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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Nepal

1. Introduction: overview of the legal and institutional framework of Nepal in the context of implementation of the United Nations Convention against Corruption

Nepal signed the United Nations Convention against Corruption on 10 December 2003, ratified it on 23 February 2011 and deposited its instrument of ratification on 29 March 2011.

The implementation by Nepal of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was published on 2 August 2016 (CAC/COSP/IRG/I/4/1/Add.42).

Article 279 of the Constitution of Nepal, 2015, provides that the ratification of, accession to, acceptance of or approval of treaties or agreements to which Nepal or the Government of Nepal is to become a party shall be as provided for by law. The Nepal Treaties Act of 1991 provides that any domestic legal provision inconsistent with a provision of a treaty ratified by Nepal will not be applicable insofar as it is contradictory; instead, the treaty provision will apply directly.

The national legal framework for preventing and countering corruption includes provisions from a number of laws, notably the Prevention of Corruption Act, 2002 (last amended in 2010), the Money-Laundering Prevention Act, 2008 (last amended in 2019), the Act relating to Freezing, Seizing and Confiscation of Proceeds and Instrumentalities of Criminal Offences, 2014 (Confiscation Act), the Mutual Legal Assistance Act, 2014, the National Criminal Code, the National Criminal Procedure Code and the Civil Service Act, 1993. Nepal is also a party to a number of international agreements on international cooperation, crime control and crime prevention.

The Nepalese authorities cooperate at the international level through different mechanisms and networks, including the Asia/Pacific Group on Money Laundering, the Egmont Group of Financial Intelligence Units, the Asset Recovery Inter-Agency Network for Asia and the Pacific and the International Criminal Police Organization (INTERPOL).

Nepal has a number of bodies and agencies concerned with preventing and combating corruption, including the Commission for the Investigation of Abuse of Authority (CIAA), the Office of the Auditor General, the Office of the Prime Minister and Council of Ministers, the Ministry of Law, Justice and Parliamentary Affairs, the Department of Revenue Investigation, the Department of Money-Laundering Investigation, the National Vigilance Centre, the Judicial Council, the Independent Review Committee under the Public Procurement Act, the Public Procurement Monitoring Office and the Financial Information Unit.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

The National Strategy and Plan of Action for the Implementation of the Convention against Corruption, launched in 2012, is the main preventive anti-corruption policy in Nepal. It contains strategies on the following: (a) prevention of corruption; (b) criminalization; (c) international cooperation; (d) asset recovery and technical support; and (e) exchange of information. Each strategy is complemented by a working policy and a plan of action developed with the involvement of relevant stakeholders. A committee for the implementation and monitoring of the action plan was established pursuant to the Strategy and Plan of Action. The authorities reported

on the limited implementation of the Strategy and Plan of Action owing to the health situation at the time of the country visit.

Nepal has established and promoted effective practices aimed at the prevention of corruption, including a study on corruption at the local level, education programmes on the prevention of corruption and the promotion of good governance for civil servants and citizens, and the broadcasting of awareness-raising programmes on television and radio.

The compliance of existing legislation with the Convention was assessed before the drafting of the National Strategy and Plan of Action. Although legal instruments and administrative measures are evaluated occasionally, there is no timeline or pre-established plan in this regard.

The Office of the Prime Minister and Council of Ministers acts as the focal point for the effective implementation of the National Strategy and Plan of Action (sects. 6.1 and 6.9 of the Strategy and Plan of Action). The National Vigilance Centre is subject to direct control and supervision by the Prime Minister and has a mandate, inter alia, to monitor the statements of property and income submitted by public officials, to carry out surveillance and investigations of corruption and to make recommendations to the Government regarding policies, strategies and any necessary amendments to anti-corruption laws (sects. 37 and 38 of the Prevention of Corruption Act). Moreover, the Office also conducts technical audits of projects constructed or operated by government offices or public institutions as needed (rule 13 of the National Vigilance Centre (Operation) Regulation, 2009).

The Department of Money-Laundering Investigation, established under section 11 of the Money-Laundering Prevention Act, is the main authority for the prevention of money-laundering.

CIAA, the National Vigilance Centre and the Office of the Prime Minister and Council of Ministers conduct awareness-raising programmes against corruption.

CIAA is empowered to carry out research and develop processes to prevent corruption and improper conduct (sect. 35b, para. 2, of the CIAA Act). The Chief Commissioner and Commissioners are appointed by the President on the recommendation of the Constitutional Council for a term of six years, without the possibility of reappointment (art. 238, paras. 2 and 3, of the Constitution), and their removal is only possible under certain circumstances (art. 238, para. 4). They must not be members of any political party at the time of appointment (art. 238, para. 6), after which they will not be eligible for appointment in other government services (art. 238, para. 8). CIAA has the necessary material resources and specialized staff to carry out its functions.

