

The Inputs of the Government of Nepal

On

Preventive Measures to Implement the United Nations Convention against Corruption

1. Background:

The United Nations Convention against Corruption (the "Convention") was signed on 10 December 2003, and ratified by the Constituent Assembly which also acted as Legislature-Parliament, on 23 February 2011. Nepal deposited its Instrument of Ratification with the Secretary-General of the United Nations on 29 March 2011. An official notification of ratification of the Convention by Nepal was published in the Nepal Gazette on 25 April 2011. The Convention came into force for Nepal on 28 April 2011, in accordance with Article 68 of the Convention.

The Government of Nepal (GoN) has adopted National Strategy and Action Plan (Action Plan) to implement the Convention. The GoN has taken various measures including legislative, administrative, and judicial measures identified in the Action Plan for the implementation of the Convention.

2. Legislative Measures:

There are a number of legislative provisions to fight against corruption in Nepal. Some of them are as follows:

(a) **Prevention of Corruption Act, 2002:**

This is the principal anti-corruption legislation of Nepal. It criminalizes the acts such as accepting goods or services free of costs or lower price; taking gift, award or donation; taking commission; leaking revenue; getting illegal benefit or causing illegal loss with mala fide intention; preparing false documents; translating false documents; tempering government documents; disclosing secrecy of question papers or altering the result of examination; engaging in illegal trade or business; claiming false designation; giving false particulars; exerting illegal pressures; giving false report by public officials etc. and the Act imposes stringent punishment. This Act also criminalizes illicit enrichment. This Act incorporates both substantive and procedural matters to fight against corruption.

(b) **Commission for Investigation of Abuse of Authority Act, 1991:**

This is the procedural law related to CIAA established under Article 239 of the Constitution. Sub-article (1) of 239 of the Constitution of Nepal provides that the Commission for the Investigation of Abuse of Authority may, in accordance with law, conduct, or cause to be conducted, investigations of any abuse of authority committed through corruption by any person holding public office. The CIAA has power to investigate the cases of corruption and prosecute the cases in the Special Court on the basis of a complaint of a particular person or information received from any source. The CIAA may take statement of the accused or any person deemed necessary. Similarly, the CIAA has power to search and seize, suspend the accused from his or her post of public

responsibility and arrest/detain the accused for a maximum of six months with the order of competent court, the Special Court. The CIAA has authority to access bank accounts and other financial transactions. In addition, it may seize the passport of accused and also order area restriction against accused depending upon gravity of offence.

(c) Judicial Council Act, 2017:

Judicial Council Act, 2017 provides power to the Judicial Council to investigate and prosecute the judges of District Courts and High Courts, on the charges of corruption. Section 33 of this Act has detail provisions relating to the function, duty and power of the Judicial Council. Clause (d) of Sub-section (1) of the Section provides that the Council may adopt and enforce Code of Conduct to be abided by the Judges. Clause (a) of Section 7 provides that the person who is convicted in the charge of corruption is ineligible for appointment of judges. Section 22 of this Act provides that the Council may appoint a judge of Supreme Court or High Court as investigation officer to carry out investigation of allegation of corruption against judges of High Court and District Courts based on the investigation. The Council may file the case in the competent Court.

(d) Special Court Act, 2002:

Special Court Act, 2002 has been enacted to deliver speedy and effective justice in special type of cases including the cases falling under the Prevention of Corruption Act, 2002, Money Laundering (Prevention) Act, 2008 and Revenue Leakage (Investigation and Control) Act, 1996. The later Act pertains to the rules of procedure of Department of Revenue Investigation with regard to investigation and prosecution.

(e) Good Governance (Management and Operation) Act, 2007:

Good Governance (Management and Operation) Act, 2007 sets out the basis to be guided by while discharging the administrative business of the government such as greater interest of nation and people; equity and inclusiveness; rule of law; guarantee of the human rights; transparency, objectivity, accountability and honesty; economic (financial) discipline, corruption-free, lean (smart) and people oriented administration; impartiality and neutrality of administrative mechanism; access of people to administrative mechanism and its decision; decentralization and devolution of powers; and popular participation and optimum utilization of local resources, These guides principles ultimately help to prevent corruption. It provides that all civil servants and personnel of all public institutions have to follow a code of conduct issued based on this Act. The Act also incorporates a provision regarding management of conflict of interest arise while discharging administrative functions.

