

**Draft**

**Formulation and Implementation of Anticorruption Policies  
and Strategies in Nepal**

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# **Formulation and Implementation of Anticorruption Policies and Strategies in Nepal**

## **Anticorruption policy and its implementation in Nepal**

Corruption is a widespread phenomenon which is one of the trans-boundary organized crimes. It presents a challenge for all countries. It must be fought with a holistic approach. No single agency and no single country can tackle it alone. Nepal is committed to fighting corruption at all levels. Continual reform in all sections of society and government strengthens to combat corruption is main agenda of Nepal. Nepal strongly supports key regional and international anti-corruption instruments and activities.

The understanding of the term “corruption” varies between societies and over time. Corruption may for instance be regarded as any act of vice or misdeed that violates the social norms and legal provisions and results in harassment, loss, and deprivation to a person, society, or country. All immoral, unethical, and unlawful acts lead to corruption. Corruption is also defined as the sale of power for personal gain at the expense of the society’s larger interests. An economist would tend to define corruption as an informal process of exchanges involving the manipulation of public resources for private gain. It is a single greatest obstacle to socio economic development and it also undermines development by compromising rule of law.

The World Bank defines corruption as the misuse of public services for private gain. In Nepal, corruption is considered a form of abuse of authority, which is classified into two categories: “improper conduct” and “corruption”. In this paper, corruption and abuse of authority are used synonymously.

Nepal is a developing country 147,109 square kilometers in size and with a population of 25 million. As with many poor developing countries, Nepal bears the burden of wide-ranging corruption and inefficient governance. Poor economic development, poverty and economic disparity, deprivation of opportunities, cronyism, favoritism and corruption in all its manifestations have frustrated the Nepali society to an extent that seriously challenges the country’s socio-economic fabric and security. Corruption and mismanagement of the Government are the problem’s root causes. According to the Transparency International Corruption Perception Index, Nepal was ranked 121st in 2008 and this rank has gone up to 143rd in 2009, which would indicate that corruption in Nepal is on an increasing trend and it is worst performing in South Asia. Political instability, weak enforcement of laws at the central as well as local level, and absence of elected local bodies could be some of the factors contributing to increasing corruption in Nepal. Given the extent of the problem, an all-out war against the threat of corruption is today the only option.

## **History of Nepal's anti-corruption policies and agencies**

Anti-corruption activities in Nepal go back several centuries. About 230 years ago, King Prithvi Narayan Shah the Great declared that “those who take bribes and offer bribes are both enemies of the State.” Several legal and institutional provisions have been established since the very beginning of the country. Already in 1851, the general code of the country, known as *Muluki Ain*, included some provisions for controlling corruption. Later, such provisions were incorporated in the sector laws that replaced the general code. It was only in 1953 that the Prevention of Corruption Act consolidated the provisions on the prevention of corruption in the government bureaucracy. The law was amended in 1960 by a new act, which established the Special Police Department. This Department worked as an anti-corruption body and had a special cadre of officers. As time went by, however, it became evident that this institution could not work effectively, because its placement under the authority of the Ministry of Home Affairs limited its independence. Any attempt to encourage ethical behavior was compromised, as political influence was attached with corrupt bureaucracy, impunity for corruption, favoritism and mediocrity (poorness). The department turned out to be a burden rather than an effective government department.

In 1978, the Second Amendment to the constitution established the Commission for the Prevention of Abuse of Authority as a constitutional body, thereby guaranteeing its independence. The Commission had wide ranging authority and numerous tasks: it was an advisor, investigator, prosecutor, and decision maker at the same time. Eventually, it deteriorated under this heavy burden, weakened by the lack of reforms in the bureaucracy.

In 1990, the restoration of a multiparty democracy entailed the framing of the new Constitution of the Kingdom of Nepal and established the Commission for the Investigation of Abuse of Authority (CIAA). While also a constitutional body, the CIAA differs from its predecessor in many ways: in particular, its tasks are limited to investigation and prosecution and no longer include participation in policy decision-making processes.

