are strengthening the ability of people to become more engaged in society, and we are creating a stronger social fabric. People can solve problems themselves and meet their own needs. This means that people become more self-reliant and they move out of the habit of being dependent on government to take care of all society’s needs.

With globalisation, the concept of civil society has moved beyond local communities and national boundaries. International non-governmental organisations like the Red Cross, World Wildlife Fund and Save the Children today provide global leadership in addressing specific issues and connects countries across the globe. In all countries, civil society organisations are emerging to act on and fill in the gap in areas and issues that were formerly left only to the state.

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1 Civil society and democratic politics, Ehrenberg

At the personal level, citizens' action is central to the presence of civil society. A democratic state cannot be stable unless it is effective and legitimate, with the respect and support of its citizens. Civil society is a check, a monitor, but also a vital partner in the quest for this kind of positive relationship between the democratic state and its citizens.

### **Civil society in Bhutan**

It is significant that in the lead up to democracy, Bhutan's parliament adopted a Civil Society Act in 2007 to govern the establishment civil society organisations that were envisaged to introduce and provide a variety of services that the government could not.

The Constitution of Bhutan, adopted in 2008, defines the state, the government, and the role and duties of citizens and emphasises the importance of other formal and informal institutions that must play an important role in the functioning of society. Article 9, the Principles of State Polity, mandates that "the state shall endeavour to create a civil society free of oppression, discrimination and violence, based on the rule of law, protection of human rights and dignity, and to ensure the fundamental rights and freedoms of the people."

This highlights the need for civil society in the context of socio-cultural and political transformation, because of the "space that has opened up between the state and the family where people associate". A democratically viable civil society requires public space where people can share their views and negotiate meaning. This space must be independent of the market and the state.

Recognition of the importance of civil society comes from the highest authorities in Bhutan. His Majesty the King said in his address to the nation on National Day 2010:

"Today we have great aspirations: the peace, stability, security and

sovereignty of the nation; strengthening of our new democracy; equitable socio-economic growth to achieve GNH and; nurturing our youth to one day lead a nation greatly strengthened by our hard work and commitment. To achieve all this we need trust and faith in our relationships – between the government and people; between institutions of government and; between people ourselves. With the harmony and unity born of these relationships, we will achieve our aspirations and find peace, prosperity and gross national happiness. In short let me say, if we uphold values such as unity, harmony, integrity, trust, justice and peace – if we respect their great importance – then it will be reflected in a strong civil society. A strong civil society is a fundamental pillar of democracy.”

There are two forms of civil society in Bhutan. The earlier, more closely attuned to the global definitions of civil society, are the local self-help groups and associations that operate outside the purview of government. These village associations, or volunteer groups ( such as the group of volunteers who assist patients at the national referral hospital in Thimphu) are unregistered, and were formed based on locally recognised needs.

With the evolution of democracy, there emerged another form of more formal, registered civil society groups and organisations.

In 2009 a Civil Society Authority was established with representatives from government and members of CSOs as board members. CSOs are required to be registered under the Act which defines CSOs as “associations, societies, foundations, charitable trusts, not-for-profit organisations or other entities that are not part of Government and do not distribute any income or profits to their members, founders, donors, directors or trustees.” The Act clarifies that CSOs “do not include trade unions, political parties, cooperatives or religious organisations which are devoted primarily to religious worship”.<sup>2</sup>

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2 Faith based organisations are registered under the Religious ? Act.

By April 2012, there were 26 registered CSOs in Bhutan, many of them are categorised as **Public Benefit Organisations** (PBOs), or organisations established to benefit a section or the society as a whole.

A fewer number are termed as **Mutual Benefit Organisations** (MBOs). These are CSOs established to advance the shared interests of their members or supporters, e.g. to advance the shared interests of people working in a particular profession or business, businesses engaged in a particular industry, youth studying in a university, or people who are interested in a particular cultural activity, sport or hobby such as the Association of Bhutanese Tour Operators, and the Handicrafts Association of Bhutan.

