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## REPORTS OF THE COURSE

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### GROUP 1

#### ECONOMIC CRIME DAMAGING GOVERNMENT AND THE NATIONAL ECONOMY

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#### I. INTRODUCTION

Economic crime has become the crime of choice; it is a crime of low risk and high gain. After economic crime became international, it has been necessary for criminals to legitimize the fruits of crime, and accordingly, the mushrooming of off-shore banking and bank secrecy legislation has taken place. Tax evasion, smuggling and money laundering have become the tools of economic criminals, with corruption playing the part of lubricant for the smooth running of the crime machine. The South Pacific and the Caribbean, far flung from the international financial centers of the world, have developed off-shore banking into an art form, where invariably, the financial institutions are knowingly or unknowingly used, directly or indirectly, for the purpose of concealing the source and existence of the proceeds of crime. In many instances, the laws have been designed to make inaccessible the information required by investigating agencies and defrauded victims. According to one estimate, the size of the global underground economy in the

region was a staggering US \$ 5.8 Trillion in 1993.

In areas such as evasion of taxes and breaches of exchange control regulations, views appear to be changing in the international community. It was, and is, a basic tenet of international law that one nation is not obliged to enforce the fiscal policy of another nation. Accordingly, fiscal offences were not normally extraditable, and international co-operation was rarely extended to the investigation of such crimes. More recently, policy makers in many jurisdictions are questioning the rationale behind this principle. However, within the conflicting priorities, a common conscience has also begun to emerge amongst the nations of the world, forcing them to make joint efforts to fight the menace of economic crime.

Keeping in view the above, the group studied economic crime, particularly in the participating countries, with a view to assessing its volume; impact on the government and the economy of the

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country concerned; the difficulties encountered in its investigation; prosecution and trial; and possible countermeasures which can be implemented complimentary to individual political, social, economic and legal systems and the state of their development.

## II. CORRUPTION

Economic crime is invariably associated with corruption, which of course represents an even more direct attack on the integrity of the State and its institutions. Corruption, illegal gratification, and considerations which are not due, involve huge amounts of money and valuables. Their transactions not only breed black money, but also potential grounds for vested interests for the commission and expansion of activities directed towards economic offences.

Corruption in public and corporate life has assumed serious dimensions. Corruption in the global context has adversely affected the societies of both developed as well as developing countries. Corruption on a practical level has various aspects. The legal definition of corruption differs from country to country. According to one view, corruption at the lowest levels of administration, where money or some other consideration is paid on a small scale to speed up the process of decision-making (Grease), does not affect the economy of a country and therefore should not be treated as an economic crime. At the same time, an opposite view exists that small corruption leads to bigger, and the credibility of the government apparatus is damaged by all kinds of corruption, as ultimately conditions favourable for economic crime are created. Therefore, no attempt has been made to give a legalistic interpretation of corruption in this report. However, the group considered the following major areas in the field of

corruption:

- Corruption by means of bribery (as differentiated from 'Grease')
- Abuse of authority
- Political corruption
- Embezzlement of public money

### A. Actual Situation

#### Bangladesh

Corruption is perceived as a disease impairing the vital elements of society. This, in turn, has ramifications in limiting the socio-economic development of the country. According to the statistics of the Bangladesh Bureau of Anti-Corruption, from 1995 to August 1997, a total of 1378 petitions were lodged by the Bureau in different courts. Due to the lengthy investigation procedure, a large number of corruption cases are pending investigation.

#### Cambodia

Like other developing countries, Cambodia is also suffering from the problem of corruption. Most vulnerable areas in the Cambodian administration are high-ranking public servants (both political and bureaucratic), departments of Customs, Economic police, Immigration, and the judiciary. Laws and regulations are not effectively implemented in the country because of corruption, which results in other economic crimes such as smuggling, tax evasion, drug trafficking etc. The fight against corruption has not received the seriousness it deserves in Cambodia, and corruption has become a culture amongst public officials.

#### China

Corruption accounts for almost 50% of economic crime. During the formation of the socialist market economy, imperfections in the economic order provided loopholes for some types of economic crime. Besides, the policy of opening up to the world has exposed the Chinese people to external influences and

inducements. Advances in science and technology, as well as administration methodology, has brought benefits to the Chinese people. At the same time, some negative elements have contributed to new crimes, especially corruption. The criminal law of China describes public servants as those who work in government agencies, State owned companies, enterprises, institutions or peoples' associations. Also those public servants that are assigned to work in non-State owned companies, enterprises, institutions, or peoples' associations are covered by the anti-corruption law. The law further stipulates that public servants who illegally take advantage of their office, steal or fraudulently appropriate public property, are guilty of a crime. Further a public servant who misappropriates large sums of public funds for profitable business, or misappropriates large public funds without return over three months, is guilty of the crime of embezzlement. Anti-corruption agencies in China have been filing large numbers of anti-corruption cases and the courts have also disposed of most of these cases.

#### India

From the early eighties, political corruption has been on the increase. Many leading political figures in India and many political parties have been accused of accepting illegal monetary contributions from the business world in the matter of arms contracts, power and fertilizer contracts etc. Liaison agents, both of leading Indian and foreign firms have been operating this system in conjunction with corrupt politicians and bureaucrats.

There has been a steady trend in the incidence of cases registered under the Prevention of Corruption Act by the Central Bureau of Investigation (CBI) during the years 1992 to 1996. During 1996, the CBI has taken 304 persons under

custody for various offences under the Act. Enforcement by the States/Union territories on this account shows a significant increase in the number of persons arrested in the cases registered under the Act during 1995 to 1996.

During 1996, the CBI made a record seizure to the tune of Rs. 143 million. The State/ Union territory Vigilance Officials seized property to the tune of Rs. 262 million in various cases of corruption. In the cases investigated by the CBI in 1996, departmental action was taken against 544 officials, whereas in the States, departmental action was taken only against 168 persons. The punishment awarded to various public servants in the cases handled by the CBI included 42 dismissals, 20 removals, 148 major and 228 minor punishments in 1996. In State Vigilance cases, 168 persons were referred for departmental action in 1996. There were 9 dismissals, 2 removals from service, 27 minor and 97 major punishments awarded to the public servants during this year. An analysis of the profile of the public servants proceeded against by various agencies in India on the charges of corruption shows that:

- (a) The number of politicians and senior bureaucrats proceeded against is very minor.
- (b) Almost 2/3rd of the public servants charged for corruption are at the lower levels of administration.
- (c) Action taken by the State / Union territory anti-corruption agencies is very small as compared to the CBI.

#### Japan

Analysis shows that 40 percent of corruption cases in Japan pertain to *malafide* deals between private construction companies and local public bodies involving big enterprise on one side, and politicians or bureaucrats on the other.

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Recently, a serious case of corruption in which heads of several self-governing bodies and major construction companies were involved, was detected in 1993. Such corrupt deals have been the source of illegal profit to private firms, and illegal collusion between the contractors has made prices unfair by interfering with healthy competition. The companies have been able to keep large amounts of unaccounted funds, which have been used in corrupt deals.

There is no special legislation to deal with the corruption cases in Japan, but various penal regulations have been enshrined in the Criminal Code and other laws. In Japan, basically the police investigate corruption cases. There is a special investigation division that investigates economic crimes including corruption at the police headquarters of each prefecture. Police and public prosecutors regard cooperation between them as the key for successful investigation. Public prosecutors also investigate special corruption cases in which high-ranking politicians and bureaucrats are involved. Special Investigation Departments have been organized in the District Public Prosecutors Office of Tokyo, Osaka and Nagoya. These Special Investigation Departments investigate the corruption cases of the category mentioned above. These Special Investigation Departments have been getting good results by conducting investigations independently, without any political influence.

