

*Article 13. Participation of society*

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups, outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

## **CIVIL SOCIETY REPORT**

on the implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

# **UNITED NATIONS CONVENTION AGAINST CORRUPTION**

## **IN NEPAL**

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by Transparency International Nepal

## Acknowledgements

With the aim of contributing to the national UNCAC review in Nepal in its second cycle, this parallel report was commissioned by Transparency International Nepal (TIN), using the guidance materials and report template designed by the UNCAC Coalition and Transparency International. The author of this report is Advocate Kamal Pokhrel. Advocate Rukamane Mahajan contributed in the updating of this report. The report was reviewed by Danella Newman, Mathias Flug and Irina Tontcheva from the UNCAC Coalition.

The findings in this report are those of the authors but do not necessarily reflect the views of Transparency International Nepal (TIN), the UNCAC Coalition, and the donors who have made this report possible. Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of 31st December 2022.

The production of this report was supported by the UNCAC Coalition, made possible with funding provided by the Norwegian Agency for Development Cooperation (Norad) and the Ministry of Foreign Affairs of Denmark (Danida).

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**Transparency International Nepal (TIN)** is a civil society institution dedicated to increasing public accountability and curbing corruption in all walks of life. TIN is one of the national chapters of Transparency International, an NGO that leads a global movement against corruption. Transparency International is active in more than 100 countries with its secretariat in Berlin. It builds up support for the national chapters as part of a growing international movement for a transparent and corruption-free society.

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## Abbreviations

ACA	Anti-Corruption Agencies
AG	Attorney General
AML	Anti-Money Laundering
AMLO	Anti-Money Laundering Office
APG	Asia-Pacific Group on Money Laundering
ARIN-AP	Asset Recovery Interagency Network-Asia Pacific
CD	Compact Disc
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CIAA	Commission for the Investigation of Abuse of Authority
CJ	Chief Justice
COVID-19	Corona Virus Disease of 2019
CSO	Civil Society Organization
DMLI	Department of Money Laundering Investigation
DNFBP	Designated Non-financial Business and Professions
DRI	Department of Revenue Investigation
EC	Election Commission
EPC	Engineering, Procurement and Construction
FACO	Funds and Accounts Comptroller Office
FATF	Financial Action Task Force
FC	Finance Committee
FCGO	Financial Comptroller General Office
FDI	Foreign Direct Investment
FIU	Financial Intelligent Unit
FNCCI	Federation of Nepalese Chamber of Commerce and Industry
GoN	Government of Nepal
IMF	International Monetary Fund
INGO	International Non-governmental Organizations
IRM	Implementation Review Mechanism
JC	Judicial Council
KYC	Know Your Customer
LEA	Law Enforcement Agency
M&E	Monitoring and Evaluation
ML	Money Laundering
MoF	Ministry of Finance
MoGA	Ministry of General Administration
MoU	Memorandum of Understanding

NBA	Nepal Bar Association
NCB	National Central Bureau
NGO	Non-governmental Organizations
NHRC	National Human Rights Commission
NIC	National Information Commission
NIP	National Integrity Policy
NRB	Nepal Rastra Bank (the Central Bank of Nepal)
NVC	National Vigilance Center
OAG	Office of the Auditor General
OPMCM	Office of the Prime Minister and Council of Ministers
PAC	Public Audit Committee
PEP	Politically Exposed Person
PIL	Public Interest Litigation
PM	Prime Minister
PPMO	Public Procurement Monitoring Office
PRC	Procurement Review Committee
PSC	Public Service Commission
RDI	Revenue Investigation Division
RTI	Right to Information
SAGC	State Affairs and Good Governance Committee
SAR	Suspicious Activity Report
SCBA	Supreme Court Bar Association
SDG	Sustainable Development Goals
SEBON	Securities Board of Nepal
STR	Suspicious Transaction Report
TF	Terrorist Financing
TIN	Transparency International Nepal
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNODC	United Nation's Office on Drugs and Crime
WB	World Bank

## I. Introduction

Nepal signed the United Nations Convention against Corruption (UNCAC) on 10 December 2003 and ratified the convention nearly eight years later on 23 February 2011.

This report reviews Nepal's implementation of selected articles of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering these chapters. Nepal was selected by the UNCAC Implementation Review Group by a drawing of lots for review in the second year of the second cycle.<sup>1</sup>

### Scope

The UNCAC articles and topics that receive particular attention in this report as those covering:

#### *Preventive Measures, UNCAC Chapter II—*

- Art. 5 – Preventive Anti-Corruption Policies and Practices
- Art. 6 – Preventive Anti-Corruption Body or Bodies
- Art. 7.1 – Public Sector Employment
- Art. 7.3 – Political Financing
- Art. 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations
- Art. 8.4 and 13.2 – Reporting Mechanism and Whistleblower Protection
- Art. 9.1 – Public Procurement
- Art. 9.2 – Management of Public Finances
- Art. 10 and 13.1 – Access to Information and the Participation of Society
- Art. 11 – Judiciary and Prosecution Services
- Art. 12 – Private Sector Transparency
- Art. 14 – Measures to Prevent Money-Laundering

#### *Asset Recovery, UNCAC Chapter V—*

- Art. 52 and 58 – Anti-Money Laundering
- Art. 53 and 56 – Measures for Direct Recovery of Property
- Art. 54 – Confiscation Tools
- Art. 51,54,55,56 and 59 – International Cooperation for the Purpose of Confiscation
- Art. 57 – The Return and Disposal of Confiscated Property

### Structure

The report begins with an executive summary, including the condensed findings, conclusions and recommendations emanating from the review, based on the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Nepal as well as access to information issues in more detail.