After the historic April movement ‘Janaandolan II’, in 2006 the country went into a process of transition and change. Seven political parties and the Maoist got involved in power sharing, peace building and elections to the Constituent Assembly. They dismissed old constitution and declared Interim constitution 2063 BS (2007) to manage transitional period. After two repeated postponements, in June and November 2007, elections to the Constitution assembly were finally held on 10 April 2008. The election result made CPN Maoists the largest party in the assembly and the first meet of the 601-member Constitutional Assembly, held on 28 May 2008, declared Nepal a Federal Republic, abolishing the 240 year-old Monarchy.

Nepal's Interim Constitution 2063 BS (2007) has given continuity to the mandate of the Commission for the Investigation of Abuse of Authority (CIAA) in investigating and filing lawsuits against corrupt government officials.

While CIAA is the premier institution in fight against corruption, there are a number of other government institutions also which have their own specific roles and mandates in fight against corruption. Similarly, there are civil society organizations (CSOs) like, Transparency International (TI) – Nepal Chapter, Pro Public running anti-corruption and good governance programmes. The Federation of Nepalese Chambers of Commerce and Industry (FNCCI) has also run an anti-corruption project through which it has developed the ‘Code of Conduct’ for business community and had it adopted by its constituent members.

## **Policies to combat corruption in Nepal**

### **A. Constitutional provision**

#### **1. The Commission for the Investigation of Abuse of Authority**

The Commission for the Investigation of Abuse of Authority (CIAA), is an apex constitutional body to curb corruption and its tentacles in the country. Interim constitution of Nepal 2007 has empowered CIAA to investigate and probe cases against the persons holding any public office and their associates who are indulged in the abuse of authority by way of corruption and/or improper conduct.

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 the corruption issues at a national level with system-based approach. It also focuses on detection and punishment of corrupt acts on the one hand and social, cultural and institutional reform on the other.

The Constitution empowers the CIAA to investigate and prosecute abuse of authority by individuals holding public office. The term “abuse of authority” includes both “improper conduct” and “corruption” While improper conduct results in departmental or other action such as a warning, calling attention to the conduct, or admonishment for the concerned public official, cases of corruption are brought before the Court of Law. The CIAA may also suggest the rectification of damages caused by abuse of authority. Furthermore, it may recommend amendments to relevant laws and procedures with a view to preventing abuse of authority in the future.

The CIAA is composed of a Chief Commissioner and a number of commissioners as needed. They are appointed by the Constitutional Council and may be removed only by a two-thirds majority in the House of Representatives, this provision ensuring the independence of the institution.

#### **2. Office of the Auditor General (OAG)**

The Office of the Auditor General (OAG) is a constitutional body that provides trustworthy, effective and independent audit for the efficient management and utilization of public resources, and seeks to enhance good governance through accountability and transparency in the public sector. In particular, OAG assesses whether expenditures made and revenues collected comply with prescribed rules and regulations, and whether they reflect due regard for efficiency, effectiveness, and propriety.

## **B. Legal provision**

### **The Prevention of Corruption Act, 2059 (2002 A.D)**

Commission for the Investigation of Abuse of Authority Act was enacted in 1991. A regulation thereof was also promulgated to lay down the procedural details for implementing the provisions of act.

The Prevention of Corruption Act, 2059 (2002 A.D) was formulated to conduct CIAA with efficient and effective way. It is expedient to make timely legal provisions relating to prevention of corruption with a view to maintaining peace, convenience, financial discipline, morality and good conduct among general public.

It shall be extended throughout the Nepal and applicable to all Nepalese citizens, public servants residing anywhere outside the Kingdom of Nepal and to the non- Nepalese citizens residing in foreign countries having committed any act that may be deemed to be corruption under this Act. Specially this law has targeted to the "Public Servant" means the person holding a public office under the prevailing laws and the term also includes the following persons:-

- (1) Persons appointed, nominated or elected under an oath to the government or to public institution, or under the terms, contracts or agreements concluded with Government or with any public institution, or holding any office of public responsibility for salary or allowances or remuneration or benefit or position with or without any type of gain from His Majesty's Government or any public institution;
- (2) Person appointed as an arbitrator or any other person appointed in the same position pursuant to the prevailing laws to resolve or adjudicate any dispute;
- (3) Persons appointed, elected or nominated as liquidator, surveyor or any other person working in the same capacity in accordance with the prevailing laws;
- (4) Persons designated as public servants by the Government in a notification published in the Nepal Gazette.