### Korea

Korea, in the recent past, has been jolted by serious cases of corruption. In 1995, the Central Investigation Department investigated bribery charges involving the former President Mr. Roh Toe Woo, in which he was awarded a heavy punishment. In 1993, Regulations for

Enforcement of Emergency Presidential Order on Real Name Financial Transactions and Protection of Confidentiality was enacted. As a result, bank accounts cannot be opened in somebody else's or false names. This has proved to be a deterrent to the corrupt and has helped investigators in tracking criminals and their assets in cases where a banking channel is used by the corrupt in their deals.

### Laos

Together with socio-economic development, Laos has been facing problems of various types of economic crime. Corruption is not a serious problem in the country, but it is still significant enough to be taken serious note of. Involvement of government officials in various corrupt activities is damaging socio-economic development and resulting in the loss of the confidence and faith of the people. Corruption in Laos has been endemic in middle and high-ranking officials of the government working in the fields of finance, tax, customs, immigration police, banks etc. Lack of moral values, poor living conditions and low salary are some of the causes of corruption amongst public servants in Laos. The present laws and regulations are not effective enough to combat corruption in the country.

### Nepal

There is a general realisation in Nepal that there is corruption in both the government and private sectors that involves the whole spectrum of society. A developing country like Nepal loses a colossal percentage of its development expenditure by way of corruption. Reasonable investment towards development activities is allocated, but the output in terms of benefits is worsening. In 1996/97 the Commission for the Investigation of Abuse of Authority (CIAA) started investigation of 1320 cases of

corruption, and completed investigation in 629 cases. Out of the completed cases, 11 cases were filed in the court in which 1 Minister, 3 Secretaries and various other public officials were prosecuted. The CIAA also forwarded the recommendation for departmental and other actions against more than 32 public officials. Likewise in 1997/98, besides 6 cases filed in court, the Commission recommended departmental and other action against more than 30 public officials. The departmental action taken in the cases investigated by the Special Police Department in the fiscal years 1993/ 94, 1994/ 95 and 1995/ 96 has been against 82, 73, and 30 officials respectively.

A system based on law has been set forth to combat corruption in the country. The constitution of the Kingdom of Nepal 1990, the Commission for the Investigation of Abuse of Authority Act 1991, the Prevention of Corruption Act 1960, contain legal provisions in this field. The Constitution has made provision for complete independence and neutrality for the investigation and trial of corruption cases. As the rule of law is the basic feature of the Constitution and political system, the independence of the judiciary, as well as the Constitutional Commission for the Investigation of Cases of Corruption, has been ensured.

The Constitution has made the provision for the establishment of the Commission for the Investigation of Abuse of Authority (CIAA). The Commission investigates cases of abuse of authority in terms of corruption or improper conduct (mal-administration) by any person holding a public office. The CIAA functions as an Ombudsman institution as well as an Anti-corruption institution. It has been given the power to admonish such public servants or forward recommendations to the concerned authorities for departmental or

any other necessary action, if it finds on inquiry or investigation that they have misused their authority by improper conduct. In cases of corruption, CIAA may bring, or cause to be brought, an action against such public servants or any other person involved therein in a court having jurisdiction in accordance with law. The Prime Minister, Ministers, Speaker of the House of Representatives, members of Parliament, and all public officials are included within its jurisdiction. CIAA is the sole body, which looks after cases of corruption and all other anti-corruption institutions of the government function under the delegated power of the Commission.

#### Pakistan

Corruption is a serious problem and permeates all stratas of society in Pakistan. The last three governments were dismissed on charges of corruption. Recently the government has enacted new legislation called the 'Ehtsab' Act (Accountability Act) to weed out corruption in the higher echelons of bureaucracy/politics. This enactment has produced positive results so far.

#### Philippines

Corruption amongst public servants has been a problem in the Philippines. A tough Anti-corruption law was enacted in 1991 as a result of corruption under former President Marcos, who allegedly plundered billions of dollars from the government coffers. The Anti-Graft and Corrupt Practices Act and Anti-Malversation (Embezzlement) Revised Penal Code have also been enacted to deal with various aspects of corruption in the country. In the latter law, a presumption of malversation (embezzlement) has been created which shifts the burden of proof to the accused, on their failure to account for public funds/property in their charge.

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South Africa

Achieving good governance, and overcoming the practices of profligacy and corruption inherited from the apartheid government and its economy, are two of the most important challenges facing South Africa. Corruption is also rife in South Africa's private and public institutions. The apartheid era was structurally conducive to corruption as its culture of secrecy resulted in a lack of a transparent and accountable system.

In South Africa, corruption in the criminal justice system is pervasive. Particularly disturbing is the theft and/or sale of police dockets, the destruction or contamination of exhibits, the withdrawal of criminal cases etc, with prosecutors, court interpreters and police officials often involved. A member of the provincial legislature (deputy speaker) has been removed and is facing criminal charges of corruption.

The current legislation to combat corruption is inadequate and there is no provision for the presumption of guilt. There are various institutions involved in the investigation of corruption. These structures are inadequate and work in isolation. The Anti-Corruption Unit investigates cases of corruption within the South African Police Service, the Office for Serious Economic Offences (OSEO) investigates allegations of serious economic offences that include corruption on a large scale. The Commercial Crime Unit, the D'Olivera Task Unit, the Presidential Task Unit, the Public Protector, the Independent Complaints Directorate, the Health Commission, the National Intelligence Agency and other intra-departmental units are involved in the investigation of specific types of corruption in the country. There is growing public support for coordinated action to be taken against corruption in South Africa.

**B. Contributory Factors for Corruption**

Some of the factors which contribute in creating an environment for corruption identified during the discussion are as follows:

- (i) *Political Commitment*: There seems reluctance on the part of some of the political parties and governments to seriously combat corruption. As a result, the attitude of the governments becomes lackadaisical in combatting corruption.
- (ii) *Lack Of Transparency in the Administration and Management*: Lack of transparency in framing policies and in taking administrative decisions of the government in the matter of the allocation of contracts, procurement of goods and supplies, appointment and transfer of officers etc, creates conditions where corruption thrives. The climate of secrecy in government work provides opportunity for the corrupt to often go undetected.
- (iii) *Internal Auditing and Control Systems*: Lack of efficient internal auditing and control systems in the governmental set-up makes a favorable environment for corruption. More often than not, the audit has become a formality and lacks effectiveness.
- (iv) *Lack of Ethical Standards and Non-Adherence to Code of Conduct*: In some countries, a low level of ethical standards in the society in general, and a low regard of conduct rules amongst public servants in particular, breeds a culture of corruption and cynical acceptance of the same amongst the public.
- (v) *Lack of Professionalism*: Professional experts such as Chartered Accountants,

Income-Tax Attorneys etc go against their professional ethics and help the corrupt in legitimizing their ill-gotten gains. This has in turn made the task of the investigating agencies so much more difficult.

- (vi) *Inadequate Pay Structure*: In some countries, the abnormally low pay structures for public officials has also led to a perverted justification of corrupt practices on the part of some public servants.
- (vii) *Poverty and Shortage of Essential Supplies and Lack of Awareness*: In some countries, the vicious circle of poverty, and shortage or lack of proper education amongst the populace creates an environment for corruption and lowers the capacity of the public to resist the same.