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<sup>1</sup> See: United Nations Office on Drugs and Crime (UNODC), Country pairings for the second review cycle, [https://www.unodc.org/documents/treaties/UNCAC/Review-Mechanism/CountryPairingSchedule/Country\\_pairings\\_for\\_the\\_second\\_review\\_cycle\\_6\\_September\\_2021\\_for\\_the\\_website.pdf](https://www.unodc.org/documents/treaties/UNCAC/Review-Mechanism/CountryPairingSchedule/Country_pairings_for_the_second_review_cycle_6_September_2021_for_the_website.pdf), accessed on 20 September 2021.

Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. The report then discusses the recent developments, followed by a set of recommendations for priority actions to improve UNCAC implementation in Nepal.

### **Methodology**

The report was prepared by Transparency International Nepal (TIN) with technical and financial support from the UNCAC Coalition made possible with funding provided by the Norwegian Agency for Development Cooperation (Norad) and the Ministry of Foreign Affairs of Denmark (Danida). TIN commissioned a researcher made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by CSOs. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC)'s checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practice and areas in need of improvement in articles of UNCAC Chapter II on Prevention and Chapter V on Asset Recovery.

In preparing this report, the author and the updater relied on communications with the UNCAC Focal Point of Nepal (Joint Secretary, Office of the Prime Minister and Council of Ministers-OPMCM) as no written document/report was made available for reference. The methodology employed was primarily the 'desk review'. Other methods, however, were adopted for consultation purposes. As interviews and focused group discussions in a physical setting were largely affected by the ongoing COVID-19 restrictions, Meet and Zoom meetings, as well as telephone conversations, were conducted instead. The "drop-in" method was also undertaken to obtain sensitive government information.

The report is confined to assessing the implementation of the articles contained in Chapters II and V of the UNCAC. Therefore, no reference is made to other important provisions of the Convention. Previous TIN studies cover other important aspects of the Convention.

## **II. Executive Summary**

This civil society parallel report reviews Nepal's implementation of selected articles of Chapter II (preventive measures) and Chapter V (asset recovery) of the UNCAC, which Nepal ratified in 2011. Nepal is under international obligations to control corruption and does pursue all measures in that respect. These international obligations primarily concern the prevention, criminalization, and enforcement as well as the recovery of assets as required by the UNCAC and the Doha and Marrakech declarations, respectively. With regards to the UN's Sustainable Development Goals (SDGs), Nepal is further obligated to provide access to justice for all and build effective, accountable, and inclusive institutions at all levels so as to promote peaceful and inclusive societies for sustainable development (Goal No. 16).

In order to implement the UNCAC, Nepal has been pursuing national strategies and action plans. The main anti-corruption policies that Nepal has been pursuing include: (i) raising awareness, (ii) promoting good governance, (iii) promoting transparency and accountability in decision-making process and in the criminal justice system, and (iv) adopting codes of conduct by the sectoral entities. The journey began in 2012 with the enactment of special policies to implement the UNCAC that continues even to date. A number of laws have since been amended and some new Acts have also been formulated. To promote good governance in the political arena and corporate sector, many legal reforms have been made and Nepal now has specialized legislation dealing with: (i) the prevention of transnational organized crimes, (ii) the promotion of mutual legal assistance extradition, and (iii) the prevention of money laundering and the facilitation of asset recovery. Other laws on averting potential conflicts of interest, on party financing, and on whistleblower and witness protection are being deliberated.

The Commission for the Investigation of Abuse of Authority (CIAA), a powerful constitutional entity, along with other mechanisms, forms a solid institutional framework to investigate and prosecute corruption in Nepal. Ample policy measures have been adopted, and institutions to support the fight against corruption have been created. The constitutional arrangement, policy framework, and routine activities guide overall practice. However, all policy measures require sincere implementation to realize the desired outcomes. While law enforcement is key, anti-corruption initiatives at the domestic level yield results only when institutions are nurtured to 'deliver'. As leadership is not immune from being criticized in terms of the 'capacity and integrity' of the members to be appointed, the overall efficacy is undermined despite good legislative measures adopted and institutions created. Similarly, all normative legal framework and institutional support mechanisms notwithstanding, there is no real progress in terms of asset recovery.

### **Process**

The government report tends to depict only the progresses, civil society's contribution to the review is, therefore, particularly important for an impartial de facto investigation. Realizing this significance, this study aims to assess the actual progress being made at the domestic level to implement the UNCAC Chapter II and V provisions in Nepal. The report was compiled by employing the desk review method and by compiling inputs from relevant government and civil society stakeholders.

## **Availability of Information**

This report relies on information exchanged with the UNCAC Focal Point of Nepal (Joint Secretary, OPMCM) who was supportive enough to share information orally, but restrictive in terms of sharing any written documents. Access to information, thus, was somehow limited as government documents on the review process remained classified. Interviews held with concerned people, various publications and media reports were taken in as secondary sources of information.

## **Implementation in Law and in Practice**

The legislative framework for corruption prevention and asset recovery in Nepal is extensive and there are several key authorities involved, as will be outlined below. There is still a huge gap, however, between law and practice as evidenced by the ongoing cases of corruption in the country. Very weak implementation of laws and growing impunity are among the pressing issues that need to be addressed in combating corruption effectively so as to make it more realizable within the public sphere.

