

# STRENGTHENING PREVENTION, DETECTION AND PROSECUTION OF CORRUPTION, AND PUBLIC-PRIVATE PARTNERSHIP

Gobinda Khanal\*

## I. OVERVIEW OF THE CORRUPTION TREND

### A. Corruption Trends in Developing Countries

Economic disparities and poor economic conditions provide fertile ground for corruption, with economic incentives playing a crucial role in fostering such practices.<sup>1</sup> In developing countries, corruption is pervasive, affecting all sectors from public service delivery to major infrastructure projects, thereby significantly hindering development and degrading the quality of life. This trend is driven by environments where public functionaries exercise significant discretion with minimal accountability, exacerbated by weak institutions and governance structures that fail to enforce accountability and transparency.<sup>2</sup> The societal norms and cultural acceptance of corruption further complicate efforts to combat it, especially in regions where petty corruption is culturally ingrained.<sup>3</sup> While international measures like the UN Convention against Corruption and other regional mechanisms play crucial roles in setting standards and promoting best practices,<sup>4</sup> the implementation of effective anti-corruption strategies in these countries remains challenging but necessary. These strategies often include enhancing legal frameworks, promoting transparency and fostering public awareness and engagement in anti-corruption efforts.<sup>5</sup> Given the varied drivers and widespread impact of corruption, a nuanced understanding is essential for devising effective policy interventions in developing countries.<sup>6</sup>

This paper aims to cover the following two key topics:

- (1) Overview of recent trends of corruption, money-laundering and related offences;
- (2) Barriers, challenges and possible solutions to the investigation and prosecution of corruption cases including the necessity and challenges of international investigations.

### B. Corruption Trend in Nepal

According to the 2023 Corruption Perceptions Index (CPI), Nepal's CPI Score 2023 is 35 with Rank 108 in the index. These scores indicate moderate to low performance in various indices related to corruption perception and rule of law, placing Nepal towards the lower end of the global scale in terms of perceived transparency and governance integrity. The analysis of corruption trends from Fiscal Year 2021/2022 (078/79) and Fiscal Year 2022/2023 (079/80) reveals a persistent and evolving pattern of corrupt practices across various levels of government.

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\* Joint Government Attorney, Office of the Attorney General, Nepal.

<sup>1</sup> See generally, Paolo Mauro, *Corruption and Growth*, 110 Q.J. Econ. 681 (1995).

<sup>2</sup> See generally, Sanjeet Singh, *Fighting Corruption in Developing Countries: Dimensions of the Problem in India*, PIARC Seminar on Good Governance, Institutional Integrity, and Human Resources Management for Road Administrations, 20-22 Oct. 2005, Warsaw, Pol.

<sup>3</sup> See generally, Benjamin A. Olken & Rohini Pande, *Corruption in Developing Countries*, 4 Ann. Rev. Econ. 479 (2012).

<sup>4</sup> Id.

<sup>5</sup> Sanjeet Singh, *Fighting Corruption in Developing Countries: Dimensions of the Problem in India*, PIARC Seminar on Good Governance, Institutional Integrity, and Human Resources Management for Road Administrations, 20-22 Oct. 2005, Warsaw, Pol.

<sup>6</sup> Mushtaq H. Khan, *Determinants of Corruption in Developing Countries: The Limits of Conventional Economic Analysis*, in *International Handbook on the Economics of Corruption* 216 (Susan Rose-Ackerman ed., 2006).

1. Fiscal Year 2021/2022<sup>7</sup>

This year was characterized by the continuation of long-standing corruption issues. Key trends included bribery, revenue leakage, loss of public property and the illegal acquisition of wealth. Corruption was particularly prevalent at the local level, where public service delivery and development activities are most concentrated. Corruption by public officials was closely linked to financial transactions, resulting in malpractice in both revenue collection and expenditure. Additionally, there was a noticeable trend of public property being registered in the names of specific individuals, leading to encroachment issues. Public procurement and construction sectors also faced significant challenges, with frequent violations of procurement procedures and a tendency to make emergency purchases without prior preparation. The submission of fake educational certificates and other false documents to obtain public positions was another major issue, reflecting systemic corruption across multiple levels of government.

