

STRENGTHEN THE ROLE OF OFFICE OF THE PRESIDENT

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EXECUTIVE SUMMARY

In May 2008, Nepal became a republic country after a decade long conflict followed by end of 239-year-old monarchy and took an important milestone in electing a Head of State. “The President shall perform his or her functions in accordance with this Constitution and the laws in force. The main duty of the President shall be to protect and abide by this Constitution.”¹

As a Daayitwa Fellow 2014, based at the Office of the President under project title “Strengthening the role of the office of the President”, I strived to gather evidence, work shoulder to shoulder with the Office and its key partners, develop innovative solutions to enhance its management capacity and build stronger relationship between the Office and general public through website remodeling to enable to share the journey with a greater national and international mass given the increasing accessibility to internet world wide.

My paper presents recommendation directed to two areas of the Office of the President. Firstly, a recommendation for the new constitution of Nepal under mandate stated for the President of Nepal. The recommendation is based on the comparative study of constitutions of randomly selected six countries.² The target audience is the decision-makers, the unicameral body of 601 members of 2nd Nepalese Constituent Assembly, which was formed as the result of the 2013 Constituent Assembly elections after the failure of the first Constituent Assembly to pass a new constitution.

Likewise, the second segment of my paper directs to an area of improvement, through management point of view, in the Office of the Presidents based on the SWOT (Strength, Weakness, Opportunity and Threat) Analysis and informational and observation gathered during three-month fellowship at the Office of the President starting June 2014.

¹ The Interim Constitution of Nepal, Inserted by the Fourth Amendment.

² Azerbaijan, Bangladesh, China, India, Italy and Slovenia.

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1. THE PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF NEPAL

The word public comes from the Latin for “people”, which is defined as pertaining to the people of a community, nation, or state.³ However there is an interesting dichotomy between public and private organization, which both serves to benefit the public in some sense. The Office of the President unlike all government organizations of Nepal falls in an interesting rise as result of end of the monarch and when Nepal became a republic in May 2008. After the Fifth Amendments to the Interim Constitution, the Nepalese Constituent Assembly elected a new President on July 14, 2008.

The current President of Nepal, Dr. Ram Baran Yadav is the first President of the Federal Democratic Republic of Nepal. Dr. Ram Baran Yadav took oath of office and secrecy by Chief Justice Kedar Prasad Giri “I represent all Nepali people in this august office and in all my efforts and endeavors I will be committed to the benefit of the Nepali people,” and assumed his office on July 23, 2008. Prior, under the Interim Constitution adopted in January 2007 (Seventh Amendment), all powers of governance were removed from then King of Nepal, Gyanendra Bir Bikram Shah Dev. The Nepalese Constituent Assembly elected its first Constituent Assembly election in 2008 who had to decide whether to abolish the monarch for Federal, Democratic, Republic State or continue monarch. During the suspension of the monarch, then 31st Prime Minister of Nepal, Girija Prasad Koirala acted as Head of State. Thereafter, rigorous discussion amongst the leading political parties took place at the Constitution Assembly to amend the Interim Constitution and elect the first President for the country.

Bill on Amendments to the Interim Constitution, 2007 (B.S. 2063) inserted Part 4A stating “President and Vice-President”. This was formulated at fervor of the moment as almost a replica to Constitution of India and Bangladesh. And the seventh amendment was incorporated to adhere to the adaptive challenges. The current policy in the Interim Constitution of Nepal 2007 under Part 4A Article 36 (A-D) states:

36 A. President:

1. There shall be a President in Nepal.
2. The President shall be the head of state of the country, and in that capacity perform his or her functions in accordance with this Constitution and the laws in force.
3. The main duty of the President shall be to protect and abide by this Constitution.