**C. Problems in investigation, Prosecution and Trial**

This basically involves action by one organ of the government, i.e. the criminal justice system, against its counterparts in other organs of the government, often far more powerful than the former. The situation becomes even more exasperating when the criminal justice system is infected with corruption. The fight against corruption is a fight against well-entrenched vested-interests.

During the group discussion on the subject, it was clear that whereas some of the problems and possible solutions are identical for different countries, others are not uniformly applicable due to differences in their political, social, economic systems and the state of their development.

- (i) *Independence and Neutrality of Investigating and Prosecuting Agencies*: In some of the countries it seems that investigating agencies have been

hesitant to proceed against highly placed public servants. This has been noticed particularly when high political and bureaucratic persons are suspect. In some cases, even the judiciary has been pressurised by the vested interests. This has highlighted the need to insulate the investigating/prosecuting agencies in such countries from the political/ bureaucratic executive, so that they can carry out their task without fear or favour.

- (ii) *Difficulty in Obtaining the Information/Clues for Starting Investigation*: Due to the 'white-collar' nature of the crime, information is often either not forthcoming or is imprecise. Complicated financial transactions have enabled the corrupt to disguise their illegal incomes as legal assets. In cases of highly placed public servants, informants are often reluctant to come forward with information out of fear of retribution.
- (iii) *Lack of Resources Including Training*: Lack of human and other physical resources also limits the reach and efficiency of the investigating agencies. Sometimes vested interests in the government deliberately do not allow the enforcement agencies to become strong and capable of effective investigation. In some countries where the number of corruption cases is very large, it has been felt that investigators are overburdened, resulting in delays, as well as poor quality of investigation. It has also been felt that investigation and trial of corruption cases requires special skills and knowledge in accounting, tax and company laws etc on the part of investigators and prosecutors, which they often lack.
- (iv) *Provision of Prior-Sanction*: In some countries, prior-sanction of the

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government is required before starting investigation of a case against a senior public servant. This leads to motivated delays and sometimes even leakage of information to the advantage of the corrupt.

- (v) *Shortage of Courts*: In some countries, the number of special courts to try corruption cases are not sufficient, and in others, such cases are tried in the ordinary courts which are already overburdened and also lack the expertise to try such cases. Due to these reasons, a long time, sometimes extending to a number of years, is taken in anti-corruption trials. Due to this, the witnesses, and sometimes even the complainants, become hostile in the court, leading to many unsuccessful prosecutions.
- (vi) *Delays In-Built in the Legal System*: A corrupt accused, due to their resources, is able to make use of various provisions of the legal system, like appeals and revisions, to delay the prosecution, thereby affecting its ultimate result.
- (vii) *Burden of Proof*: The prosecution has to prove the case beyond all reasonable doubt. In most cases where a corrupt public servant has been legitimizing assets by a series of financial operations over a period of time, the degree of proof required in law for successful prosecution becomes difficult to collect.
- (viii) *High Non-Guilty Judgements*: Due to the variety of factors discussed above, the rate of not guilty judgements is usually high, resulting in the low morale of investigators and the spread of cynicism in society about the effectiveness of anti-corruption efforts. This in turn demotivates people to lodge information against corruption.

**D. Countermeasures in the Field of Criminal Justice**

Corruption can definitely be controlled, if not eradicated altogether. With the best of efforts, the criminal justice system can only minimize it. Keeping in view this fact, the group came to the conclusion that to combat corruption, preventive measures, as well as curative measures, are necessary. Based on the problems analyzed above, the following are some of the countermeasures, which can be used to combat corruption in so far as they are acceptable in the individual systems of the participating countries.

- (i) *Independent and Neutral Investigating Agencies*: In order to ensure a free hand to the enforcement agencies in this field, personnel should be given security against abrupt transfers and other forms of retributive action on the part of politicians and senior public servants. Prescribing fixed tenures and a strict and impartial procedure for the induction/appointment, as well as transfer/removal, of personnel working in these agencies can go a long way in ensuring the independence and neutrality of these agencies.
- (ii) *Protection of the Complainants and Witnesses*: In order to encourage complainants to come forward with information, and to allow the witness to depose freely, Witness Protection Programs should be introduced. Invariably, the offenders in serious cases of corruption are highly placed politicians and/or bureaucrats, and very often there is a collusion between these two kinds of public servants. Under any system of government, such persons wield a lot of power. Informers and witnesses are extremely reluctant to depose against such powerful persons for fear of retribution. It is therefore, either difficult to start



investigation or it is virtually impossible to conduct a successful investigation and trial. Countries have to consider this problem in their own perspective and determine exactly what kind of protection is to be offered to the informers, complainants and witnesses.

- (iii) *Adequate Number of Well-Trained Investigators*: Besides increasing the number of investigators in the anti-corruption agencies, special training programmes should be organised for them in the fields of accounting, tax and company law, including practical training under experienced investigators.
- (iv) *Removal of Prior Sanction System*: The provision of prior sanction before initiating an inquiry or investigation, prevailing in some countries, should be removed. Instead, if felt necessary, a statutory commission could be established to examine grounds for starting an inquiry or an investigation.
- (v) *Increase in the Number of Courts*: The number of courts dealing with corruption cases should be increased so that trials are not inordinately delayed. This will increase the effectiveness of the fight against corruption.
- (vi) *Restriction on Appeal/Revision*: Procedural laws may be amended to restrict actions intending to cause delays in the ongoing trials, and the courts should, on their part, take a strict attitude against attempts to delay the trials.
- (vii) *Burden of Proof*: The Burden of proof or a presumption of guilt should lie on the accused in certain circumstances of highly suspicious evidence against public officials. In a case where a link

by way of ownership of an asset has been proved against the accused by the prosecution, the court should make it incumbent on them to prove that they are not the owner of the same, to the satisfaction of the court. Provisions for shifting the burden of proof, in certain circumstances, onto the accused already exist in some countries in anti-corruption and other laws. If necessary, substantive and procedural laws can be reviewed and amended accordingly. Hearsay evidence is often the major part of evidence gathered by investigators in anti-corruption cases. However, the evidentiary laws of most countries regard hearsay evidence as inadmissible. It is recommended that wherever proper foundation has been laid, hearsay evidence should be made admissible by amending the evidentiary laws.

- (viii) *Immunity from Prosecution*: Some countries have provisions in their laws wherein immunity from prosecution is granted to a co-accused by the courts upon their confession. This can be an effective means to strengthen evidence against the main accused where a number of conspirators are involved. This step is recommended to strengthen anti-corruption laws where ever possible. Besides this, steps to provide protection to state witnesses (approvers) under the witness protection programme should also be considered.
- (ix) *Freezing and Confiscation of Assets*: The provision for freezing and confiscation of illegal assets should be made simple, quick and effective.
- (x) *International Cooperation*: At times, the accused have found sanctuary in other countries out of reach of the investigators. The international

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community should recognize the offences of corruption as an extraditable offence and take steps to expeditiously extradite such accused to face legal action.