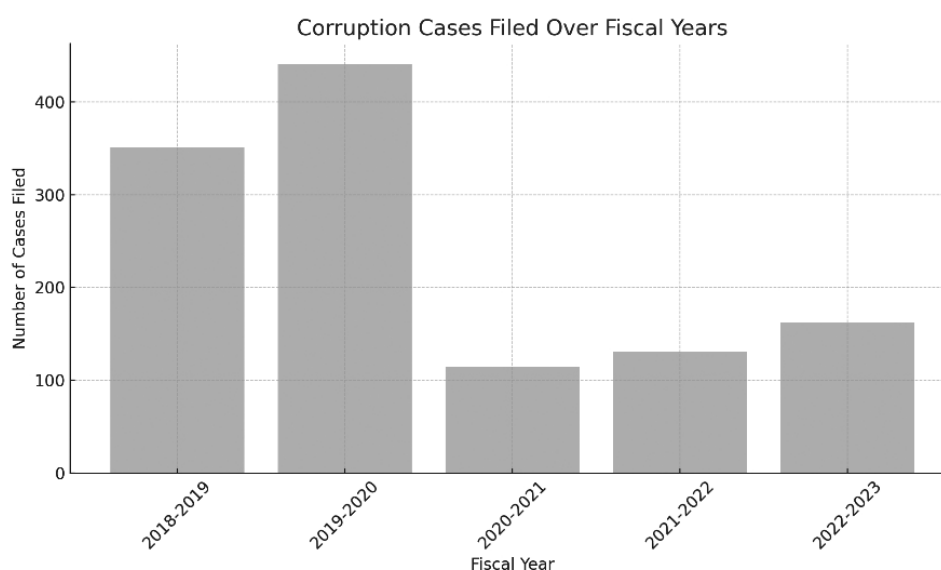
2. Fiscal Year 2022/2023<sup>8</sup>

In the following year, while the number of cases involving the loss of public property slightly decreased, cases related to illegal financial gains nearly doubled. This indicates a shift in the focus of corrupt activities rather than an overall reduction in corruption. Many of the previous year's corruption trends, such as dishonesty in recovering illegal gains or losses, damaging public property, taking bribes and providing false information, continued unabated. The trend of encroaching on public property by registering it in the names of specific individuals persisted, as did the issues in public procurement and construction, with no reduction in the violation of procurement processes or in the failure to perform quality work. The use of fake documents to secure public positions remained a significant problem. Corruption continued to be closely tied to financial transactions, affecting both revenue collection and government expenditure. Moreover, there was a growing tendency for public officials to exhibit anger towards customers during service delivery, further damaging public trust.

3. Overall Trend

Over the past two fiscal years, corruption has persisted in various forms across government income, expenditure, public property management, public procurement, construction and service delivery at all levels — local, state, and union. While certain aspects, such as the loss of public property, showed minor improvements, others, particularly illegal financial gains, worsened significantly. The systemic nature of these corrupt practices highlights the need for stronger anti-corruption measures and greater accountability to effectively address these ongoing issues.

4. Corruption Trend in the Last Five Years<sup>9</sup>



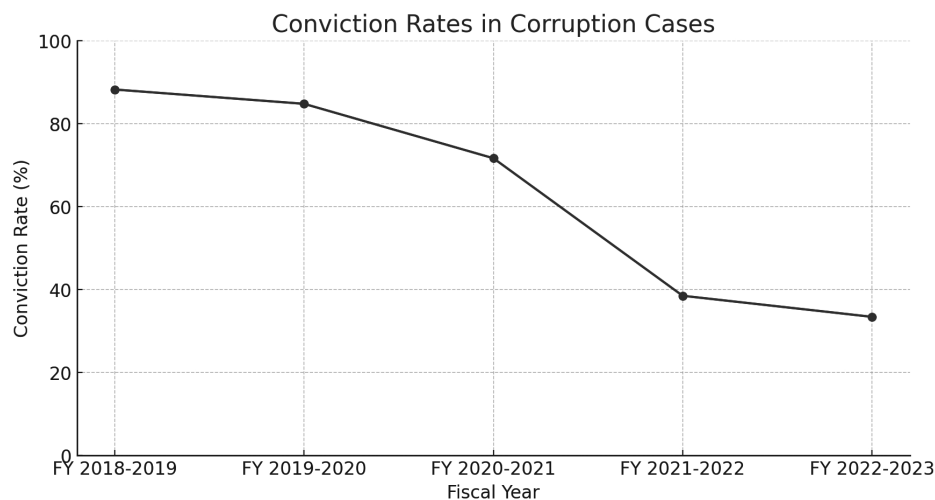
<sup>7</sup> See, Commission for the Investigation of Abuse of Authority (CIAA), Annual Report, Fiscal Year 2021/2022 (2022).