Despite the “zero tolerance” commitment made by successive governments, widespread corruption in almost all sectors, including the health sector during the Covid-19 pandemic, was being consistently reported in the Nepali media. The Public Account Committee (PAC) in the parliament had taken the matter into cognizance; its findings, however, are likely to be limited to recommendations only. There is public distrust about whether the guilty shall be brought to justice given the implementation track record of previous so-called government probes. Therefore, there is a huge gap between the policies and stated intentions of the government and their implementation in practice.

On the other hand, an independent judiciary has long been regarded as the custodian or guardian of people’s rights. The judiciary is the only organ that interprets the constitution and adjudicates disputes arising thereof. It is mandated to declare acts unconstitutional if not in line with the spirit of the constitution and serves as a check on the powers of the other two organs by the instrument of judicial review of acts and laws. The judiciary should not be influenced by the other two organs, the executive and the legislative, as it is the most important safeguard for the rule of law.<sup>2</sup> However, given the way the chain of events has unfolded in the year 2020 to 2021, the Nepalese judiciary could not uphold its past glory as it was recently embroiled in unnecessary debate. For instance, the legal fraternities were dismayed at the decision of the then Prime Minister to induct a non-parliamentarian into the cabinet. The appointment of Minister for Industry, Commerce and Supplies in October 2021 ran into controversy because he was reported to have been the man sought after by the Chief Justice in the cabinet.<sup>3</sup> This appointment created quite an uproar, with the Prime Minister facing criticism for undermining the rule of law.<sup>4</sup> The leader of the opposition even alleged that the judiciary is operating in a “barter system” as it was the judicial decision (a

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<sup>2</sup> The Kathmandu Post, Sambridh Ghimire (August 2021), Ideals of the Rule of Law, <https://kathmandupost.com/columns/2021/08/01/ideals-of-the-rule-of-law>, accessed on September 2021.

<sup>3</sup> The Kathmandu Post, Anil Giri (9 October, 2021), Minister position for non-parliamentarian ‘close to’ chief justice causes uproar, <https://kathmandupost.com/politics/2021/10/09/minister-position-for-non-parliamentarian-close-to-chief-justice-causes-uproar>, accessed on 25 July 2022.

<sup>4</sup> Ibid.

mandamus) which ousted him from the premiership in 2021.<sup>5</sup> Amidst the widespread criticism, the Minister resigned from the post but this episode has a long-term impact, as public faith in the judiciary has eroded in an unprecedented manner.<sup>6</sup> This incident led to filing of impeachment motion against Chief Justice in the Parliament in February 2022 by parties in the government.<sup>7</sup> However, the impeachment process was not initiated in time and could not be completed before the term of the parliament ended for the general election on 20 November 2022. The suspended Chief Justice retired on 14 December 2022.<sup>8</sup>

Nonetheless, the Nepalese judiciary has a history of even sending ministers to jail for corruption. The recent developments, however, have tainted the image of the judiciary as weak even though it is one of the important stakeholders for anti-corruption commitments that a nation state has.

Besides, despite explicit constitutional and legal mandates, the passage of the budget of the year, 2021/2022 was declared through an ordinance and not in the parliament. A series of ordinances were issued by subverting and evading parliament. Under the principle of separation of powers, lawmaking is the prerogative of the Federal Parliament – the House of Representatives and the National Assembly. But as an exceptional provision, the constitution allows the government to promulgate laws in the form of an ordinance. However, there is a growing tendency among the parties to issue ordinances per their “governance convenience”, thus another instance of poor governance.

In this light, the following are the key findings of the report:

- The Government of Nepal recognizes the anti-corruption agenda in its entire plan and policies including Fifteenth Plan (2019/20-2023/24), Plan and Programmes of Fiscal Year 2022/23 and draft National Integrity Policy and tries to respond accordingly, which is good in terms of commitment of a given country on corruption control.
- The Commission for the Investigation of Abuse of Authority (CIAA) is an important constitutional body for investigating corruption cases in Nepal. Nepal does not have an ombudsman per se, but the CIAA covers the same functions as it mediates citizens’ complaints against government employees and entities. It is a distinctive anti-corruption

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<sup>5</sup> The Kathmandu Post, Anil Giri (9 October, 2021), Minister position for non-parliamentarian ‘close to’ chief justice causes uproar, <https://kathmandupost.com/politics/2021/10/09/minister-position-for-non-parliamentarian-close-to-chief-justice-causes-uproar>, accessed on 25 July 2022.

<sup>6</sup> The Kathmandu Post, Post Report (10 October, 2021), Gajendra Hamal resigns as minister after controversy, <https://kathmandupost.com/politics/2021/10/10/gajendra-hamal-resigns-as-minister-after-controversy>, accessed on 25 July 2022.

<sup>7</sup> The Kathmandu Post, Impeachment motion filed against Chief Justice Rana, 13 February 2022, <https://tkpo.st/3Jj9LDm>, accessed on 20 August 2022.