36 B. Election to President:

1. The Constitution Assembly shall elect the President on the basis of political understanding.
2. If political understanding is not made pursuant to Clause (1), a person who secures a majority of the total number of the then members of the Constituent Assembly shall be deemed elected to the office of President.
3. Other procedures relating to the election of President shall be as determined by the Constituent Assembly.
4. If any person holding any political office to be filled by way of election, nomination or appointment is elected to the office of President, such political office shall, ipso facto, be vacant.

36 C. Term of office of President: The term of office of the President shall be until the commencement of the constitution to be promulgated by the Constituent Assembly.

³ Guralnick, 1980.

36 D. Qualification for President: In order to become the President, a person must possess the following qualification:

- a. Being qualified to become a member of the Constituent Assembly

Qualifications of the Members: Any person should possess the following qualifications in order to become a member of the Constituent Assembly:

- i. Nepali citizen,
 - ii. attained at least twenty five years of age,
 - iii. not have been punished on any criminal charge of moral turpitude,
 - iv. not holding an office of profit.
- b. Having attained at least thirty-five years of age.

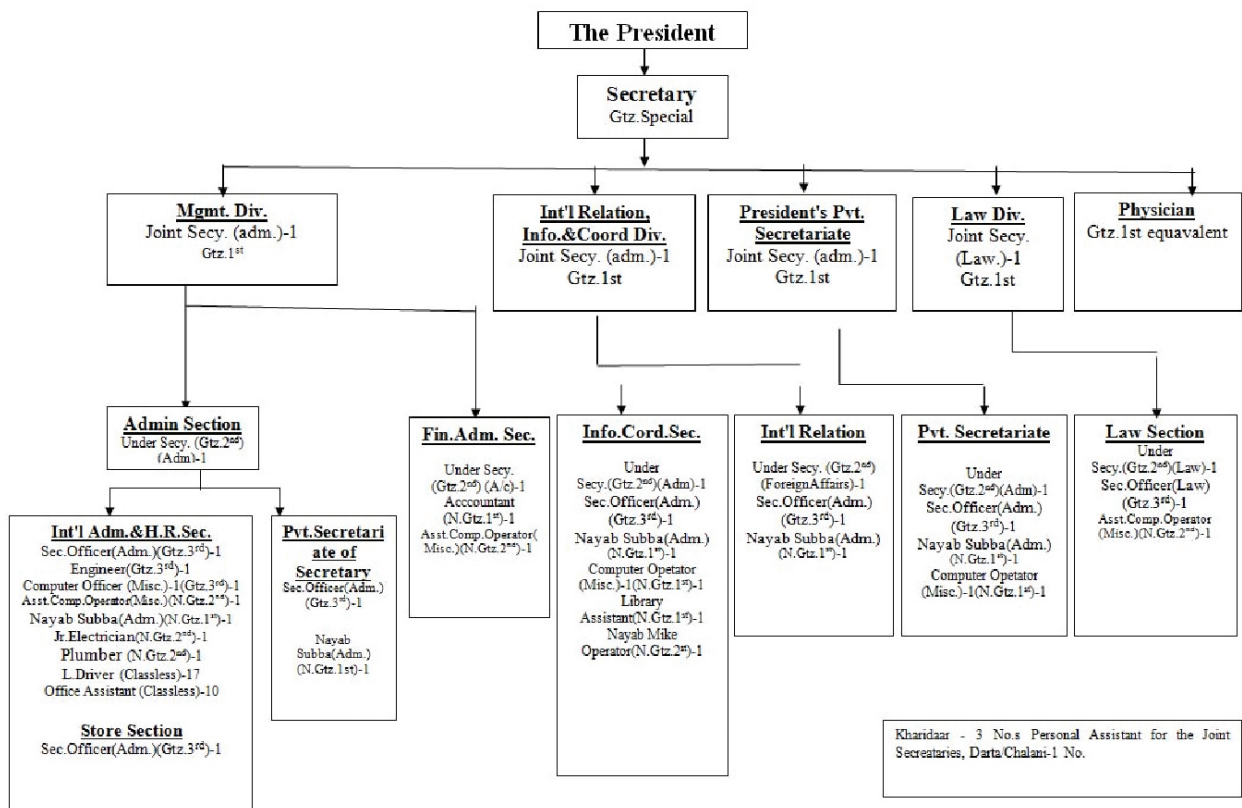


Figure 1: The organogram of Office of the President

2. COUNTRIES⁴ AND THEIR CONSTITUTIONS UNDER 'PRESIDENT'

In my fairly in-depth study, I have mainly concentrated on Bangladesh, India and Azerbaijan. And I have superficially studied remaining countries⁵ as an additional reference.

BANGLADESH

In December 1971, Bangladesh emerged as an independent state. Only 325 days after the liberation, Bangladesh prepared a full-fledged constitution on November 4, 1972. The Drafting Committee of 34-member with Dr. Kamal Hossain, Minister of Law and Parliamentary Affairs, as its chairman, and including four other top-ranking ministries, held 74 meetings and took nearly 300 hours to complete the constitution writing process.⁶

The Constitution of Bangladesh under Part IV, Article 48 states⁷:

(1) There shall be a President of Bangladesh who shall be elected by members of Parliament in accordance with law.

(2) The President shall as Head of State, take precedence over all other persons in the State, and shall exercise the powers and perform the duties conferred and imposed on him by this Constitution and by any other law.

(3) In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56 and the Chief Justice pursuant to clause (1) of article 95, the President shall act in accordance with the advice of the Prime Minister; Provided that the question whether any, and if so what, advice has been tendered by the Prime Minister to the President shall not be enquired into in any court.