<sup>8</sup> See, Commission for the Investigation of Abuse of Authority (CIAA), Annual Report, Fiscal Year 2022/2023 (2023).

<sup>9</sup> Commission for the Investigation of Abuse of Authority (CIAA), Annual Reports, from 2018-2019 to 2022-2023.

The chart above illustrates the trend of corruption cases filed over five fiscal years, from 2018-2019 to 2022-2023. From F.Y. 2018-2019 to 2019-2020, there was a notable increase in cases, rising from 351 to 441. However, in the following fiscal year (2020-2021), there was a sharp decline in cases, plummeting to 114, most likely influenced by external factors, particularly the global Covid-19 pandemic. During this period, government agencies, courts and anti-corruption bodies faced operational challenges due to lockdowns, remote working conditions and staff shortages, which could have slowed investigations and delayed case filings. The economic slowdown and legal delays also contributed, as fewer business activities and backlogged court systems reduced the detection and processing of corruption cases. In F.Y. 2021-2022, the number of cases slightly increased to 131 and further rose to 162 in F.Y. 2022-2023, showing a gradual recovery, although the figures have not yet returned to pre-2020 levels. Thus, the drop in cases is likely tied to the pandemic's multifaceted impact on society and institutions.

##### 5. Conviction Rate<sup>10</sup>



The graph above illustrates the conviction rates in corruption cases over five fiscal years, from FY 2018-2019 to FY 2022-2023. There is a noticeable downward trend in these rates. The conviction rate began at 88.25 per cent in FY 2018-2019 and decreased steadily each year, reaching a low of 33.43 per cent by FY 2022-2023. This sharp decline could be indicative of various systemic issues, such as changes in legal frameworks or challenges in the investigation/prosecution of corruption cases. The significant drop particularly from FY 2020-2021 onwards suggests a critical shift that warrants further investigation to understand the underlying causes.

### C. New Mechanism: Investigation and Prosecution of Money-Laundering

The 3rd Round APG Mutual Evaluation Report (MER) for Nepal recommended that Nepal pass the Amendments to Some Laws relating to the AML and Business Promotion Bill, which seeks to grant money-laundering (ML) investigation authority to the agency responsible for investigating predicate crimes,<sup>11</sup> thereby introducing new legislation<sup>12</sup> amending 19 different laws. This represents a significant advancement in Nepal's efforts to combat financial crimes. These amendments address the issue of duplication in the investigation process between predicate offences and ML. Under the new system, the investigating officer responsible for a predicate offence will also handle the investigation of related ML elements, thereby streamlining the process and ensuring that ML is addressed from the outset. This marks a departure from the previous system, where the Department of Money Laundering Investigation (DMLI) was solely responsible for ML investigations. Now, investigative responsibilities are distributed among law enforcement agencies

<sup>10</sup> Id.

<sup>11</sup> APG, Anti-Money Laundering and Counter-Terrorist Financing Measures – Nepal, Third Round Mutual Evaluation Report, 45 (2023).

<sup>12</sup> On 12 April 2024, the Nepalese Parliament enacted Amendments to Some Laws relating to AML and Business Promotion Act, 2024, which amended 19 different statutes, including extensive amendments made to the Money Laundering Prevention Act, 2008.

handling predicate offences, including the CIAA.

#### D. Way Forward

Developing countries, including Nepal, exhibit a dynamic and evolving nature of corruption that adapts to changing economic and political conditions. This shifting landscape requires continuous adaptation of anti-corruption strategies to address emerging forms of corrupt practices. It must focus on strengthening anti-corruption frameworks by enhancing transparency, accountability and legal enforcement. Implementing rigorous public procurement procedures and increasing public engagement in anti-corruption initiatives will be crucial. For Nepal specifically, prioritizing the effective implementation of the newly amended laws on money-laundering is essential. This includes integrating investigative responsibilities among various law enforcement agencies to streamline the process and reduce duplication. Additionally, fostering a culture of transparency and accountability at all levels of government will help curb systemic corruption and improve overall governance. Enhanced international cooperation and adherence to global anti-corruption standards will further support these efforts, contributing to a more effective response to corruption and financial crimes. The Office of the Attorney General in Nepal has a specialized division and office representing the Government of Nepal in legal matters before the court. Further, there is a Specialization Training for the Government Attorneys on Anti-Corruption. However, the training course has not undergone any revisions in last three years, whereas the trend of corruption is changing every year. Learnings from other jurisdictions, analysis of the crime trend, and engagement with practitioners and experts can aid in enhancing the current course, thus further strengthening the capacity of government attorneys before the court.