**E. Other Countermeasures**

To make the fight against corruption effective, the following countermeasures in the realm of government and legislature are recommended by the group:

- (i) *Transparency in Administration and Effective Management Systems to Eliminate Situations which could Lead to Corruption:* Transparency in the policy and administrative decisions of the government in the matter of acceptance and allocation of contracts, procurement of goods, appointments and transfer of officers should be ensured. The internal management should be made efficient and prompt. A Single Window System of government decisions should be introduced, obviating the need for making contact with different public servants by the applicant. Legislation on the Right to Information may also prove to be a step in making the system of government decision-making more open.
- (ii) *Professional Misconduct:* In case of professional misconduct by chartered accountants and income tax attorneys, a special provision debarring them from their profession should be introduced in the relevant Acts.
- (iii) *Suspension from Holding Public Post:* A politician accused of corruption should be debarred from holding a public office until the conclusion of the legal proceedings. Similarly, a government servant accused of the crime of corruption should be compulsorily suspended from service

until the conclusion of legal proceedings. Such a system already exists in some of the participating countries.

- (iv) *Public Education and Mobilization:* Public-cooperation and support play an important role in any anti-crime measure, and more so for the successful campaign against corruption. Therefore, emphasis should be given for public education and mobilization by governmental, as well as non-governmental, organizations and by campaigns through mass media.

**III. TAX EVASION**

Chiselled into the granite portico of the Internal Revenue Service building in Washington, DC, are the words 'Taxes are what we pay to live in a free society'. However, such egalitarian sentiments are more often than not scoffed at by the rich and wealthy, who regard taxes as a measure of fiscal unfairness and as a reduction of incentive to create wealth. This situation contributes another facet to the capitalist paradox, as those with the greatest need to protect their wealth from the grasp of acquisitive chancellors are also those with sufficient means to pay for the expensive advice available to enable them to avoid paying more tax than is absolutely necessary, and to minimize taxes to which they are already subject. This ensures that in practice they pay proportionally less tax than the poorer members of society.

**A. Actual Situation**

China

In recent years, China has made reforms in its taxation system. Cases of tax evasion have been increasing. In 1994, the procuratorates received 12074 cases relating to tax evasion, and filed 6841 cases prosecuting 7562 defendants; 7180 cases were finalised. In 1995, the courts handled

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491 cases relating to tax evasion, 495 cases ended in conviction and 1354 defendants were punished.

### India

In India, tax evasion is the most common illegitimate activity, which is practiced by suppressing facts and the manipulation of records by professionals and other tax payers. Information from the Central Board of Direct Taxes reveals that there has been a steady and continuous effort to unearth income tax evasion through searches. The assets seized during 1996 were to the tune of Rs. 4056.3 million. According to one estimate, as much as 70% of taxes are evaded in India (the years 1992-96). A look into the prosecutions that were launched for tax evasion reveals that the conviction rate has been low. During 1996, out of 234 cases, which were prosecuted under the direct taxes enactment, 70 were compounded, 149 cases were acquitted and only 15 cases resulted in conviction.

### Japan

Recently in Japan, on average 40 to 60 billion yen is lost every year due to tax evasion. Most of the evasion is in the field of income tax, corporation tax and inheritance tax. In Japan, the police do not investigate tax evasion cases, because this requires expert technical knowledge of the many tax laws and techniques of the investigation. Investigation of these cases is conducted by the tax investigation officers of the Tax Administration Bureau and the Public Prosecutors Office. During investigation, the public prosecutor and the tax investigation officers usually discuss the many points of investigation, and the investigation is carried out under close cooperation between them. The Tax Investigation Bureau recently investigated about 230 tax evasion cases, and referred about 75% of the cases to the public prosecutor, most of which were prosecuted.

In the trial, almost 100% cases were found guilty, out of which 80% or more were given suspended sentences.

### Nepal

Tax revenue is the major source of financing the Government expenditure in the country. Tax revenue and non-tax revenue comprise 80.4% and 19.6% respectively of the government revenue. However, the business community and other high-income groups mostly evade taxes. The usual ways of tax evasion is by submitting false documents whereby a false income is declared, resulting in lower tax assessment. It is often alleged that the actual tax collection is only in a fraction of the taxes which are due. Statistics show that the volume of business transactions, as well as the tax base of the country, is increasing but in comparison, revenue is decreasing. The Revenue Investigation Department, an administrative body, has been established for the investigation of tax evasion cases in the country. Very few cases of tax evasion are investigated and prosecuted. Where cases are prosecuted in the court, it takes a long time for them to be disposed of. In the fiscal year 1994/95, out of the 14 cases prosecuted, only 1 case was disposed of. In 1995/96, no new cases, other than those carried forward from the previous year, were prosecuted and no cases were disposed of.

### South Africa

Withholding tax was deemed a legitimate means to fight the Government during the apartheid regime. Businesspersons, professionals and other taxpayers suppressed facts and manipulated records. This culture has taken root. The current Government is taking corrective steps to stop the above practice. Tax laws have been enacted to deal with tax evasion.

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**B. Contributory Factors for Tax Evasion**

The group identified some of the following contributory factors for tax evasion during its discussion:

- (i) *Tax-Shelters*: In order to encourage private investment in socially responsible activities, the fiscal laws provide for tax shelters where lower taxes are charged for making such investments. This provides incentive for manipulation of records to take advantage of tax shelters.
- (ii) *Fiscal Policies*: At times, fiscal policies are deliberately distorted and loopholes are left by corrupt politicians and senior bureaucrats in the tax laws for corrupt motives, with the objective of favoring big business houses.
- (iii) *High Rate of Taxation*: In some countries, the rate of taxation is very high with the maximum being as high as 70%. It is felt in some quarters that a high rate of taxation is itself a motivation for evasion. In a graded tax structure, persons with low incomes, agriculture sector etc are either not taxed or taxed very lightly, with the result that there is a feeling of unfair treatment amongst persons in higher income levels, motivating them in turn to evade taxes.
- (iv) *Implementation of Company Laws*: Weak implementation of companies laws also results in companies forging records and avoiding full disclosure of business information, leading to tax avoidance.
- (v) *Lack of Deterrence*: Penalties for tax-defaulters are lenient and most of the times, the cases are compounded (dealt with administratively) through the payment of fine. Thus the penalties

lack a deterrent effect.

- (vi) *Unprofessional and Unethical Conduct of Tax Professionals*: Large scale unprofessional and unethical practices by chartered accountants and income tax attorneys, whereby for personal gain they actively collude with rich clients and private firms to create and forge records for tax-avoidance, is rife.

**C. Problems of Investigation, Prosecution and Trial**

- (i) *Corruption in Tax Administration*: There is a large scale corruption in tax administration, where a mutually beneficial but unholy relationship exists between the assessed and the tax official, with resultant loss to the treasury.
- (ii) *Independent Tax Administration*: In some countries, the tax administration lacks independence of action, as they are subject to extraneous pressures from high political and bureaucratic quarters.
- (iii) *Lack of Professional Skills*: Lack of professional competence amongst the tax-administration officials, prosecutors and judges about modern complex financial operations works to the advantage of the tax-defaulter.
- (iv) *Reporting of Transactions*: Absence of reporting requirement by the banks and financial institutions for transactions of more than a certain value, and bank secrecy laws, help the tax-evader to hide information about various commercial deals and incomes generated therefrom.

**D. Countermeasures in the Field of Criminal Justice**

The group recommends the following countermeasures related to the problems as identified above.

