

A SUMMARY OF ANTI-CORRUPTION MEASURES IN NEPAL

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I. INTRODUCTION

Corruption is a transnational phenomenon that affects all societies and economies. It is the enemy of rule of law, human rights and development. It hinders democratic institutions, civilization and social values. It adversely affects the justice system and equality and creates bias and prejudice. It jeopardizes transparency, accountability and good governance.

Nepal has introduced preventive and promotional measures along with punitive/correctional measures with respect to corruption control. But preventive and promotional measures are not entirely used. Punitive measures are concerned with criminal justice. In this paper, I try to explain and analyse the corruption scenario, anti-corruption laws and institutions, their drawbacks, United Nations Convention against Corruption (UNCAC) compliance, problems of criminal justice related to corruption and the way forward to curb corruption in a Nepalese perspective.

II. SITUATION OF CORRUPTION IN NEPAL

Corruption is a single word, but it has several forms. Corruption may be monetary or non-monetary. Bribery, embezzlement, fraud and extortion are main forms of corruption. All these forms of corruption are present in Nepal. Nepotism and favoritism are deeply-rooted in Nepalese culture. Not only petty but also grand political and bureaucratic corruption are being committed in Nepal. Similarly, the nature of systematic or state corruption along with isolation corruption is widespread. "There is no doubt that corruption is the main problem in Nepal".¹

DFID identifies fraud and corruption as one of the key risks in Nepal and says that corruption has been "endemic in Nepal for decades". Professor Moore said "I have rarely seen as corrupt a country as Nepal";² "Corruption is an old scourge in Nepal as anywhere else. Corruption in Nepal poses a complex challenge to its people and their leaders."³

Almost all spheres i.e. the public, political and private sectors have been infected by corruption in Nepal. So, the cabinet, judiciary, civil service, politicians, police, army, non-governmental organizations, and the private sector etc. are seriously affected by the virus of corruption. It has been claimed that justice is being exchanged for money. The criminal investigation, prosecution and adjudication process are deeply affected by corruption. Nepal's low score in the Corruption Perception Index is evidence of the above-mentioned facts.

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¹ Devendra Raj Pandeya , Democracy and Corruption, Liberal Democracy Nepal, vol.1, No 2, 2005.

² House of Commons International Development Committee, DFID's Program in Nepal, Six Report of Session2009-10, vol. 1 at 18.

³ Devendra Raj Pandeya , Corruption as a Problem in Nepal, www.tinepal.org

Year	Score	Rank
2010	2.2	146
2009	2.3	143
2008	2.7	121
2007	2.5	131

Table 1. Nepal's score in the Corruption Perception Index ⁴

III. ANTI -CORRUPTION LEGAL FRAMEWORK IN NEPAL

A. Constitutional Arrangement

The Interim Constitution of Nepal sets up the Commission for Investigation of Abuse of Authority (CIAA) as constitutional body. All arrangements for its independence and competency are also managed by the Constitution. CIAA consists of the Chief Commissioner and such number of other Commissioners as may be required. They are appointed by President on the recommendation of the Constitutional Council after a parliamentary hearing. The Commission is empowered to inquire into, and investigate, any abuse of authority committed through improper conduct or corruption by a person holding any public office. The Commission is entrusted with the power of prosecution too.

B. Anti-Corruption Law

The first legislative attempt to enact a specific counter-corruption law was made as early as 1864 A.D. as part of the *Muluki Ain* (Country Code), the first law of the code of Nepal. A section of this code, called the *Hakimko Nauma Karaune Ko Mahal* (Chapter on the complaints against officers) provided a mechanism for redress against a civil servant who collected bribes from among the people.⁵ A separate anti-corruption law was enacted in 1954. The present anti-corruption law was enacted in 2002, and replaced the previous law. It has more sophisticated provisions and a wider scope. Besides this law, other laws were also enacted in 2002. In fact, the enactment of these laws is an important and landmark step to create a competent anti-corruption legal regime. In addition to the above-mentioned, a series of anti-corruption laws have been passed. Let me briefly introduce the laws related to anti-corruption in Nepal.

1. Corruption Prevention Act, 2002

It is the principal anti-corruption law of Nepal, which criminalizes the acts that have been defined as crimes. Both substantive and procedural matters are incorporated in this law. Moreover, roles, powers and procedures of investigation agencies and officers are also made responsible for some required jobs within the Act.