## II. OVERCOMING BARRIERS IN INVESTIGATIONS AND PROSECUTIONS OF CORRUPTION

Investigation and prosecution of corruption cases have observed several challenges which have been highlighted below.

#### A. Validation and Identification of Evidence

The difficulty in investigating and gathering sufficient evidence to ensure the punishment of those involved arises from the widespread and systemic nature of the corruption, often perpetrated by high-ranking officials, such as presidents, governors and prime ministers, who are or were responsible for the country's decision-making. Additionally, the use of complex mechanisms to conceal and launder the proceeds of corruption across multiple foreign jurisdictions further complicates the process.<sup>13</sup>

“Criminals are leveraging digital channels more frequently, capitalizing on the low risk of detection, increased convenience, specialized skills, and greater gains for minimal effort.” - World Governments Summit 2024<sup>14</sup>

#### Nepalese Experience

In Nepal, prosecution and investigation of corruption cases face significant challenges, as highlighted by several key decisions of Special Court. One recurring issue is the failure to authenticate or establish the authority of crucial evidence, such as audio recordings, leading to acquittals. For instance, in *Government of Nepal vs. Kumar Bahadur Raj Bhandari*,<sup>15</sup> and *Government of Nepal vs. Mohan Babu Yadav*,<sup>16</sup> the court acquitted the defendants due to the lack of authority over the audio records presented as evidence. This demonstrates the critical importance of proper validation and handling of evidence in corruption cases.

Another major challenge is the absence of key witnesses or complainants during the trial process. In

<sup>13</sup> Maira Martini, Fighting Grand Corruption: Challenges and Successes, Transparency Int'l (2015), [https://knowledgehub.transparency.org/assets/uploads/helpdesk/Fighting\\_grand\\_corruption\\_challenges\\_and\\_successes\\_2015.pdf](https://knowledgehub.transparency.org/assets/uploads/helpdesk/Fighting_grand_corruption_challenges_and_successes_2015.pdf).

<sup>14</sup> PwC, The Future of Crime: Emerging Trends and the Role of Technology 9 (2024), <https://www.pwc.com/m1/en/publications/documents/2024/the-future-of-crime-eng.pdf>.

<sup>15</sup> *Government of Nepal vs. Kumar Bahadur Raj Bhandari et al.*, 075-CR-0172.

<sup>16</sup> *Government of Nepal vs. Mohan Babu Yadav*, 076-CR-0009.

cases such as *Government of Nepal vs. Mohan Yadav*,<sup>17</sup> and *Government of Nepal vs. Binod Prasad Yadav et al.*, 076-CR-0001, the complainant or witnesses failed to appear before the court to give their statements. This significantly weakens the prosecution's case, as the lack of testimony from witnesses who are directly involved or have vital information can result in the inability to establish a firm case against the accused.

Furthermore, the lack of ample witnesses can also impede successful prosecutions. Cases like *Government of Nepal vs. Chabilal Pokharel*,<sup>18</sup> and *Government of Nepal vs. Ram Kishow Shah*,<sup>19</sup> highlight how the absence of sufficient witnesses can hinder the prosecution's ability to build a strong case, ultimately leading to acquittals. These challenges emphasize the critical need for thorough investigation procedures, reliable evidence collection and ensuring witness availability to achieve successful prosecutions in corruption cases.

## B. Weak Legislative Framework

One of the significant challenges in combating corruption is the legislative framework, which often presents obstacles through complex and excessively complicated procedures. These intricate legal processes can slow down or even halt investigations, allowing corrupt practices to persist unchecked.<sup>20</sup> Addressing these challenges demands a multipronged approach, including law reforms, enhanced cross-border cooperation, and equipping enforcement agencies with the necessary tools and expertise to tackle corruption comprehensively.

### **Nepalese Experience:**

"Private corruption affects the entire supply chain, as it distorts markets, undermines competition, and increases costs to firms. It prevents a fair and efficient private sector, reduces the quality of products and services, and leads to missed business opportunities."