According to law, following Provisions are Related to offenses of Corruption and Punishment

#### **1. Punishment to Giver and Taker of Graft:**

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| 1. Up to twenty five thousand rupees.                                     | 2. Imprisonment for a term not exceeding three months.                 |
| 3. More than twenty five thousand rupees to fifty thousand rupees.        | 4. Imprisonment for a term from three to four months.                  |
| 5. More than fifty thousand rupees to one hundred thousand rupees.        | 6. Imprisonment for a term from four to six months.                    |
| 7. More than one hundred thousand rupees to five hundred thousand rupees. | 8. Imprisonment for a term from six months to one year and six months. |

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| 9. More than five hundred thousand rupees to one million rupees.                   | 10. Imprisonment for a term from one year and six months to two years and six months. |
| 11. More than one million rupees to two million and five hundred thousand rupees.  | 12. Imprisonment for a term from two years and six months.                            |
| 13. More than two million and five hundred thousand rupees to five million rupees. | 14. Imprisonment for a term from four to six years.                                   |
| 15. More than five million rupees to ten million rupees.                           | 16. Imprisonment for a term from six to eight years.                                  |
| 17. Whatsoever amount above ten million rupees.                                    | 18. Imprisonment for a term from eight to ten years                                   |

2. **Punishment to Public Servants Accepting Goods or Service Free of Cost or at Lower Prices:**

3. **Punishment for Taking Gift, Present, Award or Donation:**

4. **Punishment for Taking Commission:**

5. **Punishment to Public Servants for Leaking Revenue:**

6. **Punishment to Public Servants for Getting Illegal Benefit or Causing Illegal Loss with Malafide Intention:**

7. **Punishment to Public Servants Preparing False Documents:**

8. **Punishment for Translating False Documents:**

9. **Punishment for Tempering Government Documents:**

10. **Punishment for Causing Damage to Government or Public Documents:**

11. **Punishment for Disclosing Secrecy of Question Papers or Altering the Result of Examination:**

12. **Punishment to Public Servants Engaging in Illegal Trade or Business:**

13. **Punishment for Claiming False Designation:**

14. **Punishment for Giving False Particulars:**

15. **Punishment for Damaging Public Property:**

16. **Punishment for Exerting Illegal Pressures:**

17. **Punishment for Giving False Report:**

18. **Property Deemed to be Acquired Illegally:**

19. **Punishment for Committing Attempts:**

20. **Punishment to Accomplices:**

21. **Principal to be Deemed to have Committed the Offence in case a Corporate Body Commits Offence:** In case any firm, company or corporate body commits any act that is deemed to be an offence under this chapter, the partners at the time of commission of the

- act in case of a firm and the person acting as the principal official in case of a company or a corporate body shall be deemed to have committed the offence.
22. Provided that in case it is proved that such act has been committed prior to the appointment of the person acting as the principal official, the person who has committed the act shall be deemed to have committed the offence.
- Explanation:** For the purpose of this Section, the "the person acting as the principal official" means the Chairman, Board Member, General Manager, Managing Director or the Official of a company or corporate body working in the same capacity.
23. **Additional Punishment:** In case the offences under this chapter have been committed by an office bearer of a constitutional organ or body to be nominated or appointed by His Majesty, officer belonging to the special class of His Majesty's Government or officers of equivalent rank; Head, General Manager or officer of a public institution of equivalent rank, such person shall be liable to the punishment of imprisonment for a term of three years in addition to the punishment prescribed for such offence.