(4) The Prime Minister shall keep the President informed on matters of domestic and foreign policy, and submit for the consideration of the Cabinet any matter, which the President may request him to refer to it.

In Bangladesh, Constitution making process included evoking public interest by publishing invitation through the press, radio and television. The Committee invited any institution or individual citizen interested to send proposals in writing for consideration of the Committee during the preparation of the Draft Constitution for the People's Republic of Bangladesh.

The first President of Bangladesh was Sheikh Mujibur Rahman and the incumbent President is Abdul Hamid. Since Bangladesh gained independence in 1971, the role of the President has changed thrice with substantially expanded responsibilities through time.

INDIA

Post independence in India in May 1952, India gave itself their first President. His good name was Dr. Rajendra Prasad. On November 28th, 1960, at a massive national

⁴ Azerbaijan, Bangladesh, India, and Italy.

⁵ China and Slovenia.

⁶ Huq, Abul F. "Constitution- Making of Bangladesh." *Pacific Affairs, University of British Columbia* 46.1 (1973): 59-76. Web. 24 July 2014.

⁷ Constitution of Bangladesh.

gathering of Indian Law Constitution, the President expressed the position of the President of India being a replica of the British monarch model. "The President of the Indian Union will be generally bound by the advice of his ministers."⁸ However, Dr. Rajendra Prasad was not suggesting to completely assimilate to the American President. But he was suggesting a close study on the powers of the President of India, particularly where the President can use his discretion in the exercise of his power and where he should be bound by ministerial advice instead of blindly following British constitutional practice.

The Constitution of India under Part V, Article 53 states⁹:

- (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
- (2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.
- (3) Nothing in this article shall-
 - (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or
 - (b) prevent Parliament from conferring by law functions on authorities other than the President.

The article concluded with an interesting say i.e. avoid the risk and it should be overlooked. However, the inquiry by Dr. Rajendra Prasad raised many eyebrows. Even Prime Minister Nehru could not disregard such remarks given the gravity of occasion. Dr. Prasad was simply suggesting a close study be made of the powers of the President of India, particularly to find out where the President can use his discretion in the exercise of his powers and where he should be bound by ministerial advice, because as he points out there is no provision in the Constitutional laying down that the President shall be bound by ministerial advice in everything.