– UNODC, 2013<sup>21</sup>

Articles 21 and 22 of the United Nations Convention against Corruption (UNCAC) focus on combating corruption in the private sector. Article 21 urges States to criminalize bribery in private businesses, including both the giving and receiving of undue advantages that lead to a breach of duties. Article 22 calls for the criminalization of embezzlement within the private sector, where individuals misuse assets entrusted to them due to their position. Both articles encourage countries to adopt legislative measures to address these corrupt practices within economic, financial and commercial activities. Although Nepal is a state party to the United Nations Convention against Corruption (UNCAC), it has yet to fully align its domestic laws with the convention's requirements. Notably, Nepal has not criminalized private sector corruption, focusing primarily on public sector offences. This gap in legislation leaves a significant area of corrupt practices unchecked, particularly those involving private enterprises, where corruption can be just as detrimental to economic integrity and governance. Strengthening legal frameworks to include private sector corruption is essential for Nepal to fully comply with UNCAC and combat corruption more effectively.

To effectively tackle the challenge of corruption, substantial legal reform is essential. In this endeavour, the United Nations Convention against Corruption (UNCAC) provides a crucial framework, offering globally recognized standards and practices for combating corruption. Additionally, examining and integrating successful anti-corruption practices from various jurisdictions worldwide can provide valuable insights and strategies. By aligning national laws with international standards and learning from the experiences of other countries, states can strengthen their legal mechanisms to prevent, detect and prosecute corruption more effectively.

<sup>17</sup> *Government of Nepal vs. Mohan Yadav*, 076-CR-0068.

<sup>18</sup> *Government of Nepal vs. Chabilal Pokharel*, 076-CR-0307.

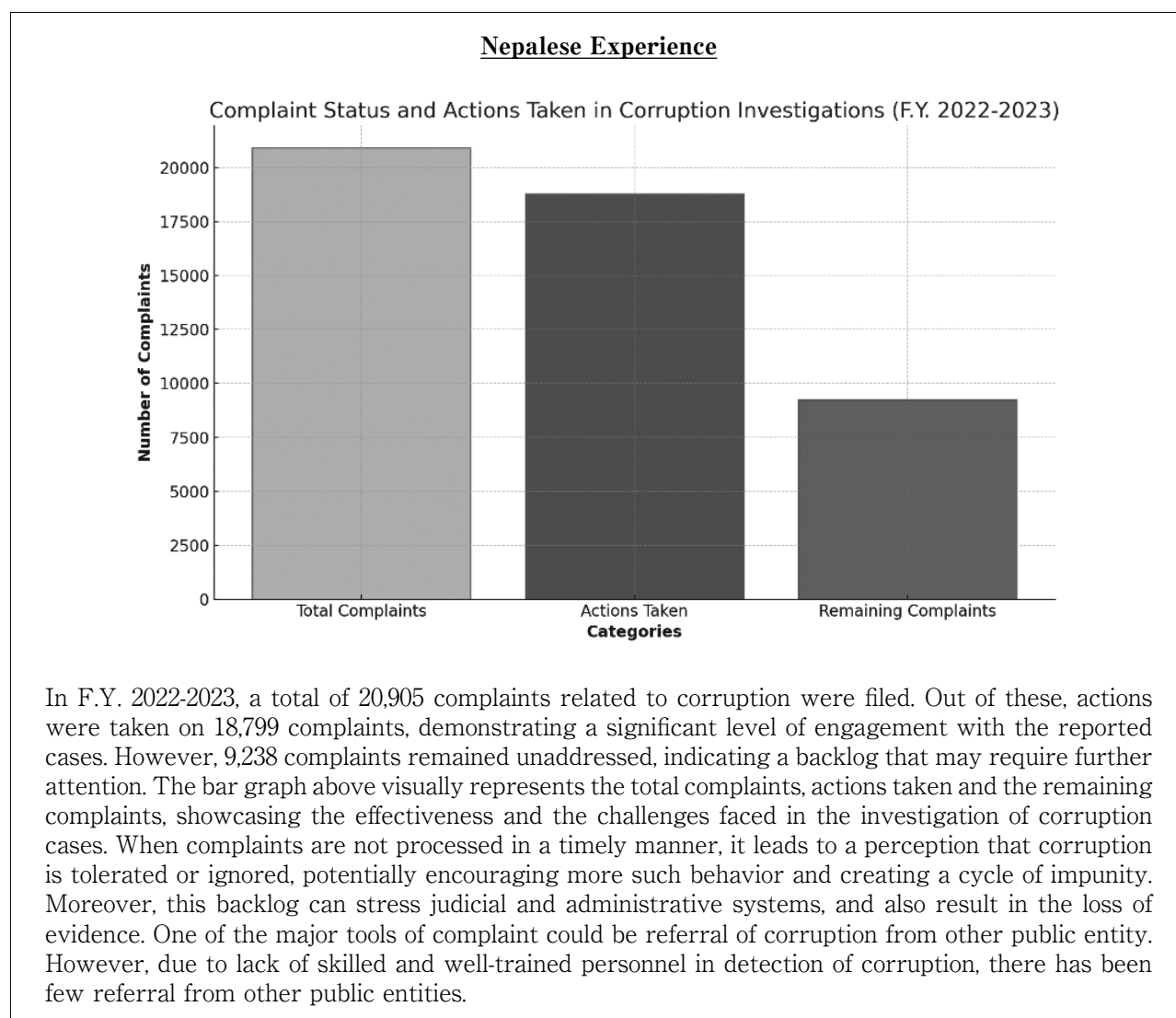
<sup>19</sup> *Government of Nepal vs. Ram Kishow Shah*, 076-CR-0198.