2. Commission For Investigation of Abuse of Authority Act, 1991

This is procedural law related to CIAA procedure. The Act not only defines improper conduct but provides the CIAA with significant power. The Act categorically states that the CIAA has the power to investigate on the basis of a complaint of a particular person or information from any source. The CIAA may take the statement of the suspect or any person deemed necessary. Similarly, the Commission has also power to search and seize, suspend the suspect from his or her post of public responsibility and arrest/detain the suspect for a maximum of six months with the competent court's consent.

The CIAA Act has also given authority to the CIAA to access bank accounts and other financial transactions. In addition, it may seize the passport of a suspect and also order area restriction against suspect.

3. Judicial Council Act, 1991

This Act relates to appointment and disciplinary action of judges. It also provides power to the Judicial Council to investigate and prosecute the judges of District Courts and Appellate Courts, on the charge of corruption.

⁴ www.transparency.org

⁵ Bhimarjun Acharya (editor), Annual Survey Of Nepalese Law 2001, Nepal Bar Council, Kathmandu at 211.

4. Special Court Act, 2002

The Special Court Act has been enacted to deliver speedy and effective justice in special types of cases. The Special Court is empowered to exercise jurisdiction over cases related to the Corruption and Anti-Money Laundering Act.

5. Revenue Leakage (Investigation and Control) Act, 1995

This Act is related to tax leakage by tax payers. The Act pertains to the role and procedure of Department of Revenue Investigation with regard to investigation and prosecution.

6. Good Governance (Management and Operation) Act, 2007

Good governance and corruption are opposite concepts. Good governance prevents corruption. This Act has made many provisions regarding good governance which are valuable in preventing corruption. It states that all civil servants and personnel of all public institutions have to follow a code of conduct. The Act also incorporates a provision regarding managing of conflicts of interest to some extent.

7. Anti-Money Laundering Act, 2008

The Act has provided measures to take comprehensive legal action against money laundering and financing of terrorism. The Act criminalizes the earning, acquiring, holding, possession, involvement or consumption of proceeds from tax evasion, terrorist activities and other crimes and provisions. Recently, it has been amended and incorporates various provisions for the control of money laundering.

8. Rights to Information Act, 2007

Transparency is the most important aspect to curb corruption. The said Act has made comprehensive provision with respect to rights to information. Detailed processes and ample provisions when information is denied are also included in the Act.

9. Public Procurement Act, 2007

The Act establishes appropriate systems of procurement, based on transparency, competition and objective criteria in decision making, that are effective, *inter alia*, in preventing corruption. This Act is enacted to prevent irregularities in the procurement process as well as setting standards in such proceedings. In fact, the Act is enacted in line with UNCAC provisions.

10. Army Act, 2006

As per this Act, any crime of corruption committed by army staff is investigated and prosecuted by a three-member committee headed by the Deputy Attorney General. Other members of the committee include an officer working at the Defense Ministry and member of legal department of Nepal Army. Such cases are adjudicated in a three-member Special Military Court which is headed by an Appellate Court Judge.

11. Regulation

Several regulations have been made as delegated legislation. Basically, these regulations have created comprehensive procedural matters. CIAA regulations and a regulations-related Vigilance Centre are prominent in this regard.

C. Anti-Corruption Strategy

Control of corruption is not possible without a systematic, strategic campaign against corruption. Several plans and policies have been made in Nepal at national and institutional level to curb corruption. I would like to outline briefly these strategic plans.

1. Three Year Plan (2010/11-2012/13)

The planned development was introduced in Nepal on 1956 has crossed five decades. Now Nepal has a three year plan. In this plan Nepal has made a strategy to strengthen and reform corruption-control-related legal systems and administrative structures in consonance with the commitment made by the international community through the UNCAC.⁶

⁶ Government of Nepal, National Planning Commission, Three Year Plan Approach Paper (2010/11-2012/13) at 178.

2. Strategic Action Plan of Nepal Government

The Nepal Government issued its strategic action plan in 2009. This plan has 13 point strategies and more than one hundred activities to curb corruption. Key points of the plan are: a competitive and accountable public service; the commercial and banking sector's economic discipline; policy and law for private sector corruption; reform (law, policy, work style); a responsive, result-oriented anti-corruption movement through monitoring; usage reform (minimum cost in social usage); promotional activities; people-oriented local authorities; transparency in political parties' expenditure; transparency; zero tolerance; independent public management; integrity; organizational capacity building; national interest in foreign investments; and transparent and accountable NGOs.⁷ In principle, these strategies are very sound, whereas their implementation is very poor.