<sup>8</sup> My Republica (8 August 2022), Current parliament will not be able to conclude impeachment motion against CJ Rana, , <https://myrepublica.nagariknetwork.com/news/current-parliament-will-not-be-able-to-conclude-impeachment-motion-against-cj-rana/>, accessed on 20 August 2022. My República (14 December 2022), Suspended Chief Justice Rana retires as impeachment against him remains to be concluded: <https://myrepublica.nagariknetwork.com/news/suspended-chief-justice-rana-retires-as-impeachment-against-him-remains-yet-to-be-concluded/>, accessed in mid-December 2022.

agency in South Asia that simultaneously plays the roles of ombudsman, investigator and prosecutor. The CIAA engages with the general public through the interactive mediums of radio and TV as well as community education programs and interaction programs. This allows the CIAA to improve public confidence in its independence, fairness and effectiveness and the general public is more aware of anti-corruption laws and efforts. The CIAA receives a good oversight from the parliament and the judiciary that facilitated the process of removing the chief commissioner or commissioners who were alleged of misusing the authority or even receiving bribes. However, the CIAA has not investigated big corruption cases but focused on sting operations targeting low rank civil servants, subsequently prosecuting them in the Special Court. The unfortunate incidents of suicide by low level civil servants charged of corruption indicate that more due diligence is required on the CIAA's part including protecting the privacy of the accused and fair trial rights.

- The constitution calls for a competent civil service to run the administration of the country with constituting the Public Service Commission (PSC), which has been assigned an independent constitutional status. The PSC is involved in selecting meritorious candidates to fill various vacant posts of the civil service in Nepal. The Civil Service Act and the Civil Service Rules provide the necessary authority for civil service administration in Nepal. The Government has tried its best to make the civil service as attractive as possible by reviewing salaries in a span of three years and providing civil servants with festival allowance, medical insurance, educational and child care allowances, and other benefits such as pension, among others. Although Nepal has continuously experimented with anti-corruption reforms within the civil service, the civil service remains marred by inefficiencies, political patronage, and nepotism, all of which diminish its capacity to make an effective contribution to minimize corruption and overall economic development.
- There is no specific law on political party financing in Nepal. In practice, political party finances have always been questionable in Nepal. So is election integrity. The Election Commission (EC) makes it mandatory for all political parties to disclose their financing but most of the parties do not comply with this provision. The veracity of the disclosed information is generally questionable as there is no validating mechanism in place. Equally, owing to various reasons, the EC does not take any action in cases where a political party does not disclose their election-related expenses.
- Codes of Conduct for Employees Working in the Courts 2018, Codes of Conduct for Government Attorneys and Employees Working in the Office of the Attorney General 2018, Code of Conduct for the Office Bearers and Employees of the CIAA 2018, Code of Conduct for the Employees of the Finance Ministry, Diplomatic Code of Conduct 2011 and Code of Conduct for Judges have been formulated that emphasize high standards such as neutrality, transparency, integrity and professionalism. These Codes help to guide concerned officials' public conducts, making them more ethical, independent, impartial, competent and diligent. However, codes of conduct are not strictly adhered to in practice, and there are low instances of follow-up in the event of breaches. There is no law in place in Nepal regulating conflicts of interest. All three branches—the executive, legislature and the judiciary are obliged to file asset disclosures. However, the Nepalese asset disclosure

system is merely a cosmetic one because it is ineffective in practice. There is no real monitoring or a national database for asset declarations in place, and the declarations are confidential and not accessible to the public.

- There is no specific whistleblower or witness protection mechanism or policy in place, and there is no enabling environment for whistleblowing in Nepal. However, there are some legal provisions scattered through different acts, regulations, directives and practices, which provide for confidentiality of the identity of whistleblower, immunity from prosecution and remedy and compensation in case of harm or loss suffered. However, in practice, there is no guarantee that the whistleblowers will not face retaliation for reporting corruption or misconduct.
- Nepal has the Public Procurement Monitoring Office (PPMO) that is a key oversight agency taking care of key functions such as formulating policies and recommending measures of implementation, monitoring, coordinating foreign technical assistance and developing human resources. Nepal has developed the e-procurement platform with an objective of ensuring transparency. Corruption is pervasive in Nepal's public procurement sector and there are frequent reports of the embezzlement of public money. The PPMO blacklists a bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company from one year to three years on the basis of seriousness of his/her act or misconduct. However, political influences exist, and blacklisting alone may not solve the problem of collusion and impunity relating to the public procurement.
- The Financial Procedure and Fiscal Accountability Act 2019 and the Financial Procedure and Fiscal Accountability Rules 2021 have been formulated to make the fiscal management system responsible, transparent, result-oriented and accountable, and aims to maintain overall fiscal stability by providing a blueprint for the regulation and management of the financial procedures at the federal, provincial and local level. An independent constitutional body, the Office of the Auditor General (OAG), carries out the national audit. The Public Audit Committee (PAC) acts as an oversight agency and is mandated to examine the irregularities reported in the OAG annual report. Likewise, the Finance Committee (FC) of the parliament also provides oversight of public funds. However, there is a growing tendency to bypass the set procedures per the convenience of the parties in power by issuing ordinances instead of obtaining approval in parliament.
- The Nepalese government has not been very accountable to citizens in terms of providing information that is of national importance. The information, particularly that which is politically sensitive, is often delayed and may even be withheld without assigning any reasons whatsoever. Regarding the participation of societies, civil society organizations (CSOs) may be consulted for "matters of public concern" pursuant to laws that deals with good governance. It should be noted that prevention of corruption has not been directly defined as a matter of public concern but participation of CSOs may be sought for that purpose; albeit not mandatorily but if the GoN so desires. Moreover, there are other statutory requirements whereby CSOs may have a chance to participate, for instance in public hearings.