- (i) *Deterrent Penalties*: Exemplary deterrent punishment should be prescribed for dishonest tax officials and politicians colluding in tax evasion.
- (ii) *Neutrality of Tax-Administration*: The independence and neutrality of tax administration agencies should be ensured through constitutional/legislative steps. In some countries, tax administrations have been given statutory status.
- (iii) *Improving Professional Skills*: In order to correctly analyze highly complex financial deals involved in the tax cases, tax administration officials, prosecutors and judges dealing with tax cases should be trained in up-to-date tax administration methodology and accounting. Tax administration officials have been posted as advisors to the courts in Japan.
- (iv) *Reporting of Financial Transaction*: Reporting of financial transactions of more than a certain value should be made mandatory for banks and financial institutions. This has been made a legal requirement in many countries including the U.S.A.
- (v) *Computerization of Tax Records*: The tax administration should computerize its record keeping to make the forging of records difficult and detectable.
- (vi) *Double Taxation Treaties*: International cooperation should be freely sought and given in getting details of bank deposits and financial transactions accomplished abroad. More 'double

taxation' treaties should be concluded with countries to elicit their cooperation in this field.

- (vii) *Public Education*: In some of the countries, tax-payment has been considered as a donation to the government rather than a legal duty of the citizen. Public awareness programs play an important role in the efforts to decrease tax evasion. The emphasis should also be given for public education through various means, including mass media, in order to motivate them to become honest taxpayers.

**E. Other Countermeasures**

The group also identified the following countermeasures which can be taken on the part of the government to supplement the efforts of the tax-administrators to reduce the tax evasion.

- (i) *Simple Tax Laws*: Tax laws should be made simple and fair. The laws should be free from escape routes in the form of 'tax shelters' and 'exemption schemes', which provide an opportunity for manipulations and forging of records by the assessors.
- (ii) *Fiscal/Tax Policies*: Fiscal and tax policies should be designed and implemented to make tax evasion a 'high risk/low profit' business.
- (iii) *Overall Rate of Taxation*: Some participants were of the opinion that the overall rate of tax should not be very high and should be realistic. Instead, efforts should be made to increase the tax base by including more persons, professions and businesses in the categories eligible to pay tax.
- (iv) *Financial Intelligence/Data Bank Organization*: An organization on the

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lines of FINCEN (United States Department of the Treasury Financial Crimes Enforcement Network) may be formed in every country to act as the central repository for financial intelligence and analysis, for providing assistance in the investigation of financial crimes including tax fraud.

#### IV. SMUGGLING

In their initial stages of development, the developing countries had extremely limited foreign exchange reserves and therefore, had to conserve it for the import of essential items, defense and other crucial requirements. Regulatory measures including restrictions on the import of goods, both for the sake of protecting indigenous industry and for conserving scarce foreign exchange, had to be resorted to. Further, in the absence of a strong industrial or agricultural sector, revenue required to undertake massive development had to be generated by imposing high tariffs. Evasion of duty and circumvention of import trade control restrictions therefore put a premium on smuggled items and made smuggling profitable.

Smuggling of contraband like drugs, firearms and pornographic material etc can lead to serious social and political problems. Smuggling of items protected by copyright and intellectual property rights can seriously upset relations between the countries. Smuggling is a transnational crime and requires cooperation between nations for combating it.

##### A. Actual Situation

###### Cambodia

Cambodia has been fighting a terrorist war at its northwestern borders for over two decades. Consequently, large-scale firearms and other offensive weapons have

been smuggled into the country. Apart from this, large scale smuggling of gold, timber, consumer items and drugs has resulted in the country, from its borders with Thailand and Vietnam.

###### China

In 1995, 1119 cases of smuggling were filed with 1097 cleared by public security organs; 154 cases were convicted by the courts and 239 defendants were punished. In 1996, the public security organs finalised 1000 cases of smuggling involving cars, tobacco, drugs, pornography, CDs and DVC disks. Smuggling offences by companies are increasing and sometimes government officials are also involved. Most of the smuggling in China is carried out by organized gangs.

###### India

In India, apart from outright smuggling, evasion of customs duty by mis-declaration of value and description of goods also takes place. These activities bring together unscrupulous elements both in India and abroad. Well organized gangs, which have the capacity to arrange funds abroad for establishing sophisticated communication networks, arrange the landing of goods both by air and sea. Smuggling, involving consequent evasion of customs duty, generation of black money, money laundering and evasion of taxes etc, grew as a formidable parallel economy in the 1960's and 1970's.

Information in respect to the number of seizures made and the nature of commodities seized for the years 1992-1996 presents the gravity of the offence and the traffic that takes place in contraband goods in the country. Over the years, the trend for this type of crime has been steady, however, the type of contraband has changed. Consequent to the ushering in of new economic policies in 1992-93, there was a reduction in rates of custom duties

and liberalization in the economic policies of the country. There has been a gradual fall in the quantum of goods sought to be smuggled into the country. Compared to 1995, there has been a decrease of 11.4% in cases of seizures made by the Customs in 1996. The value of articles was around half of the previous years and stood at RS. 5533.7 million.

Gold, which has traditionally been the most important item of smuggling, has yielded place to narcotics and electronic items. Outright smuggling of gold has come down due to the economic measures initiated by the government, which includes import of gold up to 10 kg allowed to each passenger returning from abroad after 6 months, and the import of gold under special license. There has been a disturbing trend of smuggling foreign currency in and out of the country by various means, including payments for under-invoiced imports, inward remittances for over-invoiced goods or bogus exports for financing the import/smuggling of gold and other sensitive items. Other items seized by customs include silver, diamonds, watches, synthetic fibers etc.

#### Japan

The Japanese law enforcement agencies are especially striving against anti-social smuggling (illicit drugs and guns) on account of their obvious negative effects on society. 'Boryokudan' (mafia gangs) have been found to organize most of this kind of smuggling. In addition, duties are evaded on articles like silk, pork and clothes by importers via fraudulent declarations. In recent times, cases involving smuggling by tourists of illicit drugs, guns, jewellery have come to notice. Smuggling is carried out amongst other methods through storage in ships, cargo containers and postal services.

#### Laos

In Laos, the commodities involved in smuggling include motorcycles, medicine, fruit, cosmetics, construction equipment etc. Since it is one of the 'Golden Triangle' countries, Laos is also a transit route for drug smuggling. As Laos is a land locked country, having international borders with five countries, smugglers find it relatively easy to carry out their nefarious trade.

#### Nepal

Smuggling has a serious effect on the economy of the country. Though statistical data is not available for smuggling activities, it is accepted that the national revenue, mostly dependant on the customs and tax revenue, has suffered due to an increase in smuggling activities. Illicit trafficking of narcotics, illegal import and export of gold, foreign currencies, and illegal export of timber are some of the major items involved in smuggling in the country. Violation of the Customs Act, the Foreign Exchange Act and other related laws is a consequence of smuggling activities. Forged Letters of Credit, as well as forged customs receipts and registration papers, are commonly used in the smuggling of goods and motor vehicles. Nepal is basically a transit point for smuggling. Due to its open borders with India and China, most of the smuggling activities are cross-border operations.

#### Pakistan

Despite efforts to root out the evil of smuggling, considerable luxury items and electrical appliances are smuggled into the country due to porous borders with Afghanistan. Afghanistan has transit rights through Pakistan and quite a few consignments find their way into the tribal areas of Pakistan, from where they are distributed to different parts of the country.

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South Africa

The most damaging aspect of smuggling operations is the killing of rhinos for their horns, and elephants for their ivory, by poachers. These items are smuggled out of the country for sale. Stolen motor vehicles, gold and diamonds are also smuggled out of the country. Drugs, firearms, counterfeit goods are smuggled into the country.