3. Institution-wise Action Plan of Nepal Government

The Nepal Government published its Institution-wise Action Plan to combat the corruption on the occasion of Anti-Corruption Day 2010. It is the additional and complementary action plan to the Strategic Action Plan of the Nepal Government. Basically it has focused on activities that should be taken by the major components and institutions of the Nepal government within a certain period of time.

4. Three Year Strategic Plan of the CIAA (2010/11 - 2012/13)

CIAA has also drafted a three year action plan to execute its responsibilities. Effective and reliable information collection and analysis regarding corruption; speedy and accurate investigation of corruption and improper cases; effective implementation of verdicts of the CIAA; coordination of anti-corruption agencies; transfer of Corruption Prone Zones into Islands of Integrity; monitoring the implementation of codes of conduct of the public sector; and effective conduct of anti-corruption awareness programmes are major strategies of the CIAA.

5. Five Year Strategic Plan of the Office of the Attorney General (OAG) (2011/12 - 2015/16)

The Office of the Attorney General also has its own five year strategic plan. This strategic plan fully focuses on reforming and strengthening the criminal justice system. Several strategies are formulated, e.g. reform and development of investigation, prosecution, pleading, and capacity building of the OAG. In addition to the above-mentioned, the strategic plan also focuses on corruption control issues and has set up several strategies. The UNCAC and Nepal's challenges for implementing it are critically and comprehensively analysed in the Strategic Plan of Action.⁸ Establishment of a separate anti-corruption department in the OAG for pleading and defending corruption cases, and posting experienced personnel in this department to lobby for the enactment of new laws which are essential to implementing the UNCAC are some examples of this strategic intervention related to corruption control.

6. Five Year Strategic Plan of the Judiciary (2009/10 - 2013/14)

The judiciary is the major component of criminal justice system. Corruption control is not possible without reforming the judiciary. In this juncture, the judiciary also has its own strategic plan. This plan has categorically set several strategies. Proper and effective implementation of codes of conduct for judges and court personnel; development of the mechanism to hear complaints of irregularities found in court; and maintaining financial discipline and transparency related to corruption control.⁹

IV. ANTI-CORRUPTION INSTITUTIONAL ARRANGEMENTS IN NEPAL

A. **Commission for the Investigation of Abuse of Authority**

The Commission for the Investigation of Abuse of Authority Nepal is an apex constitutional body to curb corruption and its tentacles in the country. Articles 119, 120 and 121 of the Interim Constitution of Nepal, 2006 have empowered the CIAA to investigate and probe cases against persons holding any public office and their associates who are indulged in the abuse of authority by way of corruption and/or improper conduct. The CIAA is the distinctive anti-corruption agency in South Asia, which plays the role of an ombudsman, investigator and prosecutor as well. It aims to crack down on corruption issues at a national level with a

⁷ www.opmcm.gov.np

⁸ Five Year Strategic Plan (2011/12-2015/16) of the Office of the Attorney General, Nepal, at 34.

⁹ Five Year Strategic Plan of the Judiciary (2009/10-2013/14), Nepal at 72.

system-based approach. It also focuses on detection and punishment of corrupt acts on one hand and social, cultural and institutional reform on the other.¹⁰

Particulars	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
CIAA Meetings	102	117	129	160	192	145	164	212	154
Nos. of Decisions	245	219	351	401	482	382	427	637	465
Total Complaints	2522	3966	3732	4759	4324	3564	2732	4149	4295
Resolved	2015	2481	3188	3709	3353	2976	2135	3303	3067
Cases Filed	61	147	93	113	114	115	70	50	27
Departmental Actions	18	25	38	39	45	26	28	29	13
Warning	15	25	24	42	19	16	19	22	11
Attention Drawn	27	9	3	6	6	13	13	17	18
Suggestions	50	22	20	22	13	96	13	107	75

Table 2. Facts and Figures on CIAA Activities¹¹

However, the Commission has some limitations to its jurisdiction. The Commission has no jurisdiction in following areas:

- Any official in relation to whom this Constitution itself separately provides for such action and to any official in relation to whom any other law provides for separate special provision. This Constitutional provision provides that the CIAA has no jurisdiction over chiefs and members of constitutional bodies, judges and armies.
- Policy decisions made by the cabinet.
- Issues of Parliamentary privileges.
- Private Sector Corruption.