ITALY

Much can be learned from the Italian Presidency, its constitutional role and political practices. From 1869s until 1946, the Italians lived under Fascist regime. And after the fall of monarch, while preserving it, the country's electorate participated in the referendum on the monarchy and elected a Constituent Assembly to develop a new constitution¹⁰. Since the birth of the Republic in 1948, the country is infamous for government instability, violence, corruption, inflation and numerous other ills. The constitution makers carefully formulated Articles 87-88 under Title II of Part II of the Constitution of the Italian Republic ensuring impotent figurehead "Chief of State."¹¹

Article 87

- a. The President of the Republic is the Head of the State and represents national unity.

⁸ Ghosal, A. K. "The Position of the President of Indian Republic- Is It a Replica of the British Crown?" *The Indian Journal of Political Science* 22.4 (1961): 312-18. Print.

⁹ The Constitution of India.

¹⁰ Koff, Stephen P. "The Italian Presidency: Constitutional Role and Political Science." *Presidential Studies Quarterly* 12.3 (1982): 337-51. Print.

¹¹ The Constitution of the Italian Republic.

- b. The President may send messages to Parliament.
- c. The President shall authorise the introduction to Parliament of bills initiated by the Government; Promulgate laws and issue decrees having the force of law, and regulations; Call a general referendum in the cases provided for by the Constitution; Appoint State officials in the cases provided for by the law; Accredite and receive diplomatic representatives, and ratify international treaties which have, where required, been authorized by Parliament.
- d. The President is the commander-in-chief of the armed forces, shall preside over the Supreme Council of Defence established by law, and shall make declarations of war as have been agreed by Parliament.
- e. The President shall preside over the High Council of the Judiciary.
- f. The President may grant pardons and commute punishments.
- g. The President shall confer the honorary distinctions of the Republic.

Article 88

1. In consultation with the presiding officers of Parliament, the President may dissolve one or both Houses of Parliament.
2. The President of the Republic may not exercise such right during the final six months of the presidential term, unless said period coincides in full or in part with the final six months of Parliament.

Koff states that “the nature of political conflict throughout the system has resulted in stalemates, inefficiency, ineffectiveness and corruption. Since the presidency was the organ that was supposed to be detached from intense political activity and conflict, its failure to evolve in this fashion is most striking.”

As per Constitution, the Figure #2 below illustrates qualification for the position of President, the term of office, the methods of selecting President, deputisation in absence of the President and impeachment upon violating the Constitution.

President/ Republic of...	Election		Term	Deputisation	Impeachment by
	Eligibility	By			
Azerbaijan Ilham Aliyev, 4 th President	Citizen; Age >35 Living in the country longer than 10 yrs	General Election	5 years	Prime Minister	Milli Majlis on initiative of Constitutional Court based on conclusions of Supreme Court presented within 30 days *
Bangladesh Abdul Hamid, 16 th President	Citizen; Age >35; Qualified for election as a member of Parliament *	Members of Parliament in accordance with law	5 years for 2 consecutive terms (max)	Speaker	Members of Parliament and delivered to the Speaker *
China, Xi Jinping, 7 th President	Citizen; Age >45	The National People's Congress	5 years for 2 consecutive yrs (max)	Vice-President	***
India, Pranab Mukherjee, 13 th President	Citizen; Qualified for election as a member of the House of the People; Age >35	Members of an electoral college (Houses of Parliament & Legislative Assemblies)	5 years; eligible for re- election	Vice-President	House of the Parliament *
Italy, Giorgio Napolitano, 11 th President	Citizen; Age >60	Parliament in a joint session of its members *	7 years*	President of Senate	Parliament in a joint session, with a vote of an absolute majority of its members
Slovenia, Borut Pahor, 4 th President	Citizen	Direct general elections by secret ballot *	5 years for 2 consecutive terms (max). *	President of National Assembly	National Assembly before the Constitutional Court *
Nepal, Dr. Ram Baran Yadav, 1 st President	Citizen; Qualified to be a member of the CA; Age >35	Constituent Assembly on basis of political understanding *	Until the commencement of the constitution to be promulgated by the CA	Vice President	If at least two-third majority of CA members adopts resolution of impeachment

Figure 2: The Presidents in various countries.