- The Judicial Council takes actions against judges on various grounds including incompetence, misconduct, failure to perform his or her duties honestly, performance of business with mala fide intention or serious violation by him or her of the code of conduct required to be observed by him or her. Likewise, the Judicial Council can oversee the CIAA, the chief commissioner or commissioner that can be removed from the post by the President upon recommendation of the Constitutional Council on grounds of his or her inability to hold office and discharge the functions due to physical or mental illness. Nevertheless, it should be noted that in practice impeaching or removing the chief commissioner or commissioner of the CIAA has been a rare phenomenon.
- The Good Governance (Management and Operation) Act, 2008 does not allow ex-civil servants to assume the management role in the private sector, which helps to protect transparency and integrity of the private sector. However, the private sector code of conduct does not suffice, nor has it proven to be effective, to do away with potential undue nexus with the law enforcement agencies and there is no transparency of the beneficial owners of companies.
- The Government of Nepal recognizes the anti-money laundering and countering the financing of terrorism (AML/CFT) system as a strategic tool to control financial crimes and intends to make its electronic monitoring system “goAML” fully operational. The existing AML/CFT legal, policy and institutional frameworks provide relatively comprehensive provisions in line with the standards and good practices of the Financial Action Task Force (FATF).
- The FIU-Nepal has assisted other agencies in developing their AML/CFT instruments and has provided resource persons for AML/CFT training and capacity building programs, as well as preparing policies and guidelines. These agencies include the National Judicial Academy, Nepal Rastra Bank, Revenue Administration Training Centre, Investigation Authorities like the Commission for the Investigation of Abuse of Authority, the Department of Money Laundering Investigation (DMLI), Nepal Police, Nepal Banker’s Association, National Banking Training Institute, Nepal Bar Association, the Federation of Nepalese Chamber of Commerce and Industry, Confederation of Nepalese Industries (CNI), etc.
- Nepal is a member of the Asia-Pacific Group on Money Laundering, Egmont Group of FIU, Asset Recovery Interagency Network- Asia Pacific (ARIN-AP) and INTERPOL since 1967 and is committed to providing cooperation internationally. However, there is a huge gap in inter-agency coordination and cooperation in policy and at an operational level. There is no system in place for the verification of the ultimate owners of Reporting Entities, and consequently, there is no monitoring happening in this regard. Moreover, there is no specific law or policy regulating designated non-financial businesses and professions (DNFBPs) which leaves much leeway for money-laundering and corruption. The Assets (Money) Laundering Prevention Act, 2008 provides the DMLI or its investigating officer the power to give orders for freezing assets during the course of an investigation. Fines are imposed if orders are not complied with. Domestic bank accounts can be withheld and requests for freezing foreign bank accounts can be made through diplomatic channels. Despite reports such as *Nepal-leaks 2019: Illegal Wealth watch*, no

investigation has been initiated by the government, neither was any action taken to stop illegal investments.<sup>9</sup>

Overall, the UNCAC objectives on prevention and asset recovery are not fully complied with yet as implementation is weak. As the report highlights below, legislative, executive and judicial integrity is in a weak state, and there is a lack of measures for legislative reform, and implementation of prevalent laws, particularly in areas such as procurement, election integrity and whistleblower protection. The private sector is yet to come on board in the fight against corruption. Participation of society in the process is yet to yield the desired results as social engagement is far from being effective. Likewise, there is a wider recognition of the AML/CFT system as a strategic tool to control financial crimes and the government intends to make the goAML system fully operational. Regarding asset recovery, there is a huge gap in inter-agency coordination and cooperation in policy and at an operational level.

**Table 1: Implementation and enforcement summary**

<b>Chapter II</b>		
<b>UNCAC Articles</b>	<b>Status of implementation in law</b>	<b>Status of implementation and enforcement in practice</b>
Art. 5 – Preventive anti-corruption policies and practices	Largely implemented	Moderate
Art. 6 – Preventive anti-corruption body or bodies	Largely implemented	Moderate
Art. 7.1 – Public sector employment	Largely implemented	Moderate
Art. 7.3 – Political financing	Partially implemented	Poor
Art. 7, 8 and 12 – Codes of conduct, conflicts of interest and asset declarations	Partially implemented	Poor
Art. 8.4 and 13.2 – Reporting mechanism and whistleblower protection	Partially implemented	Poor
Art. 9.1 – Public procurement	Largely implemented	Moderate
Art. 9.2 – Management of public finances	Largely implemented	Moderate
Art. 10 and 13.1 – Access to information and the participation of society	Largely implemented	Poor

<sup>9</sup> Centre of Investigative Journalism Portal (January 2019), The Nepalis who deposited their suspicious wealth in Swiss banks, <https://cijnepal.org.np/the-nepalis-who-deposited-their-suspicious-wealth-in-swiss-banks/>, accessed on 30 September 2021.