At the local level, Bhutanese CSOs engage in community development, in education and skill improvements for sustainable livelihoods, in training, in encouraging citizen participation. At the national level, they have been involved in policy development, although this involvement is limited and the full potential of bringing CSOs on board in reviewing and developing policy needs commitment.

Less formally, there are community based organisations or local voluntary associations and groups that operate outside the regulations of the state. A Civil Society Funding Facility set up by a group of development partners under the umbrella of the CSO Authority supports applications from these community based organisations as long as they have the endorsement of their local community and the elected leader's (gup's) office.

But, despite the legitimisation of civil society by the Constitution as well as the CSO Act, and acknowledgement of the role of civil society by the government, Bhutan has a long way to go to strengthen civil society. The concept is still little understood and the people have many challenges to overcome in nurturing a vibrant civil society. The regulations that guide organised civil society space are a stark con-



trast to the more spontaneous associations that have developed in the past in the more rural communities.

Volunteerism and co-operation that help build social inclusion are missing, especially in the new urban communities that have grown in the past decades. With communities of people coming from an entirely rural setting, society is breaking down at a much faster rate than residents are able to comprehend. All this is resulting in social problems, alienation of youth who are indulging increasingly in alcohol and substances, growing urban disparity, and the emergence of domestic violence and urban slums. Rural areas are facing an aging population as the young move to towns and find a new way of life without the strong community bonds that tie traditional society.

In the past, authority has always taken charge and people were not groomed for civic participation. The often-heard lament from citizens that the authorities have not picked up litter, cleaned the streets, cleared clogged drains, controlled youth violence, or ensured employment for everyone indicates the tendency in Bhutan for people to expect the government to take on all these responsibilities.

There is a need for vigorous interaction among the people to strengthen the democratic culture. Civil society organisations need to negotiate their independence as well as seek support and understanding from a government that was the only decision maker in the past and has been wary of the NGO culture because of the negatives without an understanding of the important role and space that civil society provides in a democracy. The legacy of a hierarchical society is a challenge because people always deferred to the government for decisions and action.

Civil Society needs to be nurtured to initiate activities beyond the scope of government. Both voluntary and informal groups as well as CSOs can play a more active role in the formulation and review of

policies, and especially in areas like social development, cultural and community resilience, youth development, and media and democracy literacy.<sup>3</sup> There is evidence of unreached areas and needs that only civil society can fulfill. Regulations and policies must enable the healthy and independent growth of civil society, and avoid modelling them into bureaucracies. As processes and institutions are being put in place for Bhutan's democratic transition, now is the time to give serious thought to grooming strong civil society as a foundation for a strong democracy.

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3 Conclusion drawn at a forum on CSOS and a focus on GNH. The forum was conducted by Bhutan Centre for Media and Democracy on November 16<sup>th</sup>, 2011. Reported in *Mi-Khung*, Volume 1, Issue 2. December 2011, published by BCMD.

### **Public Benefit Organisations (PBOs)**

#### **1. Bhutan Association of Women Entrepreneurs (BAOWE)**

BAOWE is an organisation that empowers Bhutanese women through the promotion of knowledge and business skills. It was formally registered as a Civil Society Organisation in 2010.

#### **2. Bhutan Ability Society**

Bhutan Ability Society is non-profit organisation committed to creating an environment that supports and promotes early intervention and integration of individuals with disabilities and to the enhancement of their quality of life.

#### **3. Bhutan Centre for Media and Democracy (BCMD)**

Bhutan Centre for Media and Democracy is a non-profit organisation formed in 2008. It was formally registered as a CSO in 2010. The mission of BCMD is to nurture a culture of democracy by strengthening media, expanding public discourse, and providing essential training and education for key persons who will have a direct impact on Bhutan's democratic transition and the creation of democratic institutions.

#### **4. Bhutan Centre for Nature Conservation**

Bhutan Centre for Nature Conservation (BCNC) was formed in April, 2012. BCNC's mission is to conserve nature through education, advocacy, networking, best practices, promoting environmentally responsible behaviour and inspiring people to care for nature. It also aims to promote nature conservation through capacity building, education and awareness, to empower youth by encouraging youth led environmental initiatives and to develop a spirit of volunteerism through community service and environmental activities.