During the country visit, Nepal was reminded of its obligation to inform the Secretary-General of the name and address of the authority that may assist other States parties in developing and implementing specific measures for the prevention of corruption.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The recruitment, hiring, retention, promotion and retirement of public officials are regulated through the Civil Service Act and the Civil Service Regulation, 1993.

Positions in the civil service are filled through open competitive procedures or promotion (sect. 7 of the Civil Service Act). Positions in the federal civil service and federal government services are filled by way of competitive examinations following open, proportional and inclusive principles (art. 285, para. 2, of the Constitution). There are special provisions on requirements for appointments to offices in constitutional bodies (art. 245, para. 6; art. 248, para. 6; art. 252, para. 6; art. 255, para. 6; and art. 292 of the Constitution). Announcements of competitive examinations are published online and in newspapers, and promotions are granted on

the basis of competency evaluations, internal competitive examinations, work performance, experience and education (sects. 19 and 21 of the Civil Service Act).

The Public Service Commission is in charge of conducting the examinations, when applicable, and all permanent appointments to pensionable positions in the Government must be made in consultation with the Commission (art. 243 of the Constitution).

Although Nepal identified positions that are more prone to corruption in its national risk assessment on money-laundering and countering the financing of terrorism, that information is not used for the purposes mentioned in article 7, paragraph 1 (b), of the Convention. The transfer of civil servants is possible under section 18 of the Civil Service Act.

Salaries of public officials are reviewed periodically by a salary and allowance review committee, taking into consideration the consumer price index (sect. 27, paras. 1a and 1b, of the Civil Service Act). Article 18 of the Constitution guarantees the principle of equality in remuneration.

Civil servants are trained, including on integrity issues, when assuming public office, while in office, and when special capacity-building is required. Although specific training tailored to positions that are more vulnerable to corruption is not offered, training aimed at raising awareness and increasing knowledge of the risks of corruption is provided. In addition, candidates for posts at the level of secretary or an equivalent level must successfully complete a high-level management training programme (i.e. the senior executive development programme; sect. 19, para. 2 (c), of the Civil Service Act).

The Election Commission is mandated to conduct, supervise, direct and control elections at all levels (arts. 245 and 246 of the Constitution). The eligibility criteria for election to public offices are governed by the Constitution (art. 64, para. 1; art. 69; art. 87, para. 1; art. 178, para. 1; art. 215, para. 5; and art. 216, para. 5).

Members of the Federal Parliament must not hold any other position for which remuneration or an economic benefit is paid from government funds (art. 87, para. 1, of the Constitution). Persons convicted of certain offences, such as corruption, organized crime or money-laundering, cannot stand for election at any level (sect. 13 of the House of Representatives Election Act, 2017; sect. 13 (g) of the Local-level Election Act, 2017; sect. 13 (e) of the Provincial Assembly Election Act, 2017; sect. 12 (e) of the President and Vice-President Election Act, 2017; and sect. 12 (e) of the National Assembly Election Act, 2018).

Every political party and candidate must submit to the Election Commission details of expenditure incurred during election processes within 35 days (sect. 25 of the Election Commission Act; sect. 64, para. 5, of the Local-level Election Act; sect. 72, para. 4, of the House of Representatives Election Act; sect. 62, para. 4, of the President and Vice-President Election Act; sect. 65 of the National Assembly Election Act). The Election Commission sets expenditure limits that political parties and candidates must not exceed (sect. 24 of the Election Commission Act, 2017). However, at the time of the country visit, Nepal did not have specific legislation on political campaign financing.

Accounts maintained by political parties are audited within six months after the end of the fiscal year and submitted to the Election Commission within one month (sect. 25, para. 1, of the Election Commission Act, 2017). Certain donations to political parties, such as those made by the Government, are prohibited (sect. 38, para. 2, of the Political Parties Act).

While executing administrative functions, authorities must adhere to the principles of transparency, objectivity, accountability and honesty (sect. 6 of the Good Governance Act). Public officials with a conflict of interest in a given matter are to abstain from deciding on that matter (sect. 18 of the Act).

Public officials must request approval from the Government to accept gifts, donations, presents or gratifications, including those directed towards their family members (sect. 47 of the Civil Service Act) and must not accept any kind of employment outside the civil service without the authorization of the Government, except for literary, scientific or artistic work (sect. 48 of the Act). However, there is no obligation to declare employment in those sectors or to declare outside activities and benefits from which a conflict of interest may arise.