**B. Contributory Factors for Smuggling**

The group felt that following factors contribute to an increase in smuggling:

- (i) *Long Land and Sea Frontiers*: In most of the countries, due to long coastlines, as well as long land frontiers, the task of detecting smuggling and enforcing anti-smuggling measures has become quite daunting, involving huge financial and human resources.
- (ii) *Duty Free Export Schemes*: Violation of certain fiscal measures designed to encourage exports in developing countries, like the duty free exemption schemes, is difficult to detect and investigate due to lack of co-operation amongst the countries in the matter of information sharing about the crime and criminals.

**C. Problems in Investigation, Prosecution and Trial**

- (i) *Lack of Information*: As smuggling is a transnational crime, enforcement agencies are handicapped due to the lack of information about the activities of the organised gangs in other countries affecting them. Smugglers have been using containers, complicated structures of the ships and even human bodies to hide contraband, making the job of detecting the same extremely difficult.

- (ii) *Conflicting Jurisdictions*: Conflicting/overlapping jurisdictions amongst Customs, tax authorities, police, narcotics control departments etc, delay the detection, investigation and trial of smuggling cases to the advantage of the offenders.

- (iii) *Lack of Co-operation Between the Enforcement Agencies*: Lack of co-operation between enforcement agencies in the matters of sharing/follow-up of information, and in actual anti-smuggling operations, works to the advantage of the smugglers.

- (iv) *Lack of Manpower*: Lack of sufficient manpower in the enforcement agencies, particularly at small local ports or wayside border custom offices, makes them the focus of operations by smugglers.

- (v) *Corruption in Customs Department*: In most of the developing countries, corruption amongst Customs officials and border police further compounds the problem of detection and investigation.

- (vi) *Involvement of Organized Gangs*: Involvement of organized crime groups in smuggling, like the 'Boryokudan' in Japan and similar gangs in other countries, makes the job of enforcement difficult. These gangs have large resources and are transnational organisations, with none of the problems/handicaps of information, jurisdiction etc, faced by the official enforcement agencies. The carriers rarely belong to the gangs, as they operate in the background. Thus in the event of the carrier being apprehended, the smuggling syndicate remains intact.

- (vii) *Extradition*: Difficulty in the



extradition of smugglers, due to the hurdles in extradition processes often experienced between countries, also helps the smugglers. As long as the investigating agencies are unable to proceed against the gang behind the operations, action against the carriers is like treating the symptoms rather than the disease.

**D. Countermeasures in the Field of Criminal Justice**

- (i) *International Co-operation in the Field of Investigation and Information Sharing*: Close monitoring of the activities of the organised gangs, and information sharing between the countries affected, has proved very effective in curbing smuggling. This has resulted in the offenders coming under pressure from both ends. Joint training programmes between the enforcement agencies of various countries, based on the one conducted under the UNDCP in the field of drugs smuggling, can be organised. Japanese enforcement agencies have been exchanging information and seeking cooperation under the aegis of the Asia Pacific Maritime Safety Agencies Forum and World Customs Organisation, which has proved to be of immense help in their anti-smuggling operations.
- (ii) *Co-ordination and Joint Operations Between Enforcement Agencies*: Coordination, including information sharing meetings, between senior officers of the enforcement agencies; joint training programs; inspections and exchange of personnel at middle and lower levels, will improve inter-agency co-operation and speedily resolve jurisdictional problems to make joint operations more efficient. In Japan, officials of police, Customs and the Maritime Safety Agency closely co-operate and this has led to many successful operations.
- (iii) *Strengthening Manpower at Smaller Ports/Inlets*: To supplement the manpower shortage of the enforcement agencies, video-monitoring, more patrol cars, patrol vessels and air-crafts may be used as force-multipliers. Manpower of smaller ports and land inlets should be strengthened.
- (iv) *Anti-corruption Measures in Customs Departments*: Senior supervisory officers and anti-corruption agencies shall keep a close watch on the conduct and lifestyle of their subordinates, from the point of view of enforcing integrity. Exemplary punishment shall follow cases of *malafide* conduct.
- (v) *New Technology to Improve Detection and Monitoring*: Provision of the latest gadgetry to enforcement authorities will increase their detection and monitoring ability. Video monitoring, fiber-scopes, x-ray machines and computer programs are being used in Japan, which makes the task of monitoring and checking more efficient for the purpose of detecting smuggling items ingeniously hidden, without slowing down the process of Customs clearance. Detection dogs have been effective in anti-drug operations.
- (vi) *Fast Extradition*: High level contacts and improved co-operation between countries in matters of the extradition of suspects will act as an effective deterrent to smugglers.
- (vii) *Double Taxation Treaties*: These bilateral treaties are negotiated between countries having considerable trade between them, in order to secure co-operation between their

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investigating agencies. More double taxation treaties should be negotiated between affected countries, which will help in exchanging information and evidence about individual deals.

(viii) *Controlled Delivery Operations*: In certain countries, including Japan, controlled delivery operations by the Customs/narcotics department have proved very successful, particularly in smuggling through postal channels. This enables the enforcement agencies to apprehend the main gang behind the operations.

## V. MONEY LAUNDERING

Money laundering means conversion of illegal and ill-gotten money into seemingly legal money, so that it can be integrated into the legitimate economy. Proceeds of drug related crimes are an important source of money laundering world over. Besides, tax evasion and violation of exchange regulations play an important role in merging this ill-gotten money with tax-evaded income, so as to obscure its origin. The aim is generally achieved via the intricate steps of placement, layering and integration, so that offenders, without any fear of detection, can freely use the money so integrated in the legitimate economy. Initial deposits are usually made in states without regulations and then transferred to offshore centers.

In some parts of Asia, 'illegal underground banking' is used by launderers because it leaves no paper trail. Money never enters the formal banking system but is instead transmitted through alternative banking systems such as the 'hawala' in India and Pakistan. These parallel banking systems are based on family or gang alliances and reinforced with an unspoken covenants of retributive violence. Now, Africa is also being

increasingly used as a route by money launderers.

### A. Impact of Money Laundering

As for as the impact of money laundering, it is well known that it facilitates tax evasion, smuggling, drug-trafficking and terrorism. An I.M.F. working paper concludes that money laundering impacts financial behaviour and macro-economic performance in a variety of ways, including policy mistakes due to measurement errors in national account statistics; volatility in exchange and interest rates due to unanticipated cross-border transfer of funds; the threat of monetary instability due to unsound asset structures; tax collection and public expenditure allocation due to misreporting of income; misallocation of resources due to distortions in assets and commodity prices; and contamination of legal transactions due to perceived possibility of being associated with crime.

### B. Actual Situation

#### China

China has of late experienced the crime of money laundering. In view of this situation, China has criminalised the general offence of money laundering by amending its Criminal Law.

#### India

The Enforcement Directorate in India, in the course of its action against money launderers, made recoveries/seizures in money laundering cases during 1996 to the value of Rs 124 million (Indian Currencies) and Rs 78 million (Indian equivalent of foreign currencies seized) respectively. The value of confiscated Indian currencies by adjudication registered a sharp rise, to the tune of 40 million as against 12 million during 1995.

The offence of money laundering is likely to be criminalised soon and 'the Prevention

of Money Laundering Bill 1998' has been introduced in the Indian Parliament. It contains provisions for the mandatory reporting of financial transactions above a certain value, and for the compulsory maintenance of records of such transactions by the banks and financial institutions.