B. Office of the Attorney General

The Attorney General is one of the most important constitutional bodies under the Constitution of Nepal and has been empowered to make the final decision whether or not to initiate proceedings in any case on behalf of the government in any court or judicial authority. The Attorney General is the chief legal adviser of the government and has the right to appear and present his or her legal opinion on any legal question in any meeting of the legislature-parliament, the constituent Assembly or any other committees. The Attorney General has been assigned for representing the government in a court of law in cases in which the State is party or in suits where in the rights, interest or concerns of the government of Nepal are involved. The cadres of the AG's office have also been deputed at various government offices and constitutional bodies, viz. the Commission for the Investigation of Abuse of Authority, and the Election Commission. The government attorneys have been assigned to the CIAA to carry out investigation and prosecution of corruption cases. In this way, government attorneys and the OAG are not only leading agencies of the criminal justice system but also major agencies of corruption control. Similarly, the CIAA has delegated its power to 75 District Attorney Offices and 15 Appellate Attorney Offices.

¹⁰ www.ciaa.gov.np

¹¹ Different Annual Reports (2001/02- 2009/10) of Commission for the Investigation of Abuse of Authority.

THE 14TH UNAFEI UNCAC TRAINING PROGRAMME
PARTICIPANTS' PAPERS

Year	Supreme Court	Special Court	Total
005/06	190	332	522
006/07	187	344	531
007/08	158	249	407
008/09	193	250	443
009/10	260	181	441

Table 3. No. of cases pleaded/represented by Government in the Special and Supreme Courts¹²

C. Court

Corruption cases are adjudicated by the Special Court. The Special Court is empowered to adjudicate corruption cases filed by the CIAA at trial level. The Special Court is established under the Special Court Act. The Special Court has the status of an appellate court so appeal jurisdiction of corruption cases goes to the Supreme Court. Similarly, trial jurisdiction over the charge sheet of the Judicial Council against judges rests in appellate courts.

1. Special Court

The Special Court is entrusted with the jurisdiction to hear corruption cases filed by the CIAA. Special Court judges are deputed from the Judicial Council for a certain period.

Year	004/05	005/06	006/07	007/08	008/09	009/10
Conviction rate in percent	84.49	91.5	81.85	86.95	67.4	52.9

Table 4. Conviction rate in corruption cases decided by the Special Court (in percentages)¹³

Disproportionate Property	Fake certificate	Forged Document	bank Fraudulent	Embezzlement	Vehicle related
28.5	89.6	78.26	89.36	67.39	95

Table 5. Conviction rate verdict given by the Special Court according case nature period of 2002-2010¹⁴

2. Supreme Court

The Supreme Court has appellate jurisdiction over the verdicts of the Special Court. The Supreme Court has laid down several precedents in corruption cases within appellate and writ jurisdiction.

D. Judicial Council

The Judicial Council is an independent constitutional body headed by the Chief Justice. The Council is responsible for recommendation and appointment of all the judges except the Chief Justice. It has also power to investigate and prosecute the judges of District Courts and Appellate Courts in the charge of corruption. The Council also monitors the observance of the Code of Conduct of Judges. In fact, the council has an important role in preventing judicial corruption and irregularities.

No. of judges resignation during investigation	Removed no. of judges after investigation	No. of judges warned made by council	No. of judges charged the corruption cases	Recommended for impeachment	Total
6	5	6	1	1	19

Table 6. Action against judges taken by the Judicial Council¹⁵

E. National Vigilance Centre

The National Vigilance Centre is established under the Corruption Prevention Act. The Centre is under the Prime Minister and headed by secretary-level officials of the Nepal government. The Centre has no investigation authority regarding corruption. The Centre is empowered to take only preventive and

¹² Different Annual Reports (005/06- 2009/10) of Office of the Attorney General.

¹³ Different annual reports (2005/05- 2009/10) of Commission for the Investigation of Abuse of Authority.

¹⁴ This data are based on analysis of verdict of special court.

¹⁵ Data are presented according to the source of the Judicial Council.

promotional measures against corruption.