(f) Money Laundering (Prevention) Act, 2008:

Money Laundering (Prevention) Act, 2008 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. The GoN may freeze or take under control of assets, instruments or goods if investigation and inquiry so requires or if a request to this effect is received from any state where the

offence under this Act is committed or from any other international organization in accordance with the provision of bilateral or multilateral treaty or agreement to which Nepal is a party. Accordingly, under this Act Nepal may make a similar request to foreign state or international organization through diplomatic channel to freeze or take under control such asset, instrument or goods.

(g) Mutual Legal Assistance Act, 2014:

Mutual Legal Assistance Act, 2014 is related about the providing mutual legal assistance between Nepal and foreign state. The main purpose of this Act is to make provision on the exchange of mutual legal assistance particularly in matters required for judicial proceedings.

(h) Bank and Financial Institution Act, 2017 (BAFIA):

Bank and Financial Institution Act, 2017 is enacted to regulate banks and financial institutions to promote the trust of the general public in the overall banking and financial system of the country and protect the rights and interests of depositors, provide quality and reliable banking and financial intermediary services to the general public through healthy competition. According to this Act without registration or permission granted by concerned authority no one can incorporate a bank or financial institution. This Act regulates the governance of bank and financial institutions and establishes the monitoring norms and parameters about their transactions.

(i) Right to Information Act, 2007:

Right to Information Act, 2007 establishes Information Commission and provides comprehensive provision with respect to rights to information. It provides detailed process that may be pursued when information is denied to provide by the relevant authority.

(j) Public Procurement Act, 2007:

Public Procurement Act, 2007 establishes detailed 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.

(k) Army Act, 2006:

Army Act, 2006 provides that if any allegation of corruption committed by any army staff is arised, it 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 Ministry of Defense and a member of legal department of Nepal Army. Such cases are adjudicated in a three-member Special Military Court which is headed by a High Court Judge.

(l) Competition Promotion and Market Protection Act, 2007

This Act has been enacted to make national economy more open, liberal, market-oriented and competitive by maintaining fair competition between or among the persons or enterprises producing or distributing goods or services, to enhance national

productivity by developing the business capacity of producers or distributors by way of competition, to protect markets against undesirable interference, to encourage to make the produced goods and services available to the consumers at a competitive price by enhancing the quality of goods or services by way of controlling monopoly and restrictive trade practices, and to maintain the economic interests and decency of the general public by doing away with possible unfair competition in trade practices. The Act has provision of constituting a Board consisting 11 persons under the Chairmanship of the Secretary, Ministry of Industries, Commerce and Supplies. This Board has mandate to enhance fair competition in market by protecting the market.

3. Institutional Provision:

Office of the Prime Minister and Council of Ministers, Ministry of Law, Justice and Parliamentary Affairs, Commission for the Investigation of Abuse of Authority (CIAA), Department of Money Laundering Investigation, Office of Attorney General, Office of Auditor General, Revenue Investigation Department, National Vigilance Centre and Public Procurement Monitoring Office are closely engaged in activities related to prevention and control of corruption.

3.1. Commission for the Investigation of Abuse of Authority:

The Constitution of Nepal (the Constitution) has set up the Commission for the Investigation of Abuse of Authority (CIAA) as constitutional body. All arrangements for its independency and competency has been ensured by the Constitution. According to Article 238 of the Constitution, CIAA consists of the Chief Commissioner and four other Commissioners. They are appointed by the President on the recommendation of the Constitutional Council and after completing a parliamentary hearing. The Commission has been empowered to conduct or cause to be conducted, investigations of any abuse of authority committed through corruption by any person holding public office. If the Commission finds, on investigation, that a person holding public office has committed an act which is defined by law as corruption, it may file, or cause to be filed, a case against that person and other persons involved in that offence in the competent court.

3.2. Office of the Prime Minister and Council of Ministers:

Office of the Prime Minister and Council of Ministers coordinates the anti-corruption activities. It is the focal point to implement the National Strategy and Action Plan to implement the Convention against Corruption.

There is High Level UNCAC Implementation and Monitoring Committee in the chairpersonship of the Chief Secretary of GoN comprising Secretaries of relevant institutions. The Office of Prime Minister and Council of Ministers reviews the National Strategy and Action Plan in order to make it up to date.

All the Ministries have designated focal point with regard to National Strategy and Action Plan to implement the Convention. All the Ministries submit periodic and annual progress report

relating to the implementation National Strategy and Action Plan on UNCAC, to the Office of Prime Minister and Council of Ministries and it is published by the OPMCM annually.