Nepal has adopted several codes of conduct in the public sector, such as the Regulation Concerning the Conduct of Employees of the Civil Service, the Code of Conduct of Government Attorneys and the Diplomatic Code of Conduct, among others. Non-compliance with such codes may lead to sanctions (sect. 23, paras. 4 and 5, of the Good Governance Act).

Although there are no reporting channels specific to the public sector, public officials can make use of the general reporting channels and are protected against retaliation (sect. 29 of the Right to Information Act). However, they are not obliged to report illegal acts.

Judges are appointed upon recommendation by the Judicial Council (sect. 5 of the Judicial Council Act), and the Chief Justice is appointed by the President on the recommendation of the Constitutional Council (art. 129 of the Constitution).

The Judicial Council is mandated to make recommendations or to advise on appointments, transfers, disciplinary action and dismissals in relation to judges, as well as to carry out investigations on allegations of abuse of authority by judges. Its composition is regulated in article 153 of the Constitution.

Vacancies for district judges are filled on the basis of seniority, qualifications and competency evaluations or competitive examinations (art. 149 of the Constitution). High Court and Supreme Court judges do not undergo competitive examinations, but their appointment is based on criteria such as seniority, experience, knowledge, efficiency, honesty, impartiality and moral conduct, among others (sect. 5 of the Judicial Council Act).

Nepal has enacted a code of conduct for judges, whose compliance with the code is monitored by the Judicial Council (sect. 16 and sect. 33, para. 1d, of the Judicial Council Act). Non-compliance may lead to dismissal (art. 101 of the Constitution). The commission of offences of corruption or money-laundering and the violation of professional conduct are grounds for ineligibility for judges (sect. 7 of the Judicial Council Act) and constitute misconduct (sect. 11, para. 1, of the Act). High Court or District Court judges are suspended when a case is filed against them on the basis of misconduct (sect. 23 of the Act).

Judges have the obligation to submit a statement of property within 60 days from the date of completion of each fiscal year (sect. 29 of the Act).

The roles of the Attorney General and government attorneys are specified in the Constitution (art. 158). However, there is no specific law governing the prosecution service. Government attorneys are governed by the Civil Service Act and the Civil Service Regulation, and they are appointed, transferred and promoted upon the recommendation of the Judicial Service Commission (art. 154 of the Constitution), which, together with CIAA, also monitors prosecutorial discretion (sect. 99 of the National Criminal Code).

Government attorneys may be dismissed if they commit corruption offences (sect. 61 of the Civil Service Act).

Public procurement and management of public finances (art. 9)

Public procurement is regulated by the Public Procurement Act, 2007, and the Public Procurement Regulation, 2007, which provide for six modalities of procurement: international-level bidding, procurement through tender procedures, sealed quotation, direct purchase, users' committee or beneficiary group, and force account

arrangements (sects. 11, 15, 40, 41, 44 and 45 of the Public Procurement Act). The choice of modality depends mainly on the goods or services to be procured and their price. The Public Procurement Monitoring Office oversees procurement processes, and its functions include making recommendations to the Government for the amendment of procurement policies and laws, issuing technical guidelines, offering advice on procurement legislation and submitting annual reports on procurement proceedings (sect. 64 of the Act).

Each public entity is responsible for its own procurement processes, which are to be carried out by employees with the required qualifications, knowledge and training (sect. 7 of the Public Procurement Act). The description of goods to be procured must be prepared on the basis of relevant, objective technical and quality characteristics and functions (sect. 4 of the Act). Moreover, the bidding documents must contain all relevant information for preparing and submitting bids, and the criteria and methodology for their evaluation and selection (sect. 13, para. 2 (b), of the Act; rule 40 of the Public Procurement Regulation).

There are provisions regulating conflicts of interest for officials involved in public procurement proceedings and bidders or applicants (sect. 61, para. 1 (c) and (f), and sect. 62, para. 3, of the Public Procurement Act).

Invitations to bid must be published, including on the website of the entity concerned or that of the Public Procurement Monitoring Office, for 30 days in the case of national invitations or for 45 days in the case of international invitations (sect. 14 of the Public Procurement Act).

Bidders who believe that an error or breach has occurred in a procurement decision made by a public entity can file an application for review with the chief of that public entity within seven days from the date on which they become aware of the error or breach and before the entry into force of the procurement contract (sect. 47 of the Public Procurement Act; sects. 100–108 of the Public Procurement Regulation). If the claim is not sustained, the bidder may file an application for review before the Review Committee (sects. 48–50 of the Public Procurement Act), which acts as a review tribunal. Even after the exhaustion of the remedy involving the Review Committee, bidders may resort to judicial remedies under the extraordinary jurisdiction of the court.