#### Japan

In Japan, the Special Drug Law specifically provides for regulation of money laundering of 'illicit proceeds or the like'. Any person, *'who disguises facts with respect to the acquisition or disposition of illicit proceeds or the like, or conceals illicit proceeds or the like, shall be imprisoned for not more than five years or fined not more than three million yen or both'*. The same shall apply to any person who disguises facts with respect to the source of illicit proceeds. However, the scope of anti-money laundering legislation in Japan at the moment is limited only to proceeds connected with trafficking in drugs. Some of the cases have indicated the involvement of organized gangs like the 'Yakuza' (mafia).

So far, 8 cases of money laundering have been investigated in Japan. Four of these case were disposed of by suspension of prosecution, whereas three cases have resulted in convictions. The Japanese Ministry of Justice is actively considering a report to extend the scope of money laundering laws to other crimes, besides drug offences.

#### Nepal

Money laundering is a newly emerging economic crime in the country. The opportunities for money laundering have increased in the era of economic reforms. Liberalization of market economy, creation of favorable environments for foreign investors and the casino business have provided ground for huge financial transactions. However, the crime of money

laundering in the country has yet to be identified and investigated. There is still a lack of legislation making money laundering a criminal offence. The Narcotic Drug Control Act 1976 has provision for the forfeiture of drug related property and assets. Other financial regulatory laws such as the Nepal Rasrta Bank Act 1953 (The Central Bank Act) and the Foreign Exchange (Regulation) Act 1962 do not cover all aspects of the sophisticated and complicated crime of money laundering.

#### Pakistan

Principal money laundering methods detected so far are Hawala/Hundi, Bearer Investment Schemes, over and under invoicing of imports and exports, smuggling of currency, investment and speculation in real estate. Hawala is the preferred method of money laundering in Pakistan. The Government of Pakistan has not enacted any laws against money laundering. However, the Control of Narcotics Substances Act 1997 provides punishment for laundering drugs proceeds. Reporting of suspicious transactions by the banks and financial institutions has been made obligatory in this law.

#### South Africa

The proposed Money Laundering Control Bill, which is supposed to compliment the enforcement of the Proceeds of Crime Act by combating the money laundering in the country, is yet to be promulgated. The proposed Bill provides for the establishment of a Financial Intelligence Centre (FIC).

### **C. Contributory Factors for Money Laundering**

- (i) *Lack of International Co-Operation:* Today nearly 40 countries in all parts of the world are considered tax havens. The situation in the Cayman Islands

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provides a glimpse into the offshore industry. With the seventh largest deposit base in the world, the Cayman Islands has 550 banks in the territory, only 17 of which have a physical presence and are subject to money laundering laws. Total assets held by Cayman banks in 1994 were above \$USD 430 billion. Other countries considered as being 'major offence centers' are the Bahamas, Bahrain, Hong Kong, the Netherlands Antilles, Panama and Singapore. Some of these countries have been hesitant in enforcing controls on tax havens due to the benefits accruing to their individual economies.

- (ii) *Free Trade Zones*: Trade liberalization and free trade zones provide additional money laundering venues. It is believed that these zones are shifting from using the banking system to using international trade to launder money. Free trade zones in various parts of the world bring economic prosperity to their individual economies, but they have often been manipulated by money launderers due to an absence of controls, by indulging in deals with manipulated invoices.
- (iii) *Big Businesses*: Billions of dollars in drug proceeds are laundered through major businesses such as stock brokerages and insurance firms. Other money laundering schemes involve cash businesses such as bars, casinos and restaurants, as well as non-bank financial institutions such as cheque-cashing stores and money exchange houses. Such businesses have large cash turnovers and, unless closely monitored, are likely to and have often been used by money launderers in their operations of conversion of illegal into legal money.
- D. Problems in Investigation, Prosecution and Trial**
- (i) *Absence of Anti-Money Laundering Legislation*: Most of the countries, particularly in the developing world, are yet to introduce comprehensive anti-money laundering legislation. In some countries, this crime so far has been dealt with under Foreign Exchange Regulation Acts; under which most of the cases get compounded and very few prosecutions are launched. Absence of specific laws in this field has provided a climate of non-deterrence to criminals.
- (ii) *Bank Secrecy Regulations*: These regulations, which were designed to give privacy to genuine customers, are being used by criminal money launderers for illegal deals. For the sake of attracting deposits, some bankers misuse these laws by opening fictitious accounts for the money launderers.
- (iii) *Electronic Transfer of Funds*: Wire transfer systems allow criminal organizations the facility of a swift and nearly risk free conduit for moving money between countries. With the establishment of electronic cash, it has become virtually impossible to trace the transfer of funds from one place to another over the Internet or via e-mail. Dig-Cash uses public key and digitally blind signature techniques, whereby 'blinding' carried out by the user's own device makes it impossible for anyone to link payments to the payer. Electronic cash has of late been increasingly used by money launderers due to the anonymity it provides to the source of the funds.
- (iv) *Lack of Information*: Professionals such as attorneys, tax consultants etc, are

usually involved in money laundering operations. Since the crime is committed by white-collar criminals, information which is traditionally received by the enforcement agencies from the criminal world is lacking in these cases. Absence of mandatory reporting of financial transactions by the banks also deprives the enforcement agencies of clues about money laundering rackets.

**E. Countermeasures in the Field of Criminal Justice**

- (i) *Enacting Tough Anti-Money Laundering Legislation:* This should now be the objective of every country. This measure should include the requirement of mandatory reporting of transactions over a certain amount, and the keeping of documentary records of transactions for certain number of years.
- (ii) *Co-operation between Nations:* As money laundering is a transnational crime, the nations of the world must co-operate to relax bank secrecy laws which should, while ensuring legitimate customer privacy, readily provide required information to authorized investigators. Besides facilitating extradition of offenders/suspects, nations should also impose commensurate regulatory controls on banks functioning as tax havens, exports and imports in free trade zones, and on the monitoring of transactions in cash rich businesses like casinos, non-banking financial institutions and money exchange stores etc, in order to make their misuse by money launderers counter-productive.
- (iii) *Use of Technology for Pre-shipment Inspections:* In order to effectively deal with over-invoicing as a mode for the

transfer of funds, Florida International University experts have developed software to filter trade data which can be used in developing countries as a potential compliment or substitute for pre-shipment inspection to monitor abnormal pricing. Governments should provide their enforcement officials with such technology and training to operate the same, in order to make the use of manipulation of import and export invoicing difficult by money launderers.

- (iv) *Creation of Financial Database Agencies:* Along the lines of FINCEN of the U.S.A (and other such agencies in the U.K and France), agencies may be created in every country which have a large database on financial operations within the country, collected from various sources like banks, financial institutions, customs, Internal Revenue Services, narcotic control organizations etc, to aid and help financial investigations. The AUN anti-money laundering program, started in 1997 by the Vienna-based UN office for Drug Control and Crime Prevention, the ‘Global Program against Money Laundering’ provides governments with legal advice and offers training for law enforcement and judicial officers. It also assists in establishing national financial intelligence units.

**F. Other Countermeasures**

The group has recommended the following countermeasures as preventive measures to combat the crime of money laundering:

- (i) *Legislation in the Area of Digital Money:* Laws are in the process of being enacted in various countries in the world, criminalising various computer offences. These laws should also attempt to include the area of digital

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money and virtual banking. Organizations like FINCEN in every country should be granted constitutional authority to secretly monitor all cyber-banking transactions.