<sup>20</sup> See, *Explanatory Report to the Criminal Law Convention on Corruption*, Council Eur., <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ee8d4>.

<sup>21</sup> Consequences of Private Sector Corruption, United Nations Off. on Drugs & Crime, <https://www.unodc.org/e4j/zh/anti-corruption/module-5/key-issues/consequences-of-private-sector-corruption.html>.

### C. Resource Constraints

The effectiveness of law enforcement in tackling corruption cases is closely tied to the availability of sufficient human, financial and technical resources. Skilled and well-trained personnel are essential for dismantling the often intricate networks of corrupt activities. The tasks of identifying, analysing and taking enforcement actions require both a deep understanding of corruption and precise investigative abilities. However, a shortage of staff or insufficient training can significantly hinder law enforcement agencies' capacity to address the numerous challenges posed by corruption cases.<sup>22</sup>



To effectively combat corruption, a comprehensive strategy is necessary that includes increased funding for anti-corruption agencies to hire more staff and improve technical systems, training programmes to enhance personnel skills in handling complex corruption investigations and improved cooperation among various government bodies to facilitate information sharing and streamline corruption-related processes.

### D. Lack of International Cooperation

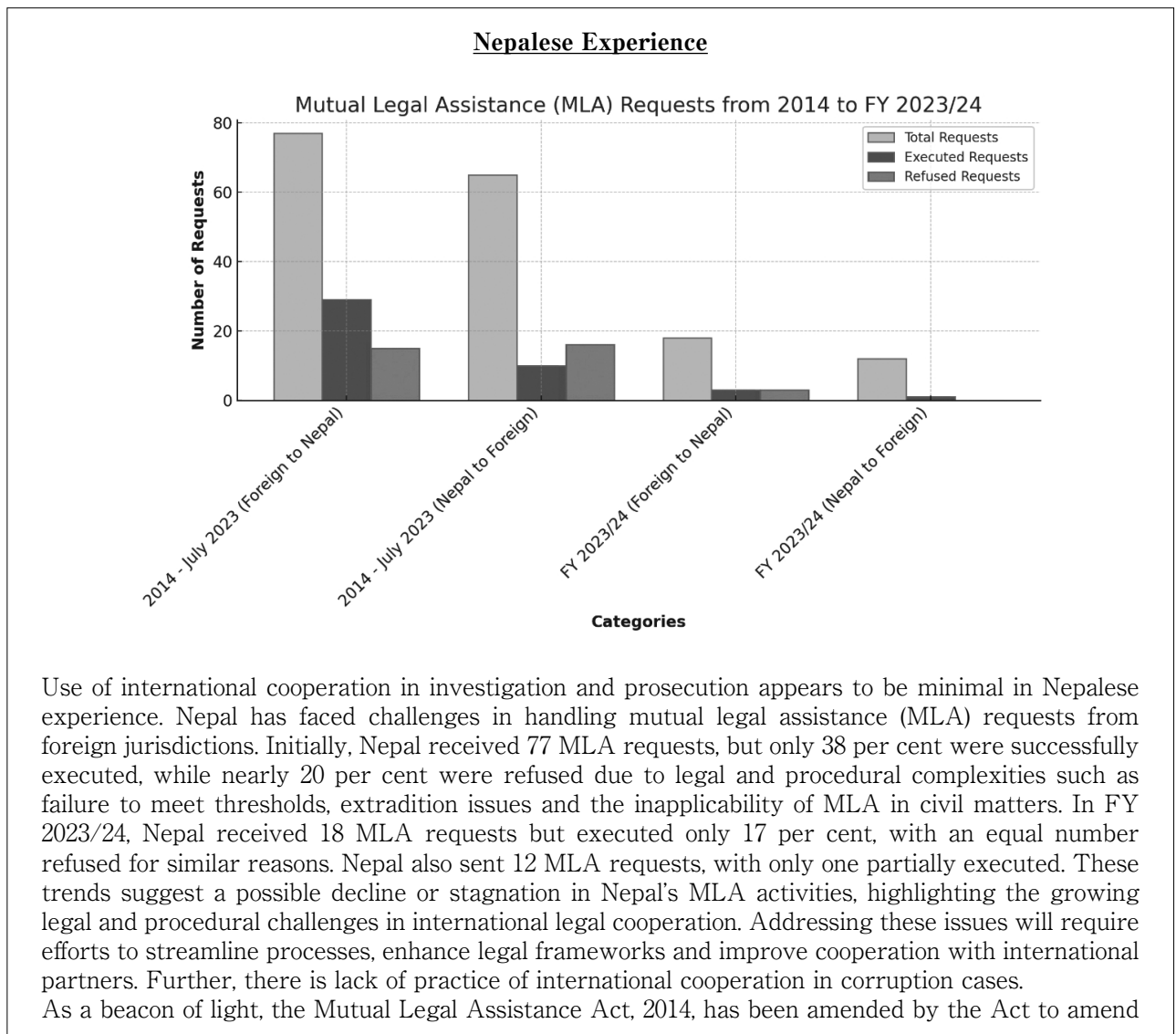
“Corruption does not respect territorial boundaries. It therefore requires an international response, because of its links to transnational organized and other crimes. Countries now recognize the need for action that goes beyond borders and acknowledge the benefits of

<sup>22</sup> Romli Arsad, *Obstacles and Challenges in Law Enforcement Against Corruption in Public Services*, 11 Russian L.J. 3336 (2023).

cooperation and the sharing of information".<sup>23</sup>

UNCAC focuses on international cooperation in addressing corruption, acknowledging its complex and cross-border nature. It establishes a framework for formal and informal collaboration among States, requiring the establishment of independent, specialized law enforcement bodies. States are encouraged to provide extensive mutual legal assistance and facilitate secure exchanges of information on ongoing corruption cases. It also covers various forms of international cooperation, including extradition, transfers of sentenced persons, joint investigations and the use of special investigative techniques. Additionally, it advocates for assisting one another in civil and administrative matters when appropriate.<sup>24</sup>