The process of preparing the national budget commences with the receipt of budget limits from the National Planning Commission. The Ministry of Finance prepares proposals for the annual appropriations bill and submits the annual estimate to both chambers of the Federal Parliament, together with a statement of the expenses allocated to each ministry in the previous financial year (art. 119 of the Constitution). Under certain circumstances, a supplementary estimate can be submitted (art. 121 of the Constitution).

The Office of the Auditor General is mandated to audit the accounts of all federal, provincial and local government offices, having regard to, *inter alia*, economy, efficiency, effectiveness and the propriety of the accounts (art. 241 of the Constitution). The internal control and audit of each ministry is carried out by an internal control committee, which has a mandate to minimize financial risks (sect. 32 of the Financial Procedures and Fiscal Accountability Act). Nepal reported that off-budget expenditure is not permitted (on the basis of art. 116 of the Constitution and sect. 24 (3) of the Financial Procedures and Fiscal Accountability Act).

Public accounting must follow the double entry system of accounting and generally accepted principles of accounting (sect. 25 of the Financial Procedures and Fiscal Accountability Act). It is the responsibility of the chief of each office to maintain records and accounts for 10 years (annex 4 to the Rules on the Disposal of Government Documents, 1971) and to prepare financial statements (sect. 27, para. 5, of the Act). The forgery of public documents is a criminal offence (sect. 9 of the Prevention of Corruption Act).

Not all accounting books, records and financial statements are digitalized.

Public reporting; participation of society (arts. 10 and 13)

The right of Nepalese citizens to gain access to information is regulated in article 27 of the Constitution and in the Right to Information Act. Exceptions to the right of information are made according to the nature of the information requested, including on the basis of individual privacy, among other grounds (sect. 3, para. 3, of the Act). Information of a personal nature must be protected (sect. 28 of the Act). The National Information Commission was established to protect and promote the right to information (sect. 11 of the Act).

Nepalese citizens can request information from the appointed information officers of each institution, who are to provide the information within 15 days if it is not immediately available (sects. 6 and 7 of the Right to Information Act). Fees for such information are based on the cost of providing it (sect. 8 of the Act). A complaint may be filed if the information is not provided, is provided only in part or is incorrect (sects. 9 and 10 of the Act).

Government offices engaged in public relations work publish information proactively, including on services offered, procedures to be followed, responsible officers and fees (sect. 25 of the Good Governance Act). In addition, public offices disseminate information about their functioning and decision-making processes through websites, periodic reports, information handbooks and media briefings.

Public bodies must make access to information simple and easy (sect. 4 of the Right to Information Act), and the Government has issued guidelines on simplifying the procedures contained in the Good Governance Act. Most public entities have established hotlines to enhance citizens' access to information and regularly upload information to their websites.

The Government, constitutional bodies and institutions at the central level must submit annual reports on their functioning, programmes implemented and achievements (arts. 53 and 294 of the Constitution; sect. 41 of the Good Governance Act). Nepal does not publish information on the risks of corruption in its public administration.

The main legal instruments governing the functioning of civil society are the Associations Registration Act, 1977, and the Social Welfare Council Act, 1992. Before implementing measures of public concern, the Government may conduct consultations with civil society and stakeholders (sect. 20 of the Good Governance Act). Nepal works closely with civil society and provided examples of consultations carried out during the drafting of legal instruments and policies.

CIAA has set up a number of "citizens' juries" for the promotion of dialogue on corruption. In addition, CIAA, the National Vigilance Centre and the National Information Commission have conducted several activities to contribute to the non-tolerance of corruption and to raise awareness.

Acts of corruption and other offences under the Convention can be reported, including anonymously, to CIAA by different means, such as telephone, fax, mail, email or the CIAA website. In addition, any person who has information on the commission of money-laundering offences can report it to the Department of Money-Laundering Investigation (sect. 13 of the Money-Laundering Prevention Act).

Private sector (art. 12)

Companies are required to include in the memorandum and articles of association the names of their promoters and shareholders, the procedures for convening the general meeting and the powers and duties of the board of directors (sects. 19–22 of the Companies Act).

Private companies must submit a copy of each annual financial statement, certified by an auditor, to the Office of the Company Registrar within six months of the completion of the financial year (sects. 80 and 81 of the Companies Act). However, they are not obliged to publish their articles of association or financial statements,

which are available only to stakeholders with a clear interest in the company, and they are not required to furnish information on beneficial ownership to the Office of the Company Registrar.