**5. Bhutan Youth Development Fund (YDF)**

The Bhutan Youth Development Fund was launched in 1999 by Her Majesty the Queen Mother Ashi Tshering Pem Wangchuck, President of the organisation. With a special focus on disadvantaged youth, YDF enables Bhutanese youth to realise their full potential as productive citizens through education, skills training, leadership and self development programmes.

**6. Chithuen Phendey Association (CPA)**

The Chithuen Phendey Association is a Public Benefit Non-Governmental Organisation registered with the Civil Society Organisation Authority (CSOA) of Bhutan. The vision of CPA is to contribute towards a Drug and Alcohol free society in Bhutan. It aims to ensure that all people struggling with alcohol and drug abuse problems and their affected families have access to treatment services and psycho- social support, and they are treated with dignity and respect, thus enabling them to participate meaningfully in the socio- economic development of the country.

**7. Disabled Person's Association of Bhutan (DPAB)**

The Disabled Person's Association of Bhutan was registered as a CSO on November 26, 2010 to address the growing needs of persons with disabilities and to complement the efforts of the royal government.

**8. Draktsho Vocational Institute**

Draktsho was established on 2nd October 2001 to help young persons with disabilities in Bhutan have quality opportunities for developing skills for life and vocation. Draktsho supports activities to enable people with disabilities to become self-reliant, make a living and lead a contented life overcoming barriers created by gender or other differences.

## **9. Lhaksam**

Lhak-sam, a network of HIV positive people in Bhutan, was formed in September 2009 in Thimphu, with the main aim of supporting each other. Encouraged by the Ministry of Health, the group expanded to other districts and set its mission to create and promote a strong support system based on solidarity, social networking and people's participation for addressing and taking collective action towards effective responses to HIV/AIDS and its impact.

## **10. Lhomon Society**

The Lhomon Society was founded in 2010 by Dzongsar Khyentse Rinpoche. It is Bhutan's first major civil society development project with a mission to foster genuine GNH-based development in harmony with government goals through establishing sustainable agriculture methods, appropriate technology, zero waste solutions, youth engagement and alternative models for education in Samdrup Jongkhar dzongkhag and beyond. There are two projects: the Samdrup Jongkhar Initiative and Lhomon Education.

## **11. Loden Foundation**

The Loden Foundation is one of Bhutan's first registered charities under the Civil Society Organisation Authority, Bhutan. Loden is dedicated to fostering an enlightened and happy society in Bhutan through the promotion of education, learning and entrepreneurship among the Bhutanese children and young adults. It aims to contribute to the development of an educated ethos in Bhutanese communities and to promote awareness of Bhutanese culture and tradition in other parts of the world.

## **12. Menjong Foundation**

Menjong Foundation is a non-profit organisation working for the purpose of helping and inspiring hopes, with a new approach to meet the needs of poor people living in the remote areas of Bhutan. The foundation's work is an act of generosity or a secular act of public service motivated by compassion with no motive for profit.

## **13. Music of Bhutan Research Centre (MBRC)**

The Music of Bhutan Research Centre (MBRC) was founded in Thimphu in late 2008 to document, preserve, and promote the traditional music of Bhutan. MBRC aims to break new ground by professionally researching, recording and archiving the many musical traditions of the country's diverse regional, linguistic and ethnic groups, and by documenting the finest living master musicians in performance and interviews.

## **14. Rural Education Foundation (REF)**

Rural Education Foundation (REF) is a non-profit organisation working to uplift and enhance the lives of less privileged children and vulnerable youths and communities in especially for eastern Bhutan. REF complements and supplements the promoting of Gross National Happiness by espousing the education as one great pillar of Peace, Prosperity and Happiness. Rural Education Foundation enables the less privileged and economically disadvantaged children to avail Kidu from his majesty the King or Kidu foundation of Bhutan to gain access to education and assist any CSOs pertinent to kidu and education for achieving their goals, thereby promoting enlightened and educated society in rural Bhutan.