3. RECOMMENDATION: NEW CONSTITUTION OF NEPAL/ THE PRESIDENT

There are innumerable lessons that can be learnt by reflecting on countries with existing constitution and that have developed extensively through course of history. Undeniably the citizen of Nepal should prepare for potential downfalls like most nations, given Nepal Presidency is only six years old and the gravity and intricacy of political ties within. The new constitution opts for November 2015 shall redefine or provide definitive clarity on the roles and responsibilities of the President of Nepal for ultimate peace and prosperity in the country.

The citizen of Nepal must be optimistic that the Constituent Assembly will timely grant a new constitution for a good change. And what the new government unfolds after the new constitution will remain a jigsaw puzzle as the country still struggles through transition. Nevertheless, below is list of my radical suggestion that should support the new constitution. These recommendations are subject to qualification for the position of President, the term of office, the methods of selecting President, depositisaton in absence of the President and impeachment upon violating the Constitution.

The Interim Constitution of Nepal is a result of the constitution makers not wanting to give the President substantial powers, at the same time, there was little sentiment for creating an impotent figure head Head of State. The roles and responsibilities of the President is marked by clarity in few areas and significant obscurity in others.

A crucial and may be too radical is the idea to have a nonpartisanism where there will be lack of affiliation with a political party in terms of eligibility criteria for the President position. A secular senior (age over 45) figurehead outside the norms in the political arena of Nepal who values diversity and affirmative-action measure and ensures representation of marginalized groups moving forward. And he or she who acquires compulsory advance degree in any form of political science or management, preferably Masters in Public Affairs is a criterion to aim for the section of the next President of Nepal.

In line with Constitution of the Italian Republic, Nepal can adopt to similar concept where a good number of delegates depending on population from every district elected by the District Council so as to ensure legitimacy and minority representation in the election. And term of office as a general survey is five years with two consecutive terms maximum, if re-elected.

The concomitant mandate is one of many areas in the Interim Constitution that needs further exercising instead of limiting to a ceremonial head. Why cannot the President of Nepal do the following as President of Azerbaijan:

- submit the State budget for ratification
- approves State economic and social programs
- submit proposal to Constituent Assembly on establishing diplomatic representations of the country in foreign countries and international organization
- conclude intergovernmental Treaties and Agreements

In absence of the President due to unavoidable circumstance, the Interim Constitution has stated that the Vice-President shall perform the function to be performed by the President. However, the physical location of the President and the Vice-President is separate. In a real setting, it will be a challenge for the Vice-President to perform equally efficiently for he/ she is not directly involved in any of the daily activity whether it is planning or implementing phase.

4. RECOMMENDATION: OFFICE OF THE PRESIDENT/ IN-HOUSE MANAGEMENT

On May 2014, I was selected as one of twenty fellows for Daayitwa Fellowship 2014. I was assigned to work at the Office of the President under the project title “How to strengthen the role of the Office of the President”. The Fellowship is targeted to begin in June 1, 2014 and end August 31, 2014. In the three-month course of the fellowship, I studied the nuts and bolts of the organization where I collected innumerable data from their archives and informal interview with its employees, and observation at in-house events at the Residence of the President.

This segment is recommendation for the Office of the President, which is less known policy but more of a concept directed towards in-house management theories/ skills to strengthen the role of the Office of the President.