3.3. Office of Auditor General:

The Auditor General's Office is a Constitutional Organ. The Auditor General acts as a watchdog over the financial activities of the government and semi-government organizations. It has been empowered by the Constitution to audit the accounts of all these organizations. It also issues necessary directives to improve the financial discipline and ultimately submits its annual report to the President. The report finally goes to the parliament for discussion.

3.4. Office of the Attorney General:

Office of the Attorney General has been empowered to make the final decision whether or not to initiate proceedings in any case on behalf of the GoN in any court or judicial authority wherein the rights interests and concerns of GoN involves. The Attorney General is the chief legal advisor of the GoN and has the right to appear and present his or her legal opinion on any legal question in any meeting of the legislature-parliament, or any other committees. The Government Attorneys have been assigned to the CIAA to carry out investigation and prosecution of corruption cases. Similarly, Special Attorney Office has been established for the pleading for corruption case.

3.5. Ministry of Law, Justice and Parliamentary Affairs:

Ministry of Law, Justice and Parliamentary Affairs conducts awareness program on anti-corruption in line with the National Strategies and Action Plan for Implementation of the UNCAC. It has published legal awareness booklet and disseminated to local level schools and communities.

3.6. National Vigilance Center (NVC):

It is a governmental anti-corruption agency. It has been established according to Prevention of Corruption Act, 2002 under the direct control and supervision of the Office of Prime Minister and Council of Ministers to conduct preventive and promotional activities against corruption.

3.7. Department of Money Laundering Investigation. (DMLI)

The DMLI is a principal entity for the prevention of money laundering and the financing of terrorism and investigation of cases involving money laundering and financing of terrorism. The DMLI, established on 15 July 2011, is one of the pivotal investigative units in Nepal to fight, among others, money laundering, terrorist financing and any forms of illegal earnings. The DMLI carries out investigations, upon the receipt of the information from various important sources, which include, the Financial Information Unit set up in the Nepal Rastra Bank (the central bank of Nepal), Nepal Police, and the general public.

Decisions with respect to prosecutions of money laundering and terrorist financing cases are

made by the OAG upon receipt and review of the investigation case files from the investigation officers designated by the Director General of the DMLI. The investigation officers are authorized to directly file the charge sheets in the Special Court.

3.8. Department of Revenue Investigation (DRI)

The DRI was established in 1994. Prior to this, a separate division called Revenue Investigation Division (the "RID") was established in the Ministry of Finance to investigate the cases of revenue leakage and control financial crimes. In 1994, the RID was converted into DRI to handle the functions related to investigation of revenue leakages and controlling economic crimes. At present, the DRI has four regional offices located at different

4. Development Regions of the country.

The DRI has been entrusted to discharge the functions and responsibilities under the Revenue Leakage (Investigation and Control) Act, 1996 and Foreign Exchange Regulation Act, 1963. In addition, officials of the DRI and its regional offices exercise such power as exercised by the Customs Officers, Tax Officers and Excise Officers as may be delegated by the GON under the Customs Act, 2008, Value Added Tax Act, 1995 and Excise Duty

5. Act, 2001, respectively.

Along with its originally assigned functions of controlling and investigating tax revenue leakages, the DRI has been entrusted with the responsibility of controlling and investigating non-tax revenue leakages since FY 2008-2009, as well. In a similar vein, the mandate of the DRI includes the control and investigation of foreign exchange irregularities.

3.9. Special Court :

Special Court was established on 25 December 2000 by publishing in the Nepal Gazette. Later it was made more effective and relevant as per Special Court Act, 2002 in order to accomplish the trial and decision of the special types of cases in an expeditious, prompt and effective manner, especially the cases related to Corruption.

3.10. Nepal Rastra Bank:

Nepal Rastra Bank, the central bank of Nepal, established in 1956 under the Nepal Rastra Bank Act, 1955 is the monetary, regulatory and supervisory authority of banks and financial institutions. The new Nepal Rastra Bank Act, 2002 which replaces the earlier Act and has ensured operational autonomy and independence to the Bank. Key objectives of the Bank are to achieve price and balance of payments stability, manage liquidity and ensure financial stability, develop a sound payments system, and promote financial services. The Board of Directors, chaired by the Governor, is the apex body of policy making and the Governor also discharges his duty as the chief executive of the Bank.

3.11. Beema Samiti:

Beema Samiti is the Insurance Regulatory Authority of Nepal. Beema Samiti is synonymous to Insurance Board which is constituted to systematize, regularize, develop and regulate the insurance business within the country under Insurance Act, 1992. As a regulatory body, the Samiti's main concern is to create a professional, healthy and developed insurance market in Nepal.