## **Investigations, Inquiries and Filing of Cases of Corruption**

### **Investigations and Inquiries:**

When the case comes to know to the investigating authority, through any information, source or a complaint lodged by any person, that any person has committed or is going to commit corruption, it shall initiate necessary investigations, inquiries and other actions in this regard. In case the investigating authority has received an information from any source that any person has committed or is going to commit corruption, such authority may take immediate actions including raid, seizure of documents or goods and materials or arrest of person. For this purpose the investigating authority and inquiries can exercise as power of court for taking decision process and can use as the power of chief of police authority for the investigation purpose.

### **Appointment or Designation of Investigation Officer:**

The investigation authority may, in order to conduct investigation and inquiries into the offenses punishable under this Act, appoint or designate any officer under it or any government officer or any officer of a public institution as the investigation officer.

Provided that, while appointing or designating any government officer, or officer of a public institution as the investigating officer, consultation shall be held with Government or with the Chief Officer of the concerned body, depending on circumstances. The investigation officer shall be used power as follows:-

- a) To arrest the offender immediately and to take necessary actions;
- b) To conduct or cause to conduct search at any office, house, building, godown, vehicle or any other places while conducting investigation and inquiries or while collecting evidences into offenses punishable under this Act;
- c) To exercise other powers conferred on the investigation officer.

While inquiring and investing under this Act, in case it appears that the alleged offense could not be proved on the basis of the collected evidences, the investigating authority may keep the complaint in postponement having published an order slip along with reasons thereof and in case

of decision of postponement, the information thereof shall be given to the accused person and the complainant.

Provided that nothing in this section shall be deemed to have prevented to investigate and re-inquire on such complaint if any new evidence is found later on.

**Filing of cases:**

In connection with an accusation of commission of corruption, in case there is a reasonable cause to believe that the accused has committed the said offence, the investigating authority shall file a case before the authority having powers to hear the case under the prevailing laws.

**Provisions Relating to Prevention of Corruption**

**National Vigilance Center:** Government established a National Vigilance Center under the direct control and supervision of the Prime Minister in order to effectively control corruption-oriented acts and to promote people's awareness against corruption. Government designated special class officer of the civil service as the chief of the center and other officials of the services of Government in the center as may be necessary.

**Functions, Duties and Powers of the National Vigilance Center:** The National Vigilance Center established under sub-Section (1) of Section 37 shall have following functions, duties and powers:-

- a. To collect information on whether or not the functions to be carried out by the Ministries, Departments, offices of the Government and public institution are being regularly carried out;
- b. To alert Ministries, Departments, Offices of the Government, or public institution in case the functions to be carried out by them are not found to have been carried out;
- c. To monitor the statement of property and income given by persons assuming the office of public responsibility as per the prevailing laws;
- d. To make necessary provision for regular surveillance, surprise check and investigation in corruption prone places or works;
- e. To make necessary recommendations to the Government with regard to the policies, strategies and reformation on laws to be adopted for corruption control;
- f. To make provision of a complaint box in the Ministries of the Government, Departments, Offices or public institution;
- g. To provide any suggestion or direction to the concerned bodies with the objective of preventing corruption as may be necessary;
- h. To collect necessary description or information concerning corruption from the body or authority working for investigation into offenses of corruption and to maintain them updated;
- i. To forward any information concerning corruption received to it to the concerned bodies;
- j. To carry out or cause to carry out other incidental functions with regard to corruption control;
- k. To carry out or cause to carry out other functions prescribed by the Government.

**C. Rules**



The Commission for the Investigation of Abuse of Authority has, in exercise of the powers conferred by section 37 of the Commission for the Investigation of Abuse of Authority Act, 2049 (1991), framed the Commission for the Investigation of Abuse of Authority Rules, 2059 (2002)rules.