**15. Phuentsholing Sports Association (PSA)**

Having realised the need to develop and promote sports event, along with socio-economic development activities, Phuentsholing Sports Association was formed in the early 1961 under the patron of HRH Namgyel Wangchuk and Late Dashi Ugyen Dorji, and it may perhaps be the first ever formed sports Association in Bhutan.

The objective was to promote and organise sports Activities amongst the youth and sports loving people to entertain the general public at large in Phuentsholing Region. PSA Sports Activities are oriented for social service benefit and a non-profit making Association formed in Phuentsholing and subsequently affiliated to Bhutan Olympic Committee (BOC) Thimphu.

**16. Respect Educate, Nurture and Empower Women (RENEW)**

RENEW was founded by Her Majesty the Queen Ashi Sangay Choden Wangchuck, in 2004. RENEW is a non-governmental organisation (NGO) dedicated to empowerment of women and girls in Bhutan, especially the victims and survivors of domestic violence.

**17. Royal Society for Protection of Nature (RSPN)**

RSPN was founded as a citizen based non-profit, non-governmental environment organisation in 1987 to support environment conservation in Bhutan. RSPN works on environmental education and advocacy, conservation and sustainable livelihoods, research and emerging issues like climate change, solid waste and water.

### **18. Royal Society for Senior Citizens (RSSC)**

The Royal Society for Senior Citizens (RSSC) is a non-profit organisation that aims at providing peer-counselling to help adjust to retired life, providing information related to medical care, pilgrimage, and legal and financial matters. It will also harness the experience and knowledge of senior citizens for the benefit of society

### **19. Royal Textile Academy (RTA)**

The Royal Textile Academy is dedicated to preserve and promote the Bhutanese textiles in particular and the thirteen arts in general as well as strive to promote the unique culture and traditions of Bhutan by creating international awareness and encouraging international collaboration to promote mutually beneficial exhibits and educational programs

### **20. Taryana Foundation**

Tarayana Foundation was established in 2003 by Her Majesty the Queen Mother, Ashi Dorji Wangmo Wangchuck, to help bridge local needs of disadvantaged remote communities with larger national initiatives. It helps the poor rural communities become self reliant and self sufficient through the initiation and establishment of income generating activities, promote artisan skills through the establishment of training centres and facilitation of sale of products. It also enables children from disadvantaged and poor families to pursue education through support grants, midday meals and needs based tertiary scholarships and supports needy patients to receive medical care: facilitate access to medical services.



## **Mutual Benefit Organisations (MBOs)**

### **21. Association of Bhutanese Industries (ABI)**

The Association was spearheaded by a few prominent industrialists and entrepreneurs in the country in 2007 with a view to provide a common platform wherein industries could take up issues of common interests for discussion, decision, and, if need be, submit to government and other agencies concerned for appropriate redress.

### **22. Association of Bhutan Tour Operators (ABTO)**

The Association of Bhutanese Tour Operators (ABTO) was formed in January 2000 with the overall objective of bringing together tour operators and travel agents of the tourism industry. It is the collective and official voice of all Bhutanese tour operators who constitute its primary membership, and also an important player in the tourism industry. ABTO is also the first step that the industry has taken to create a mechanism for self-promotion, self-control and self-regulation. ABTO has played valuable, fundamental roles as forums for the discussion and exchange of views on important issues of common interest for the overall benefit of the tourism industry. One of the primary functions of ABTO is to build consensus among its members on public policy issues affecting the industry and to promote these policy interests with the government and relevant agencies including members. ABTO was registered under Civil Society Organisation Authority as a mutual benefit organisation on 3rd March 2011, legally representing around 450 tour operators, out of which around 300 are operational.

### **23. Association for Foreign Worker's Recruitment Agency of Bhutan**

The Foreign Workers Recruitment Agency was restructured by the middle of August 2008 by the Department of Labour to improve recruitment procedure, to facilitate the construction industries deploying foreign workers. After the restructuring of the foreign workers recruitment agency, the foreign workers recruitment agent around the country proposed the Government to form the Association of Foreign Workers Recruitment Agency and as a result, the Association received the legal recognition from the CSO on 19th October 2011.