Private companies must appoint a licensed auditor, who must certify the balance sheet, profit and loss account and cash flow statement (sects. 111 and 115 of the Companies Act). Grounds for the disqualification of persons from being appointed as auditors are set out in sections 111 and 112 of the Act. The Office of the Company Registrar is entitled to request explanations and investigate documents submitted by companies (sect. 120 of the Act).

Accounts and financial statements must be prepared following the double entry system of accounting, be in line with the accounting standards enforced by the competent body and be kept for five years (sect. 108 and sect. 109, para. 8, of the Companies Act). Sanctions are prescribed for directors or officers who hide, damage or fail to maintain such books (sect. 160 of the Act). However, not all acts set out in article 12, paragraph 3, of the Convention have been explicitly prohibited.

Although there is no obligation for private companies to implement corporate governance regulations, legal persons may receive rewards for their cooperation in the investigation of corruption cases (sect. 58 of the Prevention of Corruption Act). Sectoral laws prescribe standards and procedures to safeguard integrity and establish a number of regulatory bodies mandated to monitor compliance, such as the Institute of Chartered Accountants under the Chartered Accountants Act, the Department of Cooperatives under the Cooperatives Act, the Insurance Board under the Insurance Act, or Nepal Rastra Bank under the Nepal Rastra Bank Act. The Chamber of Commerce and Industries of Nepal has adopted a business code of conduct for affiliated entities.

Even though there is no specific provision prohibiting the tax deduction of expenses that constitute bribes, according to the government authorities, the tax deductibility of such expenses would not be possible because the Income Tax Act does not provide for such deductions.

Measures to prevent money-laundering (art. 14)

The legal anti-money-laundering regime of Nepal consists principally of the Money-Laundering Prevention Act and the Money-Laundering Prevention Rules of 2016, in addition to orders, regulations and guidelines issued by the Financial Information Unit, Nepal Rastra Bank, the Securities Board of Nepal, the Insurance Board and other supervisory authorities (pursuant to sect. 7U (2) of the Money-Laundering Prevention Act).

To comply with the anti-money-laundering requirements, all financial institutions and designated non-financial businesses and professions (i.e. non-financial institutions pursuant to sect. 2 (c) of the Money-Laundering Prevention Act) must have in place internal anti-money-laundering systems, including customer and beneficial owner identification, the ongoing monitoring of transactions, the application of enhanced due diligence to high-risk customers, accounts and transactions, and record-keeping and reporting of suspicious transactions (see the section on article 52 below).

Section 7L of the Money-Laundering Prevention Act requires ordering financial institutions, including money remitters, to include accurate originator and beneficiary information in wire transfers of funds. The same section also requires intermediary and receiving financial institutions to ensure that such information has been received. Financial institutions are also required to apply risk-based procedures to determine whether to execute, reject or suspend a transfer of funds when information on the payer or the payee is incomplete.

Section 7T of the Money-Laundering Prevention Act establishes the authorities with anti-money-laundering supervisory functions for each reporting entity. Those include Nepal Rastra Bank, the Securities Board of Nepal, the Insurance Board, the Notary

Public Council, the Institute of Chartered Accountants of Nepal and the Nepal Bar Council.

The supervision of designated non-financial businesses and professions is an area for improvement.

The national risk assessment was one of the 10 objectives of Nepal's national strategy and action plan on money-laundering and countering the financing of terrorism for 2011–2016. Nepal finalized its national risk assessment in 2016 and is in the process of reviewing it in accordance with the Nepal Rastra Bank strategic plan 2017–2021. Nepal has taken measures with a view to addressing the main risks identified.

The Financial Information Unit was established as a functionally independent and autonomous department in Nepal Rastra Bank and became operational in 2008. It receives and analyses suspicious transaction reports and other information related to money-laundering, terrorist financing and predicate offences, and it disseminates the results of such analysis to the Department of Money-Laundering Investigation and other investigative agencies and foreign financial intelligence units (sect. 9 of the Money-Laundering Prevention Act). The Financial Information Unit joined the Egmont Group in 2015.

Anti-money-laundering supervisory and law enforcement authorities cooperate and exchange information at both the domestic and international levels (sects. 7U, 10 and 12 of the Money-Laundering Prevention Act; sect. 85 of the Nepal Rastra Bank Act).