I. Strategic planning is a smart practice to produce significant changes given the rapid changes in political front of Nepal. Strategic planning engages “a disciplined effort to produce fundamental decisions and actions that shape and guide what an organization (or other entity) is, what it does, and why it does.”¹² The strategic planning addresses where it is, where it wants to be and how to get there. Below is a Figure #3 that illustrates a capsule summary- ABC of Strategic Planning.¹³ The literature of formal strategic planning for organizations mostly focused on the private sector dating back to 1960s. Only in the 1980s, strategic planning for public organizations was introduced in the 1980s.

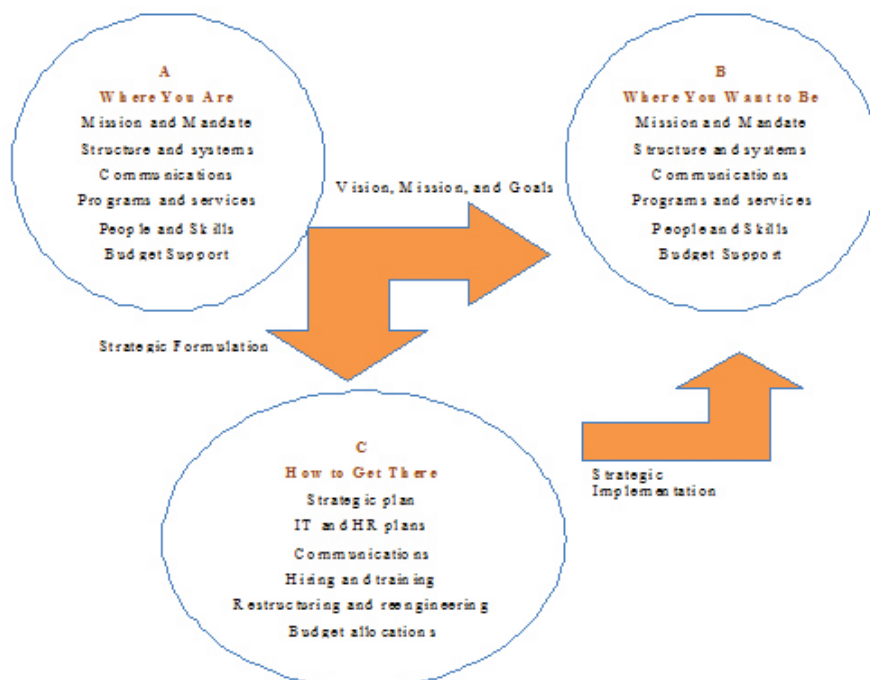


Figure 3: ABC of Strategic Planning

¹² Olsen and Eadie, 1982, Pg. 4.

¹³ Bryson and Alston, 2005.

SWOT ANALYSIS



Figure 4: SWOT analysis

SWOT Approach is a determinant of in identifying the strategic issues facing the organization. Strategic issues can be fundamental policy questions or critical challenges affecting the organization's mandates, mission and values, target audience and management. It is a conflicting topic that answers to what how or how much, why, were, when and who in building of the organization through dialogue to collectively overcome challenges.

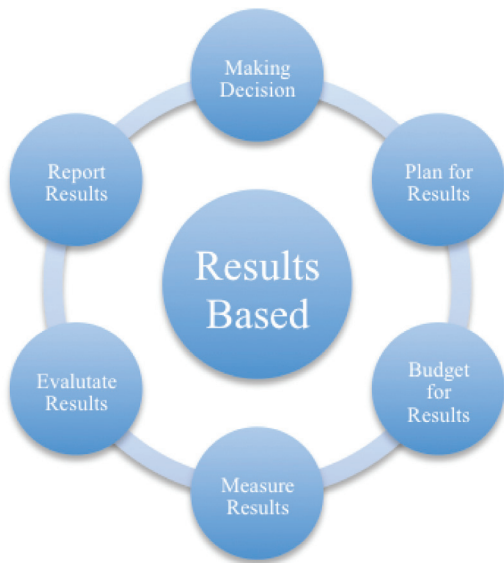
There are two guiding factors to identifying Strength, Weakness, Opportunity and Threat, also known as Challenges to view positivity- internal and external environment. The internal environment is usually more about the present and the external factor is more about the future. Strength and Weakness falls under internal factor while Opportunity and Threat falls under external factor, those are not under the organization's control.