F. Army Investigation and Army Special Court

The CIAA has no jurisdiction over corruption cases related to the army. The Army Act provides that any crime of corruption committed by army staff is investigated and prosecuted by a three-member committee headed by the Deputy Attorney General. Such cases are adjudicated in a three-member Special Military Court which is headed by an Appellate Court Judge who is appointed by the government at the recommendation of the Judicial Council. Very few cases have been investigated and adjudicated within these mechanisms.

G. Other Anti-Corruption Institutions

In addition to the above-mentioned institutions, several other institutions are also related to curbing corruption to some extent. These institutions are as follows:

- Auditor general
- Revenue Leakage Investigation Department
- Anti-Money Laundering Department
- Parliamentary Committee
- Public Procurement Monitoring Office
- Appellate Government Attorney Office
- District Government Office
- Regional Administration Office
- District Administration Office.

V. INVESTIGATION, PROSECUTION & ADJUDICATION OF CORRUPTION OFFENCES IN NEPAL

A. Investigation

CIAA is responsible for investigation and prosecution regarding public sector corruption at large extent. However, CIAA jurisdiction of investigation and prosecution of judges and army is excluded and other mechanisms are established.

The complaints lodged with CIAA are settled in accordance with the procedures laid down in the CIAA Working Procedure, 2001. The investigation process is divided into two stages: (i) Preliminary Inquiry; (ii) Detailed Investigation.

During the preliminary inquiry, the complaints are analysed with regard to their merit and the first-hand available evidence. At this stage, the designated Investigation Division of the CIAA Secretariat works with to collect most of the possible evidence. If at this stage CIAA finds a *prima facie* case, it appoints an Investigation Officer for detailed investigation. While carrying out a detailed investigation, the Investigation Officer collects evidence, makes all necessary inquiries and analyses the findings. Upon the completion of the specified procedures, the Investigation Officer submits a report of his findings before the Commission. Such report shall be reviewed by the Commission and a decision to this effect shall be taken.

The CIAA has power to investigate on the basis of written, verbal, telephone and online complaints, media sources, its own intelligence, or information from any source. The CIAA is empowered to take statements of the suspect or any person deemed necessary; to search and seize as needed; to access bank accounts and other financial transactions; to withhold transactions in accounts, or the property of a suspect; to seize the passport of the suspect and also order area restriction against a suspect.

B. Prosecution

The CIAA is empowered to prosecute corruption offences. Based on the findings of its investigation, the Commission may prosecute cases against persons alleged to have committed corruption in the Special Court.

C. Adjudication

The Special Court is empowered to adjudicate corruption cases filed by CIAA in trial level. The Special court is established under the Special Court Act and it follows the special procedure laid down in the Special

Court Act. The Special Court has the status of the appellate court so appeal jurisdiction of corruption cases goes to the Supreme Court.

VI. COMPLIANCE WITH THE UNITED NATIONS CONVENTION AGAINST CORRUPTION 2003

A. General Introduction

The United Nations Convention against Corruption (UNCAC) is the most comprehensive international anti-corruption convention to date as it covers the broadest range of corruption offences, including the active and passive bribery of domestic and foreign public officials, obstruction of justice, illicit enrichment and embezzlement.¹⁶ This Convention incorporates crucial elements of the fight against corruption, such as preventive measures, criminalization, protection of sovereignty, sanctions and reparations, confiscation and seizure, the liability of legal persons, protection of witnesses and victims, international cooperation in extradition and in the repatriation of property and money, the transfer of funds derived from acts of corruption, assets and money, and the exchange of information between Governments and nations.¹⁷

Nepal signed this convention on 10 December 2003, and ratified it on 24 February 2011. To properly implement the UNCAC, the Government formed a high-level steering committee under the chairmanship of Chief Secretary of the Nepal Government. Similarly, at working level, another working group has also been formed under the chairmanship of the Secretary of the Prime Minister's Office. It is my pleasure to be a member of such taskforce.