Art. 11 – Judiciary and prosecution services	Largely implemented	Moderate
Art. 12 – Private sector transparency	Partially implemented	Poor
Art. 14 – Measures to prevent money laundering	Largely implemented	Moderate
<b>Chapter V</b>		
Art. 52 and 58 – Anti-money laundering	Largely implemented	Moderate
Art. 53 and 56 – Measures for direct recovery of property	Largely implemented	Moderate
Art. 54 – Confiscation tools	Largely implemented	Poor
Art. 51, 54, 55, 56 and 59 – International cooperation for the purpose of confiscation	Largely implemented	Moderate
Art. 57 – The return and disposal of confiscated property	Partially implemented	Poor

**Table 2: Performance of selected key institutions**

<b>Name of Institutions</b>	<b>Performance in relation to responsibilities covered by the report</b>	<b>Brief comment on performance</b>
The Commission for the Investigation of Abuse of Authority (CIAA)	Moderate	Despite playing the role of an ombudsman, investigator and prosecuting authority, the CIAA demonstrates limited will for action.
The Office of the Auditor General (OAG)	Moderate	Limited powers to enforce findings despite being an all-powerful constitutional body.
The Judicial Council (JC)	Moderate	Power to appoint and investigate judges but lately seen under some political influence.
The Attorney General (AG)	Moderate	Technical skills but limited will in terms of political influence as AGs are politically appointed.

The Public Accounts Committee (PAC)	Moderate	Powers to recommend findings as a parliamentary body but government often ignores PAC's recommendations.
The Office of the Prime Minister and Council of Ministers (OPMCM)	Moderate	Full authority, resources and technical skills but lacks backing in terms of political will of the Prime Minister (PM).
The National Vigilance Center (NVC)	Moderate	Under PM office, has technical skills but limited powers and influences.
The Public Procurement Monitoring Office (PPMO)	Moderate	Under PM office, has technical skills but lack backing in terms of political will.
The Special Court (SC)	Moderate	Technical skills but largely influenced by parent entity.
The Department of Revenue Investigation (DRI)	Moderate	Under PM office, has technical skills but lack backing in terms of political will.
The Financial Intelligence Unit (FIU)	Moderate	Technical skills but the mechanism is yet to be effective.
The Department of Money Laundering Investigation (DMLI)	Moderate	Technical skills but the mechanism is yet to be effective.

### **Key Recommendations for Priority Actions**

In order to fully comply with the UNCAC requirements, Nepal should consider the following recommendations primarily (for more specific recommendations, see part VI of this report):

1. Involve CSOs, the private sector and media in combating corruption in general, and interact with them in the UNCAC review process by inviting them to meaningful consultations, as it is a national obligation which is not merely confined to the government.
2. Formulate and implement special laws in line with international standards especially in areas requiring full compliance to the UNCAC, namely conflict of interests and political party financing. Secure full abidance of existing laws, mitigating all anomalies and intricacies involved, as most of the prevalent laws need immediate amendments.
3. Ensure that institutions are endowed with adequate human and financial resources and an enabling environment so that they function independently and effectively, as well as in an

efficient and sustainable manner.

4. Demonstrate strong political will through actions to do away with growing impunity by prosecuting even the Politically Exposed Persons (PEPs) involved in corruption.
5. Ensure broad participation of CSOs, the private sector and ordinary citizens in formulating and implementing anti-corruption policies and action plans.
6. Restructure the various anti-corruption agencies so as to avoid duplication of work and coordination problems.
7. Formulate and implement a code of conduct for the Members of Parliament.
8. Enact laws that promote cooperation between the private sector and law enforcing agencies to ensure private sector transparency.
9. Investigate all financial irregularities reported – the DMLI and other agencies concerned must be more proactive.
10. Strengthen Law Enforcement Agency's intelligence capacity.

### III. Assessment of Review Process for Nepal

The self-assessment checklist was prepared by the Government of Nepal (GoN) with a brief informal consultation with CSOs (three to four) of their choice and preference. The self-assessment, therefore, is still a confidential document as far as Nepal is concerned. The information provided here reflects information obtained through oral exchanges with the UNCAC Focal Point of Nepal, the Joint Secretary of the Office of the Prime Minister and Council of Ministers (OPMCM). No written documents were shared with the authors of this report.

**Table 3: Transparency of the government and CSO participation in the UNCAC review process**

Did the government disclose information about the country focal point?	Yes	The GoN, through one of its decisions, has designated the Joint-Secretary of the OPMCM to be the UNCAC focal point.
Was the review schedule published somewhere/publicly known?	No	Not known publicly.
Was civil society consulted in the preparation of the self-assessment checklist?	Yes	The government consulted a select number of CSOs representatives through informal consultations rather than organizing formal conferences.
Was the self-assessment checklist published online or provided to civil society?	No	The government decided to keep it confidential.
Did the government agree to a country visit?	Yes	Visit has taken place.
Was a country visit undertaken?	Yes	According to the information provided by the Focal Point, the country visit took place in 2022.
Was civil society invited to provide input to the official reviewers?	N/A	Select civil society representatives were invited for a quick discussion that took place on 25-27 January 2022.
Was the private sector invited to provide input to the official reviewers?	N/A	Select private sector representatives were present.
Has the government committed to publishing the full country report?	No	The GoN plans to post the executive summary only to its official website of the OPMCM.

## **Access to Information**

Although the GoN decided not to make the self-assessment checklist public, no information was denied when approached. The author of this report, therefore, highly appreciates the cooperation extended by the government's UNCAC focal point in this regard. Similarly, due cooperation was extended by other public offices in sharing information of their respective institutions. The government and CSOs' portal were also referred to in compiling this report, besides some important publications in the field. Since the government compilation of resources online is relatively poor in Nepal, for example, no self-assessment checklist and other relevant information is published online on the OPMCM Portal, the author had to rely heavily on oral exchanges with the government's focal point as no written documents were shared, let alone the availability of information in the media and civil society reports.