Figure #4 illustrates the greatest Strength of Office of the President is its title "Head of State." Amid its title, it confines the President to act upon the present Interim Constitution only. The public has yet to see his capacity and delivery when or if the country experiences 'state of emergency' at its extreme level. However, for the time being he is just a ceremonial figure participating at national event or event that is requested by organization/ individual to recognize and encourage public in their respective fields. Can the President do more in building the nation?

The management practice in the Office of the President may be what the public agencies of Nepal favor but it is comparatively systemized mainly because there is absence of physical presence of general public, thus no havoc or chaos like the scenario at the District Development Committee where aggravated citizen barge through the door while thousand other are already standing under scorching heat from wee hour waiting for the Section Office to arrive for his signature.

The Office of the President in mainly divided into two Secretariat, Private and Personal. While I was only associated with the Personal Secretariat under the Admin Section, my observation remains vague in organizational mechanism in managing, assessing or evaluating events held at the Office. The Office of the President requires a strategic planning to prosper and do recognizable and respectful work, for which application of Integrated Strategic Management Approach of Hennepin County (Figure #5)¹⁴ might be the just mechanism to be on toes and maintain the equilibrium among all other roles. Figures below illustrates the details on the approach (Vargas, 2003):

¹⁴ Vargas, 2003.



Result Based					
Making Decision <ul style="list-style-type: none"> • Continuous improvement and learning • Adjust allocations as necessary 	Plan for Results <ul style="list-style-type: none"> • Mission and Vision • Desired results • Operational results • Strategic alignment • Core services • Setting Priorities • Setting Target • Initiative 	Budget for Results <ul style="list-style-type: none"> • OoP Budget • Secretarit Budget • Division Budget • Programs and services 	Measure Results <ul style="list-style-type: none"> • Data that informs planning, budgeting and decision making from 4 prospectives • Target audience • Finance • Internal process • Learning and growth 	Evaluate Results <ul style="list-style-type: none"> • Analyze data • Common cause • Special cause • Baselines vs. Targets • Resources utilized • Benchmarking 	Report Results <ul style="list-style-type: none"> • OoP Head • Target audience • Employees • Board • Stakeholders

Figure 5: Integrated Strategic Management Approach of Hennepin County

II. A crucial point to incorporate in Office of the President’s Strategic Planning is Public Relations in Public Administration through mass media, mainly directed toward Office of the President website operation, maintenance and many more. Public Relations is no longer a young profession. It is an avenue to create understanding between government agency and the publics who are the ultimate beneficiaries. Unlike private organizations and I/NGOs, public relations in government agencies should be highly required for Freedom of the Press compels civil servant to be accountable to the news and public. There is evident link between public relations and organizational effectiveness. Thus, there is also a proposal recommendation, which is action-oriented i.e. to remodeling the website of the Office to enhance its public relation to greater population, including international viewers and Nepali who may not easy have the capacity to fluently read Devanagari scrip and those who have fairly accessible reach to internet worldwide.

Before my fellowship at the Office, there had been many attempts to restructure the website of the Office of the Presdients by the staff but the project idea was consistently disregarded. With persistent weeks long attempts, the previous Secretary Sharada Prasad Trital had approved the proposed budget designed by the existing contract based website company (F1 Soft). However, when the new design was set to be incorporated, Secretary Sharada Trital was transferred to National Planning Commission as Joint Secretary. This is a true reflection of functions of government agencies. Soon after, I directly met with the new Secretary Anup Kumar Upadhaya of the Office to speak about my project. It was evident that there was no form of communication about the ongoing project by former Secretary. Now the project is at halt.



Figure 6: Current webpage



Figure 7: Proposed web design