B. Prevention

Corruption can be prosecuted after the fact, but first and foremost it requires prevention. An entire chapter of the United Nations Convention against Corruption is devoted to prevention, with measures directed at both public and private sectors.¹⁸

Several policies have been taken for prevention of corruption. Three year strategic plan of country, anti-corruption strategic and action plan of Nepal government, institutional working plan of Nepal government, three year strategic plan of CIAA are major policy concerns to anti corruption. Good Governance Act, Anti-Money Laundering Act, Rights to Information Act, Public Procurement Act etc. have already been enacted. Largely institutional arrangements have been made. CIAA, OAG, Courts, Army Special Court, Judicial Council, National Vigilance Centre, Auditor general, Public Service Commission, Revenue leakage Investigation department, Parliamentary Committee, Public Procurement Monitoring Office, Regional Administration Office, District Administration Office, Public Prosecutorial Office at district and appellate level are already set up.

However, provision incorporated in these documents need to be revised and properly implemented.

C. Criminalization

UNCAC has set international standards of criminalization. These are bribery of national public officials, bribery of foreign public officials and officials of public international organizations, embezzlement, misappropriation or other diversion of property by a public official, trading in influence, abuse of function, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime, concealment, obstruction of justice, liability of legal persons.

Corruption Prevention Act, 2002 has largely defined corruption offences recommended in UNCAC to criminalize by domestic law. Following activities are defined as corruption crime and made punishable:

- Giving or receiving bribe to or by the public official or other person (active & passive bribery in public sector);
- Accepting goods or service free of cost or at lower price by the public official;
- Unlawfully receiving gift by the public official;
- Getting commission in public purchase by the public official;

¹⁶ OECD, Glossaries, Corruption, A glossary of international standards in criminal law, 2008 at, 14, www.oecd.org/publishing/corrigenda

¹⁷ UNODC, Global Action against Corruption, The Merida Papers, 2004 at 4.

¹⁸ UNODC, COMPENDIUM OF INTERNATIONAL LEGAL INSTRUMENTS ON CORRUPTION, Second edition, 2005, at 1.

- Causing loss in revenue by the public official;
- Getting illegal benefit or causing illegal loss by the public official;
- Preparing of false documents by the public official;
- False translation of documents;
- Tampering with government documents;
- Causing damage to Government or public documents;
- Disclosing secrecy or question papers of examination;
- Engagement in illegal trade or business by public official;
- Claiming false designation;
- Submitting false information about oneself for getting or staying in a public post;
- Damaging public property;
- Pressure to commit crimes;
- Providing a false report;
- Attempts and assistance.

However, Nepalese law fails to define some acts as crimes. Bribery in the private sector, punishment of legal persons, embezzlement of property in the private sector, and bribery of foreign public officials and officials of public international organizations need to be criminalized.

D. International Cooperation

Under Chapter IV of the UNCAC, States Parties are obliged to assist one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Particular emphasis is laid on mutual legal assistance, in gathering and transferring evidence for use in court, and extradition of offenders.¹⁹

Nepal has no proper legal and institutional mechanism for international cooperation. In fact, Nepal is in very lacking in this perspective. For international cooperation, Nepal needs to make bilateral and multilateral treaties and reciprocal activities as well as enactment of new laws. Laws related to mutual legal assistance, asset recovery, joint investigation, extradition, execution of verdicts of foreign courts, have to be immediately enacted for compliance with the UNCAC.

Moreover, central agencies for the purpose of mutual legal assistance and extradition should be established promptly.

E. Asset Recovery

The UNCAC is the first globally negotiated treaty which is universally applicable for fighting corruption and explicitly includes asset recovery as a fundamental principle.

Nepal has no legal or institutional mechanisms for the fulfillment of UNCAC provisions. Similarly, Nepal has no treaty in this regard. So Nepal needs to make bilateral and multilateral treaties and reciprocal activities to fully implement the UNCAC asset recovery provisions. Similarly Nepal has to enact legislation regarding asset recovery.

VII. BEST PRACTICES OF ANTI-CORRUPTION MEASURES IN NEPAL

Several provisions and mechanisms are attractive and persuasive. Such best provisions are listed out as below:

- Independent and competent Constitutional body (CIAA) for investigation and prosecution, along with ombudsman role as multifunctional anti-corruption agency;
- Establishment of several anti-corruption agencies, including the Vigilance Centre for preventive measures;
- Separate Special Court for adjudication of corruption cases at trial level;
- Criminalization of various activities as corruption, to a large extent;
- Burden of proof on defendant in illicit enrichment cases;

¹⁹ Highlights of the UN Convention against Corruption, <http://www.unodc.org/unodc/en/treaties/cac/convention-highlight.html>