#### **D. Strategy**

The government of Nepal released a new Anti Corruption Strategy in April 2009 where all the government institutions such as Ministries, other central level offices, the Commission for Investigation of Abuse of Authority (CIAA) and the National Vigilance Centre are working on combating corruption. The major provisions of the strategies are as followings;

1. Review and Consolidation of Legislative Framework and institutional capacity
2. Emphasized promotional activities against the corruption and for establishing ethical society.
3. Transparent, competitive, managed and accountable public service and construction process.
4. New innovation for improving new performance appraisal.
5. To manage foreign assistance.
6. Emphasized simple social behavior.
7. To make effective public sector management by providing freedom in management.
8. To make transparent activities of political parties.
9. To maintain economic discipline through effective management of Bank and other financial institutions.
10. Reform the local body/local government to make development oriented and people friendly.
11. To take zero tolerance policy in the crime of corruption.
12. To adopt policy and legal instruments for controlling the corruption of private sector.
13. Proper monitoring and evaluation system for result oriented corruption control.

#### **F. Code of conduct**

As being specialized in nature, the responsibility of investigation and prevention of abuse of authority is itself a difficult task. Additionally, the dire need to assess the impact of both external and internal factors on the working environment of the organization and to address it properly has become more challenging. Keeping in view of the importance of setting certain standards of personal conduct, manners and behaviors consistent with the organizational and ethical principles, which determine the professional quality of CIAA, a Code of Conduct for the Commissioners and employees has been promulgated and implemented.

## **Implementation of anticorruption measures in Nepal**

### **1. CIAA in action**

The Commission for the Investigation of Abuse of Authority (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 the corruption issues at a national level with system-based approach. It also focuses on detection and punishment of corrupt acts on the one hand and social, cultural and institutional reform on the other.

Article 120 of the interim constitution of Nepal, 2006 has specified the functions and duties of CIAA. The CIAA also performs recommendatory services for the government. It may make suggestions or recommendations for amending a law or making certain improvements in the functions of the government or any policy or procedure with a view to enhancing and improving good governance in the country.

The engine that powers the CIAA is the full- fledged Secretariat. The Secretary appointed by Nepal Government heads it and supervises the administrative operation of the Commission. The Secretariat has a number of civil servants, police and special service officials, who are deputed to CIAA for a given period. All of them are under the command of the Secretary during the period, irrespective of offices they originally come from.

As per its mandate, the CIAA intensified its activities in 2001 and 2002, investigating, *inter alia*, several cases in the revenue and public works sectors and in the police and other branches of the Ministry of Home Affairs.

Investigations also targeted high-level officials, including political leader.

#### **A case of former manager ( successful case )**

The Commission for Investigation of Abuse of Authority (CIAA) had filed a corruption case against Madan Raj Sharma in 2003. He was former general manager of Nepal Oil Corporation (NOC) The anti-graft body had accused him of amassing Rs 43 million during his tenure in NOC. Sharma, who joined the corporation in 1974, held the top post from October 2000 to October 2002. In his case A Special Court in September 2010, slapped a one-year jail sentence and a fine of Rs 20.2 million on former general manager Sharma after finding him guilty of corruption while in office. A three-member special bench of the court comprising judges Gauri Bahadur Karki, Om Prakash Mishra and Kedar Prasad Chalise found Sharma guilty of amassing property worth millions of rupees. The “Investigations found no credible income source for property worth Rs 20, 241000.”. There was clear evidence of wrongdoing against him. The total value of property registered in the name of Sharma, his wife Rupa Dhungel, and daughter Priti Dhungel (Bhandari) exceeded Rs 3.16 million. By holding property disproportionate to his income source, the defendant has clearly abused his public office, the court said in its verdict. His excess property will be confiscated.

The workload and output of the CIAA has increased and the number of prosecution cases has also increased. After established the special court in 2002, 462 cases were filed, CIAA’s prosecution was successful in 391 and 71 were unsuccessful.

## Case 2

### **Case of Parliament member (case under investigation)**

Not only officials, It has recently conducted a special case investigation against a law maker D.B. karki who was the member of constitution assembly. Mr. Karki was arrested along with another person on August 30 from the capital while collecting Rs. 100,000 from a Nepal Police job aspirant as bribe .This case was investigated by the Commission of Investigation of Abuse of Authority (CIAA).While the case was filed in the special court with sufficient evidence the Constituent Assembly immediately suspended the CA membership of DB Karki a day after the country's graft watchdog moved the Special Court seeking action against him on corruption charges.