- (ii) *Relaxation of Tough Foreign Exchange Regulations:* This measure is necessary to allow free flow of foreign exchange, particularly in countries where 'underground banking' operations like 'Hawala' abound. This measure will, to a large extent, put underground banking out of business. As underground banking channels are also being used by money launderers in certain countries, this measure will reduce avenues of money laundering in such countries.

## VI. CONCLUSION

The study of economic crime, both from theoretical as well as practical aspects, has a common objective. It is the objective of making the world safe and secure for free trade and commerce, and for ensuring the stability of national economies. The task requires educating the public about the danger facing the economies from the actions of economic criminals, and thereby ensuring international co-operation in controlling economic crime.

RESOURCE MATERIAL SERIES No. 55

**CORRUPTION**

**CHINA**

**Economic Criminal Cases Investigated by the People's Procuratorates in China (1995)**

Type	Disposition Cases	Filing		Finalization	
		Cases	Defendants	Cases	Defendant
Total	126453	63953	72601	58773	67286
Corruption	51340	21642	25897	20281	24564
Bribery	30080	16831	17763	15550	16499
Embezzlement	20618	12616	13550	11650	12683
Tax evasion	13621	8049	8912	17302	8128
Others	10794	4815	6479	3990	5412

Note: 1. Finalization includes the previous year  
 2. Source data is from Law Yearbook of China

**Corruption Cases Disposed and Finalized by the Court in China**

Types	1994		1995	
	Disposition	Finalization	Disposition	Finalization
Corruption, bribery & embezzlement	31223	30793	33068	39934
Economic offences	43065	43013	46614	46386
Percentage	72.5%	71.5%	70.9%	86%
Numbers of defendants punished	20019		26689	

Note: 1. Finalization includes the previous year  
 2. Source data is from Law Yearbook of China

Types	1993		1994		1995	
	Disposition	Finalization	Disposition	Finalization	Disposition	Finalization
Economic offences	27463	27323	43605	43013	46614	46386
Total of criminal offences	403267	403177	482927	480914	495741	496082
Percentage	6.81%	6.77%	9.03%	8.94%	9.4%	9.35%

Note: 1. Finalization includes the previous year  
 2. Source data is from Law Yearbook of China

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**INDIA**

**Details of Cases Registered and Persons Arrested under the Prevention of Corruption Act (1992 - 1996)**

Years	No. of vigilance cases registered by		Persons Arrested	
	CBI	States / Uts	CBI	States / UTs
1992	1231	1772	-	1011
1993	1282	1895	-	1167
1994	1106	2104	463	2296
1995	825	2064	297	2604
1996	845	2361	304	2922

**JAPAN**

Year	No. of Cases	No. of Offenders		
		No. of Bribe-taker	No. of Bribers	Total
1993	67	80	139	219
1994	82	102	176	278
1995	77	98	138	236
1996	60	82	141	223
1997	89	120	172	292

Note : Statistics compiled by the National Police Agency

Offenders were investigated first by the police then sent to the public prosecutor

Year	No. of Offenders		
	No. of Bribe-takers	No. of Bribers	Total
1993	23	39	62
1994	26	16	42
1995	32	27	59
1996	11	8	19
1997	11	14	25

Note : Statistics compiled by the Ministry of Justice

Offenders were investigated by the public prosecutor independently



RESOURCE MATERIAL SERIES No. 55

NEPAL

**Cases Investigated by CIAA**

Fiscal year	Total No. of Complaints			Investigation started	Investigation completed	Cases filed in court
	C/F from last year	Registered this year	Total			
1996/97	334	1422	1756	1320	629	11
1997/98	691	1004	1695	1432	800	6

Note: Extracted from the Annual Reports of CIAA

**Departmental Actions taken by SPD**

Fiscal year	Government servants		Personnel of Public Corporations		Total
	Gazetted	Non-gazetted	Officers	Non-officers	
1993/94	10	44	13	15	82
1994/95	12	37	7	17	73
1995/96	8	4	1	17	30

Note: Extracted from the Annual Report of the Attorney General of Nepal 1995/96

**TAX EVASION**

INDIA

**Seizures by Income Tax Department (1992 - 1996)**

Year	No. of searches conducted	Assets seized (Rs. in crores)	Unaccounted income disclosed during searches (Rs. in crores)
1992	4777	384.02	501.05
1993	5026	396.46	448.83
1994	4830	381.43	577.08
1995	4612	458.14	NA
1996	4299	405.63	NA

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**JAPAN**

**Situation Regarding Criminal Investigation in Past 5 Years**

Year	No. of commence-ments (case)	No. of dismissals (case)	No. of complaints referred to public prosecutor	Accusation rate (%)	Total amount of tax evasion (yen mil.)	Total amount of accused tax evasion (yen mil.)
1993	212	215	161	75	60,107	52,721 (327)
1994	215	216	155	72	44,050	37,817 (244)
1995	217	223	163	73	41,533	33,144 (203)
1996	221	232	177	76	44,723	33,640 (190)
1997	232	225	166	74	36,310	32,629 (197)

Note: The amount of tax evasion includes the amount of additional taxes

The figure in the parenthesis is the amount of accused tax evasion per case

ANNEXTURE 6(B)

Year	No. of tax evader				Prosecution Rate
	Referred to public prosecutor by Tax Administration Bureau	Prosecuted by Public Prosecutor	Not Prosecuted by Public Prosecutor	Under investigation by Public Prosecutor	
1990	452	264	20	168	93%
1991	484	330	23	132	94%
1992	783	354	35	394	91%
1993	879	382	304	193	56%
1994	559	298	107	154	74%
1995	497	337	58	103	86%
1996	574	402	49	123	89%
1997	567	379	63	125	86%

**NEPAL**

**Number of Cases Prosecuted in Court**

Fiscal year	C/F	Current year	Total	Disposed of	Outstanding
1993/94	-	16	16	5	11
1994/95	11	3	14	1	13
1995/96	13	-	13	-	13

Source: Annual Report of Attorney General of Nepal 1995/96

RESOURCE MATERIAL SERIES No. 55

**SMUGGLING**

**INDIA**

**Seizure made by Customs under Customs Act (1992 -1996)**

Year	Total no. of Seizures	Value of Seizures (Rs. in crores)
1992	59,270	502.1
1993	52,963	389.0
1994	49,997	535.2
1995	55,947	1,062.0
1996	49,580	553.4

**JAPAN**

Year	Antisocial smuggling	Evade duty	Without permission	Total
1993	205	390	453	1,048
1994	259	372	438	1,069
1995	259	260	324	843
1996	257	324	301	837
1997	242	843	352	834

**MONEY LAUNDERING**

**INDIA**

**Money Laundering 1992 -1996 (Cases under FERA)**

Year	No. of		Currency Seized (Indian Rs. in crores)		Currency Confiscated (Indian Rs. in crores)		Fines (Indian Rs. in crores)	
	Searches/ Raids	Seizures/ Recoveries	Indian	Foreign	Indian	Foreign	Imposed	Realized
1992	1,215	738	3.9	2.5	2.4	2.2	-	2.3
1993	1,234	843	6.7	4.5	3.1	3.0	-	3.2
1994	1,540	1,046	9.8	8.1	1.8	2.2	27.8	3.4
1995	1,175	832	10.2	6.5	1.2	2.3	10.6	2.2
1996	1,164	868	12.4	7.8	4.0	2.0	78.0	1.6