- Annual declaration of property by public officials;
- Imprisonment is mandatory in most corruption cases;
- Additional punishment for high-ranking officials;
- Code of conduct for all public officials;
- Enactment of several new laws that strengthen good governance and reduce corruption, viz; Good Governance Act, Public Procurement Act, Information Act, Anti-Money Laundering Act, etc;
- Constitutionally independent Public Service Commission to recruit public officials;
- Independent Constitutional Commission for public sector audit;
- Anti-corruption strategic plan at government, CIAA and other institutional levels;
- Establish of Procurement Monitoring Office;
- Community education programme, radio programme for public awareness;
- High level working group for the implementation of the UNCAC.

VIII. CORRUPTION-RELATED CRIMINAL JUSTICE PROBLEMS IN NEPAL

The Nepalese criminal justice system has been facing various problems; criminal justice related-corruption is no exception. Major weaknesses or drawbacks regarding corruption in the criminal justice system are listed below.

A. Problems Related to Investigation and Prosecution

Investigation and prosecution have been conducted by the CIAA in Nepal. However several limitations are found with respect to CIAA jurisdiction. Major problems regarding investigation and prosecution are as below:

- Inadequate laws;
- Lack of well-trained human resources and a traditional working style;
- Exclusion of CIAA jurisdiction for officials in relation to whom the Constitution and any other law separately provides for action; policy decisions made by the cabinet; issues of parliamentary privileges and private sector corruption;
- Absence of CIAA local level offices;
- Low level of public trust in the CIAA;
- The office of the CIAA Commissioner has long been vacant;
- Appointment practice of commissioner on the basis of political parties' recommendation rather than qualifications;
- Raises the question of integrity and impartiality of investigative authorities;
- Political instability and lack of political commitment to corruption control;
- CIAA lacks a separate service law and its own staff;
- Non-existence of joint investigation legal mechanisms;
- Absence of special investigation techniques;
- Unavailability of legal provisions regarding transfer of criminal proceedings;
- Political criminal nexus.

B. Problems Related to Adjudication

The Special Court at trial level and the Supreme Court at appeal level are responsible for adjudication. Various problems are known in relation to adjudication. These are as below:

- Delay in adjudication;
- Absence of a preferential track in the Supreme Court;
- Motive of bench selection by defendant;
- Reluctance of judges to decide corruption cases;
- Unreasonably long pleading practice;
- Lengthy court procedure;
- Lack of most important legal provision, viz; mutual legal assistance, witness protection, implementation of foreign verdicts, etc.;
- Lack of well updated, skilled and expert court personnel, and a traditional working style as well;
- Questions are raised from time to time about the integrity of judges;
- Unsatisfactory conviction rate.

C. Inadequate Laws

Laws are the main instrument of the criminal justice system. Various laws related to anti-corruption have been enacted but still these are not adequate. To bring the criminal justice system in accordance with international standards and to fully implement the UNCAC, various laws are to be enacted. Similarly, dozens of laws are not consistent with the UNCAC and they have to be amended.

D. Lack of Essential Anti-Corruption Agency

Nepal has various anti-corruption agencies, but these are not sufficient to mitigate the requirements of the global era. A central mutual legal assistance agency, and an effective and competent separate financial intelligence unit are urgently needed.

E. Capacity Building

Nepalese anti-corruption agencies are very much traditional in nature. Their working style and capacity as well as mindset are very traditional. Transfer of the investigation, prosecution and adjudication system is traditional and they are to be made more scientific, which is a major challenge.

F. Implementation of UNCAC and Fulfillment of its Basic Requirements

Recently, Nepal ratified the UNCAC and UNTOC. Ratification is not sufficient, but it needs effective implementation. Implementation of these conventions is also an international obligation of Nepal. To fulfill implementation of this instrument, institutional, policy, legal and administrative requirement have to be fulfilled. But Nepal is facing absences of requirements in this regard.

G. Influence of Accused

Corruption is considered a white-collar crime. It is transnational organized crime. So, those accused of corruption crime are often more powerful than other defendants and they can exert influence in the criminal justice system.

H. Problem related to Assets Recovery

The asset recovery process needs several steps. Firstly, proceeds should be traced and identified by the requested state. The second step is to freeze and seize the assets to prevent their removal. Then the process may follow to confiscate the assets and finally to repatriate them to the requesting state. In the absence of any treaty and legal provisions governing the granting of mutual legal assistance and asset recovery, Nepal cannot render MLA relating to proceeds of corruption.