The CIAA filed a case against Karki seeking a four- and-half year jail sentence.

The clear improvement of the Commission's performance is essentially due to a number of legal reforms. The new 2002 act has shifted the burden of proof against charges of acquisition of illegal property to the accused; amendments to the CIAA Act extend the Commission's powers of investigation and establish a special court. Other factors contributing to the CIAA's enhanced performance include the CIAA staff's high level of commitment, cooperation from the Government and various sectors of society and the CIAA's efforts to strengthen its institutional capacity.

Furthermore, the CIAA has delegated its power and duties of investigation to the chief district officer to control corruption at the district level.

### **2. National Vigilance Center (NVC)**

NVC is an independent institution whose Chief Officer is answerable directly to the Prime Minister. Its primary function is to play a preventive role in combating corruption, mainly by monitoring asset declarations of government officials and by conducting technical audits of projects and government operations to ensure that service delivery weaknesses in government administration are dealt with promptly and effectively. Additionally, it also carries out promotional work and awareness raising campaigns against corruption in partnership with civil society organizations.

### **3. Office of the Auditor General (OAG)**

OAG is a constitutional body that provides trustworthy, effective and independent audit for the efficient management and utilization of public resources, and seeks to enhance good governance through accountability and transparency in the public sector. In particular, OAG assesses whether expenditures made and revenues collected comply with prescribed rules and regulations, and whether they reflect due regard for efficiency, effectiveness, and propriety.

### **4. Special Court (SC)**

Special Court is a separate bench of judiciary mandated to effectively and swiftly dispense corruption cases that are filed with it. In particular, the Commission for Investigation of Abuse of Authority (CIAA) uses the Court to prosecute cases of corruption. The Court is also mandated to consider cases of crimes against the state, and to hear appeal against the rulings of the CIAA.

## **5. Public Accounts Committee (PAC)**

PAC is one of the select committees of the present Legislature-Constituent Assembly. Its main function is to examine the Public Accounts and the Report of the Auditor General to reduce misuse and abuse of public funds. It is empowered to direct concerned government departments to explain financial irregularities, and also to pursue the clearance of arrears, that might have been specified in the Report of the Auditor General.

## **6. Department of Revenue Investigation (DRI)**

DRI is an important department under the Ministry of Finance tasked with making the control of revenue leakage in customs, excise duty, VAT and income tax more effective, and also to control the misuse of foreign exchange. It also carries out investigation in tax revenue leakage and initiate action against those contributing to such leakages within the limits of the prescribed laws and regulations.

## **Outlook**

All the institutions which we mentioned are working against the corruption in Nepal. The CIAA has both preventative and curative power to control corruption and remaining others has limited power in this area. So Strengthening the CIAA is one of the major agenda at present.

The CIAA of Nepal is well aware of its responsibility and role in exposing and penalizing corruption, inducing good governance and stabilizing democracy that has been undermined by indiscriminate corruption. However, many obstacles still need to be overcome and improvements made. For instance, the CIAA strives for continuous improvement of existing legal provisions, policies, practices and organizational structures. For this purpose, it continues to develop corresponding recommendations and suggestions to the Government.

To fulfill its demanding tasks and responsibilities effectively, the CIAA must also rely on partners: in particular, the media and civil society are crucial in boosting the CIAA's morale and in urging the Government to provide sufficient resources for the fight against corruption, reward honest officials and businessmen and alert the judiciary.

The time has come to take concrete action against this great threat that impedes social and economic advancement in our societies. Most likely, the case of Nepal is not very different from the situations in many Asian and Pacific countries. Strong regional cooperation, such as that in the framework of the Initiative taken by ADB and OECD, solidarity and joint action are therefore important to further advance our respective anti-corruption efforts.

Thanks