Nepal has adopted a written declaration system for cash and bearer negotiable instruments upon entry into or departure from the country if the value equals or exceeds \$5,000 or its equivalent (chap. 6A of the Money-Laundering Prevention Act). That system is not, however, adequately implemented. The Money-Laundering Prevention Act provides for the confiscation of cash and bearer negotiable instruments if they are related to an offence or in the case of non-declaration or false declaration, as well as the imposition of a fine equal to the confiscated amount (sect. 29B of the Money-Laundering Prevention Act).

Nepal has taken measures, including amendments to the Money-Laundering Prevention Act, to address many of the shortcomings identified in the mutual evaluation report issued by the Asia/Pacific Group on Money Laundering in 2011, including those related to preventive measures and supervision.

Nepal actively contributes to the development and strengthening of regional and international cooperation on the fight against money-laundering, in particular through its active participation in the Asia/Pacific Group on Money-Laundering, the Egmont Group and the Asset Recovery Inter-Agency Network for Asia and the Pacific.

2.2. Successes and good practices

- Nepal has established “citizens’ juries” for the promotion of dialogue on corruption (art. 13).

2.3. Challenges in implementation

It is recommended that Nepal:

- Consider developing and putting in place a monitoring and evaluation mechanism to ensure the relevance of its anti-corruption legal instruments and administrative measures (art. 5, para. 3).
- Ensure the necessary independence of the National Vigilance Centre (art. 6, para. 2).
- Make use of the positions identified as “more prone to corruption” in its national risk assessment and provide for adequate procedures for their selection, training and rotation, where appropriate (art. 7, para. 1).

- Consider enacting specific legislation on political campaign financing (art. 7, para. 3).
- Endeavour to strengthen the legal framework on conflicts of interest, including by adopting a comprehensive law on the topic (art. 7, para. 4).
- Endeavour to require public officials to declare, inter alia, outside activities, employment, investments, assets and benefits from which conflicts of interest may result (art. 8, para. 5).
- Draft and publish periodic reports on the risks of corruption in its public administration (art. 10 (c)).
- Ensure that the criteria for the selection of High Court and Supreme Court judges upon the recommendation of the Judicial Council are adequately implemented (art. 11, para. 1).
- Promote transparency in the private sector, including by requiring companies to furnish information on the identity of their beneficial owners to the Office of the Company Registrar (art. 12, paras. 1 and 2).
- Take effective measures to implement the prohibition of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditure and the entry of liabilities with incorrect identification of their objects (art. 12, para. 3).
- Explicitly disallow the tax deductibility of expenses that constitute bribes (art. 12, para. 4).
- Take the necessary measures to improve the supervision of designated non-financial businesses and professions for anti-money-laundering purposes (art. 14, para. 1 (a)).
- Consider strengthening the enforcement of the cross-border declaration system for cash and bearer negotiable instruments (art. 14, para. 2).

2.4. Technical assistance needs identified to improve implementation of the Convention

- Capacity-building for officials working at CIAA, the National Vigilance Centre and the Public Procurement Monitoring Office in order to update their knowledge regarding new trends and good practices.

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Asset recovery is mainly governed by the general provisions on international legal assistance in the Mutual Legal Assistance Act, the Confiscation Act and the Money-Laundering Prevention Act, in addition to relevant bilateral and multilateral treaties to which Nepal is a party.

The Ministry of Law, Justice and Parliamentary Affairs is the central authority for mutual legal assistance. Requests should be sent through diplomatic channels (sect. 19 of the Mutual Legal Assistance Act).

Nepal can cooperate in the area of asset recovery on the basis of reciprocity and regardless of the existence of a treaty, except for the enforcement of decisions of foreign courts (sect. 3 (2) of the Act). The same set of measures and procedures that are available in domestic criminal proceedings, including those relating to the tracing, freezing, seizure and confiscation of property, are available in the context of such cooperation. Nepal implements the provisions of the Convention directly in cases where no relevant agreement applies.

Nepal has never received nor sent a request related to asset recovery.

Nepal may provide information spontaneously to other States and has done so in the past. Section 10 (2) of the Money-Laundering Prevention Act explicitly provides for the spontaneous exchange of information. The Financial Information Unit has signed 16 memorandums of understanding with its foreign counterparts relating to cooperation, including the spontaneous exchange of information. The authorities also spontaneously exchange information through the Egmont Group and INTERPOL.

Nepal is party to a number of bilateral and multilateral international cooperation agreements in the areas of crime control and the tracing of criminals and proceeds of crime.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Financial institutions and designated non-financial businesses and professions are subject to anti-money-laundering requirements in accordance with the Money-Laundering Prevention Act and relevant orders, regulations and guidelines issued by the supervisory authorities, including the Money-Laundering Prevention Rules.