3.12. Nepal Telecom Authority:

Nepal Telecom Authority (NTA) is an independent body founded under the Telecommunication Act, 1997. The NTA is responsible for regulating all matters related to telecommunications create the optimum conditions for the development of telecommunications sector in Nepal by serving the public interest in terms of quality, choice and value for money, healthy competition among service providers and the nation in its drive for socio-economic advancement through efficient private sector participation.

3.13. Securities Board of Nepal:

Security Board of Nepal is established by the Government of Nepal on June 7, 1993 as an apex regulator of Securities Markets. It has been regulating the market under the Securities Act, 2006. The Governing Board of Securities Board of Nepal is composed of seven members including one full time chairman appointed by the Government for tenure of four years. It issues the necessary securities regulations and directives, registers the securities of public companies, regulate and systematize the issue, transfer, sale and exchange of registered securities. Similarly, it has authority to issue license to operate stock exchange, license to stock broker, dealer, merchant banker and fund manager and license to depository company, depository participant and credit rating agency.

Other regulatory agencies are Department of Cooperatives, Office of the Company Registrar, Civil Aviation Authority, etc. which look after the regulatory matters in their respective areas.

4. Policy and Progarmme of the fiscal year 2018-2019

The GoN is committed to zero tolerance policy against any form of corruption by any level. Both actors (parties) engaged in corruption will be punished. Necessary amendments will be made in the existing law to bring all type of corrupt activities under the ambit of laws committed in any sector. The legislation relating to whistle blower and witness protection will be drafted.

5. Preventing and Managing Conflict of Interest:

Sub-section (1) of Section 50 of the National Civil (Code) Act, 2017 prohibits to participate in any decision making process by any organization or member or operator of the body. If it is the subject of personal interest. Similarly, sub-section (2) of this Section provides that if the decision is affected due to the conflict of interest in accordance with sub-section (1) shall be void.

Similarly, Section 518 of this Code has provision about the voidable contract. Clause (b) of the Sub-section (1) of this Section provides that contract concluded through of undue influence may be voidable.

According to Section 18 of the Good Governance (Management and Operation) Act, 2007 provides that the concerned official should avoid making decision on any matter involving his or her personal interests or concerns. Violation of this provision is punishable with departmental actions under the respective service laws.

According to clause (f) of the sub-Section (1) of Section 18 of BAFIA, if any person, firm and company have any type of shares or personal interest with the debtor or reinstate auditor or advisor, is incompetent for promoter of the financial institution.

In addition, the public procurement laws provide that the procuring authority shall have duty to avoid conflict of interest of any type in the entire procurement process.

Clause (p) of sub-Section (2) of Section 13 of Public Procurement Act, 2007 requires to include information that bids shall not be processed in the event of conflict of interest or information relating to legal action for fraud or corruption. Clause (j) of sub-Section (2) of Section 31 of the Act provides that the bidder must mention the statement that proposals will not be processed in the event of conflict of interest and information relating to legal action if fraud or corruption is committed.

Similarly, most of the government institutions have issued the code of conducts for its officials or staff. Other sectorial laws also provide for measures in order to avoid conflict of interests.

6. **Assets and Interest Disclosure System:**

In order to promote transparency, the Constitution guarantees the right to information on matters of public concern as a fundamental right. To give effect to this provision, the Right to Information Act has been enacted and being enforced. National Information Commission has been constituted as a statutory body to give effect to this Act. The Act provides that in case a public official does not provide information that has to be provided under the Act, the Commission may impose a fine.

According to Clause (c) and (g) of Section 24 of the BAFIA the promoter of the bank and financial institution shall have to submit the details of the name of family, the person and the concerned person, financial interest of the person or his/her family and ownership of the share of the person or his/her family's in the bank or financial institution or other body and details of any kinds of personal interest or concern related to the appointment of executive head, company secretary and auditor, as the case may be. If the promoter or any member of his/her family has any kind of direct or indirect significant ownership or any other kind of interest in the bank or financial institution, such promoter shall give detailed information to the first meeting of the Board of Directors.

Sub-section (4) of Section 25 provides that if the promoter discusses the matters related to any interests which is personal interest of any promoter shall inform about his/her interest in the

matter beginning meeting of such committee and shall have to separate from discussion of such matter. Similarly, sub-Section (c) of Section 50 and Section 64 of the Act have provisions related to conflict of Interest.

Section 47 of the Civil Service Act, 1993 prohibits any member of the civil service to accept any donation, gift or present of any type that may affect the functioning of his or her office. Section 48 of the Act prohibits establishing or operating a company or running a trade or business or accepting an employment outside Nepal or abroad by a member of civil service without obtaining approval of GoN.