### **24. Guide Association of Bhutan (GAB)**

Guides Association of Bhutan is a non-profit, apolitical, mutual benefit organisation established to empower and professionalise tour guides. GAB was founded on 27 February 2009. In June 2010, GAB proudly became one of the first organisations to be officially registered with Bhutan's newly established Civil Society Organisation Authority.

### **25. Handicrafts Association of Bhutan (HAB)**

The Handicrafts Association of Bhutan was formed on December 8, 2005. The HAB is an NGO representing the handicrafts sector (both the artisans and the retailers) of Bhutan. HAB has been giving training and workshops to its members as well as non-members and to supplement on it.

### **26. Society for Artisans for Sustainable Zorig Chusum (SASZC)**

The Society for Artisans for Sustainable Zorig Chusum (SASZC) is a civil society organisation that aims to counter the inflow of Authentic Bhutanese handicraft products by encouraging local artisans at the grassroots level to sustain through production and commercialisation of zorig chusum products.

## Civil Society & Volunteerism

“Volunteering is the ultimate exercise in democracy. You vote in elections once a year, but when you volunteer, you vote every day about the kind of community you want to live in.”

-Anonymous

Civil society – in everyday life – expresses human caring. As the space where people come together outside the institutions of market and government, civil society develops on the understanding that none of us stands alone. As fellow occupants of this planet, our fate, and the fate of the societies we inhabit, are bound together. We have a responsibility to each other – and to the environment in which we live.

This notion of caring is not simply an input for the nourishing of life; it is also an output to enable the flourishing of others. In any society, this compassion manifests in the form of volunteerism – unpaid service to improve the quality of human life, thereby promoting happiness. Cleaning campaigns in which people pick up garbage, tutoring children struggling in school, looking after patients in hospitals, or helping to rebuild damaged monasteries are all examples of people voluntarily taking action to improve the lives of their communities.

The commitment to care for others helps define our values. Volunteerism is especially important in a democracy which is, by definition, governance by the people. As citizens, people must recognise the rights and responsibilities that are inherent in a truly democratic government. An engaged citizen is one who understands that volunteering is not merely an altruistic act but an obligation that all of us share by being members and stakeholders of the same family, community, or society.

## CHAPTER SEVEN

### *Reflections*

- Mark Mancall

The articles collected in this volume are intended to serve as a brief introduction to the institutions of “democracy” as gifted to Bhutan by His Majesty the Fourth King through the Constitution of 2008. However, before we discuss the articles about democratic institutions that are published in this book, it may be well to think about the definition of democracy itself.

#### I

Everything about “democracy” is contested in the world today. What does the word itself mean? How many types of “democracy” are there? Does the presence of institutions that are called “democratic” indicate the existence of real “democracy”? What is the relationship between democracy and development? Can you have political democracy without having social and economic democracy? Why do democracies fail? In fact, what is a failed or a failing democracy? The list of questions can go on and on, and it is most definitely not the purpose of this introduction to try to answer them. These questions are here only to indicate the breadth and depth of the lively and often contentious discussion that characterises the field of discourse about democracy today.

It is remarkably difficult to define the word “democracy”, particularly because in the world today there are so many states that call

themselves “democratic”, yet they differ in their political values and arrangements so markedly. Take Nazi Germany as an example from history: It was one of the most ruthless dictatorships the world had ever known, but it maintained a legal system, with judges, lawyers, court cases, and legal records, almost to the end of World War Two. This example is enough to indicate that “legality,” that is to say, the existence of judicial institutions and laws, is not sufficient for a definition of democracy.

Another example: The Communist state in the Soviet Union, which today we call Russia, lasted from 1917 till almost the end of the 20th century. Throughout that period, the government held regular elections at many levels, from national to local. Legislative bodies met regularly at each level. It was claimed that these legislative bodies, called “soviets,” had the responsibilities that all legislative bodies in democratic societies were supposed to have. There was a system of political parties, but consisting of only one party. There was a very progressive Constitution, perhaps the most progressive ever written, but, of course, it was only a piece of paper that had little value in itself. The example of the Soviet Union demonstrates that the existence of elections and of a Constitution - even the existence of a political party - is not enough to guarantee the existence of democracy. The Soviet Union was characterised not by democracy, but by an authoritarian dictatorship, ruling through a single party and consigning its political enemies, whether they were guilty of any crime or not, to slave labor camps or worse.