Those requirements cover customer due diligence measures, including customer identification and verification (sect. 7A of the Money-Laundering Prevention Act), beneficial owner identification (sect. 7C of the Act), ongoing monitoring of transactions and periodic and continuous updating of data (sect. 7I of the Act), record-keeping (for five years; sect. 7R of the Act) and reporting of suspicious transactions to the Financial Information Unit (sect. 7S of the Act). The requirements also include assessing the risks of money-laundering and taking appropriate measures to manage those risks (sect. 7D of the Act) and applying enhanced due diligence to high-risk customers, accounts and transactions, including accounts held by domestic and foreign politically exposed persons and their family members and close associates (sect. 7B of the Act). Adequate sanctions for non-compliance are provided for (sect. 7V of the Act).

Section 7E of the Money-Laundering Prevention Act is dedicated to enhanced customer due diligence measures. The Financial Information Unit issued guidelines for suspicious transaction reporting in January 2020, which provide detailed instructions on persons, accounts and transactions that must be given particular attention. Section 7U (2) of the Act allows regulators to notify financial institutions, at the request of another State party or on their own initiative, of the identity of particular natural or legal persons to whose accounts such institutions are expected to apply enhanced scrutiny, in addition to those persons whom the financial institutions may otherwise identify.

The Money-Laundering Prevention Act prohibits the establishment and operation of shell banks. It also prohibits financial institutions from having business relations with shell banks or with institutions that allow transactions with shell banks (sects. 7 and 7M of the Act).

Nepal has established a paper-based financial disclosure system for public officials. The system does not, however, seem to fulfil its purpose effectively. Section 50 of the Prevention of Corruption Act and section 54 of the Civil Service Act require all public officials, whether appointed, nominated or elected, to submit, within 60 days from the date of assuming public office, and thereafter within 60 days from the date of completion of each fiscal year, updated statements of property in their names or in the names of their family members, along with the sources or evidence of those assets. The Prevention of Corruption Act and the Civil Service Act do not require the submission of such a statement at the end of service. Furthermore, the definition of family in the Civil Service Act, which covers, *inter alia*, grandfathers, grandmothers, mothers and fathers-in-law, seems excessively broad.

Although the Prevention of Corruption Act and the Civil Service Act do not define the “property” to be reported and do not cover liabilities, the statement of property

form covers the following: immovable property; cash, jewels, gold, silver, etc.; shares and bank balances; and details of mortgage loans and funds borrowed and lent.

Different bodies and authorities, referred to as “concerned offices”, were designated to receive the statements in a notification published in the Gazette dated July 2018.

The National Vigilance Centre collects from the concerned offices the names of those who submitted and did not submit the statement of property and sends the names to CIAA, which publishes on its website information on the number of officials who failed to submit their statements of property and imposes a fine on them.

The statements are confidential, and no authority is allowed to review their content except for CIAA in connection with investigations and inquiries. In such cases, the Prevention of Corruption Act does not preclude the possibility of sharing relevant information with competent foreign authorities. As an exception, the statements of the Prime Minister and Cabinet members are published pursuant to a Cabinet decision.

Section 16 of the Foreign Exchange Act requires Nepalese citizens residing in Nepal to obtain permission from Nepal Rastra Bank before opening a bank account in a foreign country. While that provision applies to Nepalese public officials residing in Nepal, it does not cover those residing abroad (such as diplomats) and does not extend to situations in which the public official does not have the foreign bank account in his or her name but has signature or other authority over it.

The Financial Information Unit receives suspicious transaction reports, threshold transaction reports and customs declarations and has broad access to information sources to develop financial intelligence. The Unit appears to have adequate human, financial and technical resources to conduct its work properly.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

The National Civil Code explicitly grants the courts of Nepal jurisdiction to adjudicate in proceedings and settle disputes arising in connection with matters between a foreign State and another person concerning property situated in Nepal (sects. 692 and 718). This allows foreign States, pursuant to section 288 of the Code, on rights of owners, and section 274, on compensation to be paid, to initiate civil actions in the courts of Nepal to establish title to or ownership of property or to claim compensation for damages. However, the statute of limitations in such cases, pursuant to section 275 of the Code, is three months from the date of knowledge of commission of the wrongful act or action, which might not be adequate in asset recovery cases.

When deciding on confiscation, domestic courts can recognize another State’s claim as a legitimate owner of property acquired through the commission of an offence (sect. 167 of the National Criminal Procedure Code; sect. 12 of the Confiscation Act).

Sections 3 (2) and 23 of the Mutual Legal Assistance Act allow for the enforcement of freezing and confiscation orders issued by a court in a foreign State, on the basis of a bilateral treaty.