"Differences in legal systems, laws and procedures; cumbersome and lengthy MLA and extradition procedures resulting in delays which impact investigations and prosecutions; limited resources for processing requests and utilising modern technology such as videoconferencing; and linguistic and terminology differences have all impacted the extent to which most States can provide and receive assistance."<sup>25</sup>



<sup>23</sup> Pacific Anti-Corruption Factsheet: UNCAC Chapter IV, UN Dev. Programme, <https://www.undp.org/sites/g/files/zskgke326/files/migration/pacific/pacific-anticorruption-factsheet-uncac-chapteriv.pdf>.

<sup>24</sup> United Nations Convention Against Corruption, Chapter IV.

<sup>25</sup> UNODC, *International Cooperation for Investigation of Corruption Cases in Southeast Asia: Handbook 7* (2019).

some acts related to Prevention of Money Laundering and Promotion of Business Environment, 2024, recently. The major relevant provisions of the amendments are:

- i. The removal of “any particular” expands the scope of legal proceedings for which a foreign state can request mutual legal assistance from Nepal. Previously, the provision implied that requests for assistance were limited to specific legal proceedings. However, with the deletion of this phrase, requests can now be made for a broader range of legal matters without the need for specificity. This change suggests a more flexible approach to mutual legal assistance, allowing for a wider array of requests to be considered by Nepal, potentially enhancing international cooperation in legal matters.
- ii. The recent amendment to the provisions governing mutual legal assistance in Nepal has notably expanded the scope of cooperation between Nepal and foreign states, particularly concerning matters related to judicial proceedings. The inclusion of provisions allowing for the exchange of mutual legal assistance in cases involving the transfer of confiscated property between Nepal and foreign states signifies a significant shift in the country’s approach to international legal cooperation. One of the key effects of this amendment is the facilitation of processes related to the transfer of confiscated property. Specifically, the provision now allows for mutual legal assistance between Nepal and foreign states in cases where property belonging to Nepal has been confiscated abroad or where property belonging to a foreign state has been confiscated within Nepal.