Nor does the existence of civil society organisations (CSOs) or non-governmental organisations (NGOs) guarantee that democracy exists in a country. In many countries, including Nazi Germany and the Communist Soviet Union, citizens’ organisations - from the Boy Scouts and Girl Guides, to nature preservation societies, women’s organisations, the Red Cross, and innumerable others - have all existed under oppressive laws that guaranteed that they served the purposes

not of their members or of the people as a whole, but of the anti-democratic State.

The existence of television, radio, newspapers and magazines, has also been characteristic of modern societies all over the world. In non-democratic or anti-democratic conditions, the media are controlled by the state as an instrument through which the state governs the society by purveying a particular ideology to the exclusion of all others. They filter news and other information that the public hears, sees, or reads, and by slanting stories in a particular direction, they serve not the truth but the political objectives of the government. The existence of the media, no matter how few or how many they may be in number, is also not a guarantee of democracy.

In short, the word “democracy” has been applied to political systems as admirable as those of some European countries today, and also to political systems as heinous as those that ruled in the 20th century in countries like Germany and the Soviet Union and their satellites.

This book does not describe a democratic system, either in Bhutan or anywhere else in the world. It consists of articles that describe components of a democratic system of government - the legislative, the executive, the judicial, civil society, and the media. The information contained in these articles is absolutely vital to the development of democracy in our country. If our Parliament, our legal system and judiciary, our executive branch, our civil society, and our media are all functioning in a shared consensus about democracy in the real sense of the term, we may be able to speak of a democratic system in our Kingdom. But the concept of democracy and the commitment to living in society according to rules that guide the behaviour of citizens, that is to say, of all of us, in such a way that we can call ourselves “democrats”, lie outside the institutions described in this book. It is a concept upon which we must all agree. We must all be educated into

it. We must respect it. It is a concept that invigorates and empowers the institutions described in this book to function in a democratic fashion. The concept of “democracy” includes more than just institutional arrangements, because, ultimately, democracy is about attitudes and even about personal behaviour.

## II

Let us now try to define “democracy”, in order to open a discussion about what “democracy” means for us at every level of our society and in every part of the country.

In the simplest and most basic terms, we can say that democracy is a means for making decisions within a group that is characterised by a certain equality among all its members, at least an equality at the time when the members are discussing an issue and trying to arrive at a conclusion about it. For example, if the heads of families of a certain village gather together, as equals, so that no head of a family has, at the time of the meeting and in the course of the discussion, more power than any other head of family at that time and at that place, and if they arrive at a conclusion on the basis of one vote for each of the family present, we can say that is a democratic process. It is simple and it is direct. This kind of process existed in Bhutan previously and still continues in some villages. But it is important to note this: “Democracy” in such a situation includes the heads of the families taking part in the meeting but everybody else in the village is not included in the “democratic process” of the meeting. We have no way of knowing whether those who are not participating heads of families agree with their heads of families, have been consulted by the heads of their families, or have even thought about the issue or issues being decided. Democracy in this case exists in an extremely restricted group of villagers, to the exclusion of all the rest.

Let us take another example. In a modern state, all the institu-

tions described in the articles in this book may exist, and the people elect the Parliament periodically. Let's imagine that the Parliament contains members of more than one political party, but the majority of the members of Parliament belong to one political party. Within that party, there may be free and open, collective discussion of issues, and decisions may be made that will be brought to Parliament for a vote. In such a situation, the other members of Parliament do not participate in the discussions and decisions made by the members of Parliament who belong to the political party that has a majority. They may speak openly against the decisions made by the majority party, and they may even vote against the decisions made by the party when they are presented to Parliament for approval. In such a case, we can speak of democracy as characteristic of the ruling political party but not necessarily of the Parliament as a whole. Moreover, unless special attention is paid to consulting the people about the issues that are being discussed and decided in the majority party in the Parliament, they too are excluded from the democratic process. Neither periodic elections nor discussion and decision-making within a ruling party guarantee the existence and growth of democracy.