The general principle in Nepal is that confiscation is based on a criminal conviction. As an exception, section 43 of the Money-Laundering Prevention Act allows for non-conviction-based confiscation in the case of the death of a money-laundering suspect. Furthermore, the Mutual Legal Assistance Act does not make the enforcement of foreign confiscation orders conditional on the existence of a conviction. The Nepalese authorities explained that they could enforce foreign non-conviction-based confiscation orders, although there had been no such cases in the past.

Nepalese courts can also order the confiscation of property of foreign origin through the adjudication of a money-laundering offence (sect. 34 in conjunction with sect. 5A of the Money-Laundering Prevention Act).

The competent authorities in Nepal can freeze or seize property on the basis of a request from another State (sect. 5 (d) and (g) of the Mutual Legal Assistance Act).

The Nepalese authorities can also preserve property for confiscation in the absence of a request from another State on the basis of the general provisions of the Confiscation Act on freezing and seizure (sect. 4). The Act provides for the establishment of a Proceeds Management Department (sects. 13 and 14). The Internal Management Division of the Ministry of Home Affairs was designated to perform the functions of that department until its establishment. The department was established in October 2021 under the same Ministry.

The Mutual Legal Assistance Act specifies the information to be included in mutual legal assistance requests sent to Nepal. The Act provides for the possibility of refusing a request if the property is of a *de minimis* value (less than 100,000 Nepalese rupees), but only when the requested assistance is in relation to a matter of a civil nature (sect. 4 (a)).

Although Nepal has never received a request to take provisional measures, if the case arises, the Mutual Legal Assistance Act does not prevent the country from inviting the requesting State to present its reasons in favour of continuing such measures before lifting them.

The Confiscation Act (sects. 12 and 27) and the Money-Laundering Prevention Act (sect. 34) provide for the general protection of bona fide third parties in cases of confiscation. That protection extends to confiscation pursuant to a request from another State.

Return and disposal of assets (art. 57)

In accordance with the Confiscation Act, confiscated assets are transferred to the Proceeds of Crime Management Fund (sect. 22). The Fund will, inter alia, share with the concerned country the amount received from the auction of a property or instrumentality confiscated pursuant to an order or judgment of a foreign court (sect. 24 (1) (4)) and will also return confiscated assets to the concerned persons pursuant to the order of the court (sect. 24 (1) (c)). Confiscated assets may also be used to enhance the criminal justice legal and institutional framework (sect. 24 (2)). Although the court must order the return of confiscated assets to the concerned persons if legal rights of bona fide third parties exist (sect. 12 (3)), the Act provides for the sharing of assets located in Nepal and confiscated pursuant to a foreign court decision in accordance with an agreement concluded between Nepal and the concerned country. In the absence of such an agreement, the Government of Nepal alone will decide on the matter (sect. 29).

In accordance with the Mutual Legal Assistance Act, the requesting State must bear the expenses incurred by Nepal in providing mutual legal assistance (sect. 41). In practice, Nepal has never requested expenses incurred in the provision of such assistance.

3.2. Successes and good practices

- Nepal actively contributes to the development and strengthening of regional and international cooperation in the fight against money-laundering, in particular through its participation in the Asia/Pacific Group on Money-Laundering, the Egmont Group and the Asset Recovery Inter-Agency Network for Asia and the Pacific (art. 52, para. 2).

3.3. Challenges in implementation

It is recommended that Nepal:

- Consider reviewing and strengthening its financial disclosure system to make it efficient and effective (art. 52, para. 5).

- Consider taking such measures as may be necessary to require all appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts (art. 52, para. 6).
- Consider reviewing its legal provision on the statute of limitations (sect. 275 of the National Civil Code) with a view to providing for a longer and adequate limitation period for civil actions initiated by foreign States in the courts of Nepal to establish title to or ownership of property or to claim compensation for damages (art. 53 (a) and (b)).
- Consider taking measures to allow confiscation without a criminal conviction in corruption cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases (art. 54, para. 1 (c)).
- Consider the Convention as the necessary and sufficient treaty basis for the enforcement of confiscation orders issued by a court of another State party (art. 54, para. 1 (a), and art. 55, para. 6).
- Expressly provide for the return and disposal of assets in accordance with the provisions of paragraph 3 of article 57 of the Convention (art. 57, paras. 1 and 3).

3.4. Technical assistance needs identified to improve implementation of the Convention

- Focused training for the relevant agencies on mutual legal assistance and return of assets (art. 51)
 - Technical assistance to support the newly established Proceeds Management Department (art. 54, para. 2 (c))
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