To effectively address the transnational nature of corruption, a coordinated international approach is essential. The UNCAC framework facilitates this by promoting formal and informal cooperation among states, encouraging mutual legal assistance and enabling secure information exchange. For this, states must streamline mutual legal assistance (MLA) processes, invest in modern technology and enhance multilingual capabilities. Strengthening these aspects will help ensure timely and efficient collaboration, thereby improving the global response to corruption and related crimes.

### **III. KATHMANDU-TERAI FAST TRACK PROJECT: AN EXAMPLE OF PRIVATE-PUBLIC PARTNERSHIP IN DETECTION AND PREVENTION OF CORRUPTION**

The Kathmandu-Terai Fast Track Project exemplifies the role of public-private partnerships (PPPs) in the detection and prevention of corruption through its adherence to transparency, competition and objective criteria in procurement. This ambitious highway construction project involved collaboration between the Department of Roads and multiple private construction firms, showcasing how effective PPPs can mitigate corruption risks, as provided below:

- *Joint Efforts in Transparency:* The project’s use of a public tendering process ensured that all interested firms could compete fairly for contracts. By making contract details and award decisions publicly available, the project fostered a transparent environment where both public and private stakeholders could monitor and scrutinize the procurement process. This openness significantly reduced opportunities for corrupt practices, as it allowed for external oversight and accountability.
- *Collaborative Monitoring and Auditing:* Independent monitoring and auditing were integral to the project, with external auditors tasked with reviewing procurement processes and contract execution. This partnership between public authorities and independent auditors provided an additional layer of scrutiny, enabling the early detection and prevention of irregularities and conflicts of interest. The collaborative effort in monitoring and auditing enhanced the project’s ability to maintain integrity and uphold anti-corruption standards.
- *Clear Criteria and Fair Evaluation:* The establishment of clear participation conditions and objective criteria for decision-making ensured that all firms were evaluated impartially. This clarity was crucial in preventing favouritism and ensuring that the selection process was based on merit and compliance with project requirements. The public-private partnership facilitated a fair and transparent evaluation

process, further mitigating corruption risks.

- *Effective Review and Remedies:* The project's mechanisms for reviewing procurement decisions and addressing disputes exemplify the collaborative approach to problem-solving in PPPs. These systems allowed for the resolution of grievances and provided remedies in case of any procedural issues, ensuring that the procurement process remained fair and accountable.

In summary, the Kathmandu-Terai Fast Track Project<sup>26</sup> highlights how public-private partnerships can play a pivotal role in preventing and detecting corruption. By integrating stringent anti-corruption measures, promoting transparency and fostering collaborative oversight, the project demonstrates the effectiveness of a well-structured PPP in enhancing procurement integrity and efficiency.

#### IV. CONCLUSION

In conclusion, the fight against corruption in Nepal faces multifaceted challenges, largely influenced by the nation's economic and social dynamics. Despite a notable increase in the prosecution of corruption cases over the last three years, the consistently declining conviction rates highlight substantial impediments within the investigative and prosecutorial processes. The recent legislative reforms aimed at enhancing international cooperation and addressing money-laundering-related corruption mark a significant step forward, yet their practical effectiveness remains to be assessed. The role of the Attorney General as the chief legal advisor is pivotal in navigating and addressing these challenges. To fortify the legal framework against corruption, Nepal must address several critical barriers, including the validation and identification of evidence, legislative inadequacies, resource constraints and the need for more robust international collaboration. The integration of private-public partnerships in the detection and prevention of corruption offers a promising model that could serve as a cornerstone for future anti-corruption efforts. By learning from global practices and continuously updating training programmes to reflect current trends, Nepal can enhance its judicial capabilities and effectively combat corruption, thereby ensuring justice and integrity within its governance structures.

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<sup>26</sup> <https://www.kathmanduteraifasttrack.gov.np/project-management-anti-corruption-measures>.