Rule 21 of the Good Governance (Management and Operation) Regulation, 2008 provides specific procedures to be followed for obtaining approval for opening a bank account abroad.

In addition to the above statutory provisions, Codes of conducts of different state institutions, including judiciary and the CIAA, stress on avoiding conflict of interest and disclosure of assets and interests.

7. Best Practices for Prevention of Corruption:

a. Commission for the Investigation of Abuse of Authority:

Some Good practices adheres by Commission for the Investigation of Abuse of Authority in order to prevent Corruption are as follows:

(i) Regular communication through different media:

CIAA makes information public through print, broadcast and online media. CIAA bulletin, annual progress report, CIAA souvenir and Radio programs are also available in CIAA website (<http://www.ciaa.gov.np>). CIAA punitive, preventive and promotional activities are made available in its webpage and facebook page (www.facebook.com/NepalCIAA). Dissemination of instant information helps in discouraging public officials from indulging in corruption related crimes.

CIAA has also taken appropriate measures for facilitating the access of any person, group or organization to submit complaints or information to CIAA through any of available means of communication including hotline, telephone, toll free number, fax, P.O. Box, email, web page. Acts of corruption may also be reported through official letters. CIAA also investigates on media reporting of corruption cases. Anonymous complaints can also be registered and investigated. Easy access to complain also assists in prevention of corruption.

(ii) Education, interaction and coordination programs

CIAA organizes interaction programs with different stakeholders including the local elected representatives and public officials. Community education programs are conducted in schools and colleges. These programs help to educate them and foster their support in anti-corruption movement and also to get feedback for policy and procedural reforms.

CIAA organizes coordination meeting and discussion with administrative heads of ministries and departments and encourages them to use preventive measures to avoid corruption in different sectors like service delivery and public procurement. Meetings are also organized with Focal Persons of different agencies.

(iii) Providing policy suggestions to the GoN

Based on the findings of investigation of complaints, CIAA has been providing suggestions to GoN for preventing corruption and promoting good governance. Annual Report of the Commission submitted to the president incorporates such suggestions and it is presented before the Parliament for deliberations.

(iv) Conducting reformatory programs

CIAA has recently formulated and implemented a Concept Paper on Preventive and Promotional Measures for Corruption Control that emphasizes on policy and institutional reforms. The concept paper includes programs like identifying areas & sectors vulnerable to corruption, developing corruption prevention guidelines, strengthening internal control systems, deputing integrity officers, monitoring procurement unit, using digital flash board and queue machine, etc. for effective service delivery. CIAA has also taken initiatives for simplifying office procedures, implementing SOPs and using IT to ensure transparency.

(v) CIAA Code of Conduct

Code of Conduct for CIAA officials has been developed and implemented in CIAA for preventing and managing conflicts of interest. Any employee joining CIAA is bound to sign and follow them. This code of conduct restrict officials and employees to accept gift or souvenir, to use authority or facility of the Commission for private benefit, to accept any external employment and to involve in any investigation into a complaint or decision-making process in which there is conflict of interest. These measures are complemented by relevant trainings. New officials joining CIAA are offered orientation on integrity and code of conduct.

b. National Vigilance Center:

The National Vigilance Center also carries out preventive measures including awareness-raising activities in line with the National Strategies.

Some Activities conducted by National Vigilance Center:

- (i) Center conducts awareness programme, integrity classes for more than 2000 students of secondary schools or colleges, to make them aware against corruption and irregularities.
- (ii) Center conducts client satisfaction survey and monitors citizen charters about government and public services at district level and present reports at the district interaction programme.

- (iii) NVC conducts more than 100 technical audits of national pride projects and other infrastructure projects as well.
- (iv) NVC inspects, checks, cross-checks and monitors more than 600 government and public offices every year.
- (v) It conducts awareness campaign and organizes district level interaction workshops against corruption, in which officials, politicians, media reporters, civil society members and member of user groups participate and discuss how to control corruption in their districts.
- (vi) Every year, it investigates more than 1500 corruption and irregularity related cases received from various sources, and take necessary decision.
- (vii) It conducts detailed studies in various organization in order to find out corruption and irregular practices.
- (viii) It transmits different slogan, documentary, jingle against corruption through different media and different stickers of anti-corruption slogan are posted in different public classes.

The component of anti-corruption are included in all types of trainings provided by National Administrative Staff College, Revenue Administration Training Center, Judicial Service Training Centre etc. to the government service providers.