IX. THE WAY FORWARD

A. Enactment of Adequate Laws

This is the era of globalization. In globalization, crimes are also becoming globalized and they must be curbed. Criminal justice should also be globalized. Laws relating to anti-corruption should be enacted and amended with this view.

Laws relating to private sector corruption, protection of witnesses, experts and victims, as well as protection of reporting persons, mutual legal assistance, liability of legal persons, asset recovery, transparency of political parties, income and expenditure, joint investigation, extradition, execution of verdicts of foreign courts and legislation related to conflict of interest should be enacted.

Similarly, some laws need to be amended, i.e. the Corruption Prevention Act, CIAA Act, acts related to insurance, bank and finance, laws related to local government, laws related to election, different service laws, etc.

B. Institutional Set Up and Reform

The CIAA has no local offices and it very difficult to investigate corruption at local level. So establishment of CIAA offices at least at the regional level is imperative. Similarly, several institutions should be set up promptly, such as a central agency for the purpose of mutual legal assistance and extradition, and a specific and separate financial intelligence unit etc. In addition to new arrangements of institutions, institutional reform and capacity building of the CIAA, OAG and courts is imperative.

C. Speedy Justice

Speedy justice is guaranteed by several international human rights instruments. The Nepalese justice system is lagging behind. To overcome this obstacle, procedures relating to investigation and adjudication should be shorter. For this purpose, procedural law may need to be amended. Similarly, time frames given by law should be followed. Priorities to hearing corruption, discouragement of unnecessarily long pleadings and bench choices are other measures to speedy justice in corruption cases.

D. Proper Implementation of International Obligations

Nepal should take necessary arrangements to fulfill the international obligations. The UNCAC should be properly implemented and all requirements for full execution of it should be made. Nepal should give practice international cooperation and asset recovery.

E. Effective Investigation

Prosecution depends on investigation and adjudication depends on prosecution. So to ensure a high conviction rate, investigation should be effective, without any errors and based on facts as well as evidence.

F. Expansion of CIAA Jurisdiction

The CIAA has some limitations of jurisdiction. The CIAA should have jurisdiction to investigate and prosecute cabinet decisions. Similarly jurisdiction of CIAA over all public officials should be established in a new constitution.

G. Execution of Anti-Corruption Strategies

Anti-corruption strategies have to be properly implemented to systematically combat corruption.

X. CONCLUSIONS

Corruption in Nepal is chronic. Anti-corruption laws, institutions and policies have been set up to combat corruption, yet it increases day by day. Lows political commitment, low priority on corruption control, an ongoing transitional period, non-execution of anti-corruption strategies, a lack of strong stakeholders like civil society and media, and a lack of adequate awareness programmes are some causes of increasing corruption in Nepal.

There is no single measure to control corruption. New trends are emerging to combat the menace of corruption. A focus on preventive measures along with punitive and promotional measures; international cooperation; expansion of area of control into private sector; conviction of legal persons along with natural persons; focus on participation of stakeholders during anti-corruption activities and expansion of corruption control efforts in the international arena are the key emerging corruption control trends. At this juncture, it is worth mentioning that the preamble of the UNCAC states that "Corruption is no longer a local matter, but a transnational phenomenon that affects all societies and economics, making international cooperation to prevent and control it essential".

Corruption in Nepal is rampant. We have to control it. Serious commitment and priority from political leadership is imperative. The Government of Nepal has issued an anti-corruption strategy and work plan, but its implementation has not been satisfactory. To combat corruption, this strategic plan should be fully implemented. Similarly, the UNCAC should also be fully implemented. A national integrity system should be built. The active participation of the OAG, Judicial Council, Special Court, and Army Special Court, along with the CIAA and cooperation of stake-holders alike, civil society, media and the general public is essential. We have to follow the emerging corruption control trends. Combating corruption is not possible in isolation; it requires an holistic approach. That is why to cure the infection of corruption, awareness programmes, reform of social values and culture, development of morality, accountability and integrity, promotion of good governance, adequate salaries, poverty reduction programmes and e-governance should be launched simultaneously and followed with other measures. Finally, the criminal justice system has to be effective and strong and meet international standard in corruption control mechanisms.