We can conclude from these two very limited and simplistic examples that we need to think about some very important subjects concerning the future of our country. For example, what kind of democracy do we want and at which levels of our society? Do we want a democracy that is inclusive or exclusive of one or another part of our people? If we want a system of government that is democratic through the representation of the people by individuals chosen for that purpose, whether it be in the gewog or at the national level, what kind of relationship must be maintained with the people they choose as their representatives if we are to grow and maintain a democratic system of government? These are some of the questions that all the people of Bhutan, whether among ourselves or through the media, need to discuss in order to arrive at some common agreement about the future of the way we live together as a community.



### III

But that is not enough. A discussion about the ways our institutions function or should function, based on the articles in this book, is only the beginning of the long path to democratic development upon which we as a nation are embarked in the present and the future.

If, for example, democracy requires a degree of equality among those making decisions for our nation, what do we mean by “equality”? Does “equality” include both those who choose their representatives and the representatives themselves? In other words, what does “political equality” mean at this time in our history? We may ask the same question concerning the concept of “equality before the law”. What are the factors that interfere with the equality before the law that we are all supposed to share? If a degree of equality is an essential part of democracy as we conceive it, how do we consider those inequalities that are highly characteristic of our economy, our society, our education, etc.?

There are human behaviours upon which we need to reflect in our thinking about democracy. For example, can we call ourselves a “democratic” country if corruption is almost a way of life in certain areas? If we think that corruption is anti-democratic, then we must conclude that the Anti-Corruption Commission is as much a vital part of our democratic system of governance as Parliament and the Government themselves.

We need to consider whether we can have political democracy if we do not have democracy in other areas of our national life as well. This same question must be rigorously applied to matters of gender, for example. Are women who are not the equals of men in their families, homes, or local communities, full participants in our democratic system? How are our children, who form an increasingly large pro-

portion of the population, included in the processes of democracy? What is the relationship between democracy, on the one hand, and citizenship on the other? Do concepts like equality and human rights extend only to those who are legally citizens of Bhutan or should they extend to all human beings who live and work in our Kingdom?

These kinds of questions are not specific only to Bhutan. They are being discussed throughout the world today, wherever people are trying to take more control over the decision-making that has an impact on the way they live their lives, even on a daily basis. It is our responsibility to discuss them within the context of Bhutan, but the discussion we have here, we should remember, is part of the discussion that is taking place in many other countries as well.

#### IV

Finally, and perhaps most important of all, we need to discuss the question of those attitudes that may be considered “democratic,” because without them, neither our democratic institutions nor the discussion we must continuously maintain about democracy can work. Ultimately, democracy depends upon “right attitudes,” a concept not far from our Bhutanese Buddhist way of thinking.

Democracy may depend on our ability to maintain civility in our relations with each other. Elections and debates in Parliament, and discussions about public issues that may take place in the family or the village, have the potential to be very divisive, to weaken if not destroy the fabric of co-operation and even of affection, which are the very heart of our existence of the community. No matter how vociferous our disagreement about public issues, in the end we must be able to maintain a level of civility in our conversations that allow us to work together toward commonly agreed-upon goals. Among the greatest dangers to democracy may be anger and resentment.

Civility depends not only on our ability to speak to each other but also on our ability to hear each other. Our existence as a community - a political community described by the institutions that are the subject of the articles in this book - depends upon our ability to maintain unity through listening, to take into account in our own decisions the concerns of those with whom we do not agree or who do not agree with us.

Civility, and the ability to hear the other side, require that we respect the dignity of the other as well as ourselves. In the world today, there are countries in which the lack of equality, the absence of civility, and the tendency to disrespect one's opponents by denying them the dignity we grant to ourselves, are damaging the institutions of democracy themselves.