## **IV. Assessment of Implementation of Chapter II and Chapter V Provisions**

This report highlights the progress Nepal has made so far in fulfilling its obligation under the UNCAC, particularly Chapters II and V, which was signed on 10 December 2003 and ratified nearly eight years later on 23 February 2011. The sections hereinafter, thus, describe and analyze not only the policies and laws Nepal has enacted but also examine different mechanisms, practices, and institutions that have been established for the actual enforcement of the UNCAC in Nepal.

In principle, Nepal values anti-corruption initiatives in all areas - prevention, investigation and prosecution. However, close cooperation among and support of stakeholders is required to enforce the law in letter and spirit to combat corruption effectively. While law enforcement is key, anti-corruption initiatives at the domestic level yield results only when institutions are designed to deliver sustainable anti-corruption policies and practices.

### **4.1 Chapter II – Preventive Measures**

UNCAC Chapter II (Articles 5-14) includes key provisions to prevent and combat corruption, promote integrity and accountability, and manage public office and property properly. It requires States Parties to introduce, maintain, and coordinate effective anti-corruption measures and policies. The prevention of money laundering is another major focus of this Chapter.

#### **4.1.1 Article 5 – Preventive Anti-corruption Policies and Practices**

##### **Legal framework**

Nepal does pursue several policies to control corruption but in an ineffective manner as they are largely scattered and no comprehensive national policy is in existence yet. The GoN has devised a zero-tolerance action-plan and strategy in 2008, and sectoral intervention methods have also been established in 2010. Besides, a national strategy and action-plan to implement UNCAC from 2012 is in place. Some of the policies Nepal has been engaging with include: (i) raising awareness, (ii) promoting good governance, (iii) advocating for transparency and accountability in the decision-making processes and the criminal justice system, and (iv) adopting codes of conduct by the sectoral entities. The fiscal policies and programs of the GoN also contain anti-corruption commitments. The Policies and Programs of the GoN for the Fiscal Year 2020/21, for instance, declare that “for the promotion of good governance and corruption control, an integrity system will be developed in the government, non-government and private sectors. A work culture that embraces the commitment that ‘I will not commit corruption, I will not let corruption happen, and I will work for the country and people honestly’ will be promoted.”<sup>10</sup>

The 2015 Constitution of Nepal<sup>11</sup> also prescribes some policy measures. The constitution claims to adopt effective measures for the control of corruption in all sectors including political, administrative, judicial and social (Policies of the State: Article 51) and guarantees good

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<sup>10</sup> Clause 249: Unofficial Translation; available at Office of the Prime Minister and Council of Ministers, Plan & Policies, <https://www.opmcm.gov.np/en/plan-policies/>, last accessed on 20 September 2021.

<sup>11</sup> Available at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf>, accessed on 20 September 2021.

governance by ensuring that people have equal and easy access to the services and facilities delivered by the state, making public administration competent, impartial, transparent, free from corruption, accountable and participatory [Directive Principles and Policies of State Article 33 (C) and (J)]. The Commission for the Investigation of Abuse of Authority (CIAA) is endowed, from the constitution, with the power to carry out investigations on any abuse of authority, indulging in corruption, by any person holding public offices (Article 238 and 239). The previous 2007 Interim Constitution of Nepal,<sup>12</sup> however, adopted a more robust commitment towards anti-corruption as the ‘abuse of authority’ along with the ‘improper conduct’ of all office bearers was under the purview of the CIAA investigation.

All periodic plans formulated by the GoN, particularly after the Thirteenth Plan (2013/14-2015/16)<sup>13</sup>, have prioritized corruption control and made elaborate provisions. The Fifteenth Plan (2019/20-2023/24)<sup>14</sup> even contains a specific chapter on corruption control. The plan mainly realizes failures to bring the economic irregularities of the private sector completely under the scope of legal action, and to develop a robust system of investigation. Furthermore, it develops five core strategies and nineteen different working policies to create a dignified and corruption-free society promoting good governance. In order to achieve this, the plan advises to strengthen the CIAA, Judicial Council, Department of Anti-Money Laundering, Department of Revenue Investigation, National Vigilance Centre, National Investigation Department, Public Procurement Monitoring Office, Directorate of Military Intelligence, and other concerned authorities to make them more accountable and to strengthen coordination. The plan makes a notable provision to implement an “integrity policy”, which is expected to reduce Nepal’s CPI ranking.

The proposed National Integrity Policy (NIP) states that a person who became a member of a political party or who has been paying levy to a political party will not be eligible for constitutional posts, including judgeship. The draft NIP further states that a person recommended for constitutional posts must sign an affidavit before his/her appointment saying he/she was never a member of a political party, nor paid any levy to a political party. The draft proposes that the judiciary and constitutional bodies should not allow anyone to accept any kind of benefit that is not sanctioned by law.<sup>15</sup> The 23-page paper suggests policies for political parties, non-governmental organizations (NGOs), international non-governmental organizations (INGOs), the diplomatic community, constitutional bodies, academia, the private sector and cooperatives. The document includes 13 points of policies for NGOs and 25 matters concerning INGOs. The

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<sup>12</sup> Nepali version is available at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/wp-content/uploads/2021/03/%E0%A4%A8%E0%A5%87%E0%A4%AA%E0%A4%BE%E0%A4%B2-%E0%A4%85%E0%A4%A7%E0%A4%BF%E0%A4%B0%E0%A4%BE%E0%A4%9C%E0%A5%8D%E0%A4%AF%E0%A4%95%E0%A5%8B-%E0%A4%B8%E0%A4%82%E0%A4%B5%E0%A4%BF%E0%A4%A7%E0%A4%BE%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%AA%E0%A5%AD.pdf>, last accessed on 20 September 2021.

<sup>13</sup> Nepali version of the plan is available at National Planning Commission Nepal Portal, [https://npc.gov.np/images/category/13th-Plan\\_nep.pdf](https://npc.gov.np/images/category/13th-Plan_nep.pdf), accessed on 20 September 2021.

<sup>14</sup> Available at the National Planning Commission Nepal Portal, [https://npc.gov.np/images/category/15th\\_plan\\_English\\_Version.pdf](https://npc.gov.np/images/category/15th_plan_English_Version.pdf), accessed on 20 September 2021.

<sup>15</sup> The Himalayan Times (April 2018), OPMCM drafts National Integrity Policy, <https://thehimalayantimes.com/nepal/opmcm-drafts-national-integrity-policy/>, accessed on 25 September 2021.

proposed policy, however, has drawn skepticism from various stakeholders.<sup>16</sup> It was met with skepticism, disbelief, and concern among INGOs working in Nepal, with some saying that an implementation of the policy in its current form might lead to a standstill of international development activities in the country. In their opinion, many of the government proposals listed in the NIP were already covered by other laws and said this appeared to be a needless additional layer of bureaucracy.<sup>17</sup> Perhaps this discontent from the stakeholders concerned contributed to the GoN not releasing the NIP as of yet. The Office of the Prime Minister and Council of Ministers (OPMCM) lists as many as 90 different policies in its portal but the NIP is not one of them.<sup>18</sup>

Pursuant to the 2008 Good Governance (Management and Operation) Act,<sup>19</sup> the OPMCM is not only involved in managing complaints and preparing annual reports, it has also been analyzing anti-corruption policies and taking necessary steps in amending laws as required. Unlike many other countries where the leading responsibility to draft, implement or monitor, and evaluate national anti-corruption strategies are normally taken by the Anti-Corruption Agency (ACA), in the case of Nepal this responsibility has been taken up by the OPMCM. This situation has occurred primarily because the CIAA remained without leadership for a long period of time (October 2006 - May 2013).<sup>20</sup>

### **Status of implementation**

Nepalese delegations have been taking part in regional as well as international anti-corruption conferences/meetings and training programs. During these visits, best practices in corruption control were shared and discussions were held about strengthening anti-corruption agencies, joint efforts and partnerships to control corruption in the future, to sustain bi-lateral cooperation and other important issues.<sup>21</sup>

Despite the zero-tolerance commitment made by successive governments, widespread corruption in almost all sectors, including healthcare during Covid-19 pandemic, is being consistently

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<sup>16</sup> The Kathmandu Post (April 2018), Integrity policy draft draws NGOs' flak, <https://kathmandupost.com/national/2018/04/15/integrity-policy-draft-draws-ngos-flak>, accessed on 25 September 2021.

<sup>17</sup> Devex (May 2018), In Nepal proposed INGO regulation has sector fearful, <https://www.devex.com/news/in-nepal-proposed-ingo-regulation-has-sector-fearful-92647>, accessed on 25 September 2021.

<sup>18</sup> See the OPMCM Portal of National Acts, <https://www.opmcm.gov.np/national-acts/>, accessed on 25 September 2021.

<sup>19</sup> Nepali version of the Act can be accessed at Nepal Law Commission Website, <https://www.lawcommission.gov.np/wp-content/uploads/2021/01/%E0%A4%B8%E0%A5%81%E0%A4%B6%E0%A4%BE%E0%A4%B8%E0%A4%A8-%E0%A4%B5%E0%A5%8D%E0%A4%AF%E0%A4%B5%E0%A4%B8%E0%A5%8D%E0%A4%A5%E0%A4%BE%E0%A4%AA%E0%A4%A8-%E0%A4%A4%E0%A4%A5%E0%A4%BE-%E0%A4%B8%E0%A4%9E%E0%A5%8D%E0%A4%9A%E0%A4%BE%E0%A4%B2%E0%A4%A8-%E0%A4%90%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%AC%E0%A5%AA-1.pdf>, accessed on 25 September 2021.

<sup>20</sup> See the CIAA Strategic Plan 2014-19, available for download at <http://ciaa.gov.np/singlePublications/9>, accessed on 25 September 2021.

<sup>21</sup> Transparency International Nepal (February 2018), Review of the Government of Nepal's Implementation of the Preventive Measures of the UNCAC, [https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2018-September-6-7/Contributions\\_NV/Nepal\\_EN.pdf](https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2018-September-6-7/Contributions_NV/Nepal_EN.pdf), accessed on 17 March 2022.

reported in the Nepali media. There is thus a huge gap between the policies and stated intentions of the government and their implementation in practice. For example, there was a scam in health-related procurement from China and a commission-related scandal on procurement of COVID-19 vaccines from India which hit the headlines of all major media outlets recently.<sup>22</sup> No state functionaries responsible for making the government accountable have taken up the issue seriously. The Public Account Committee (PAC) in the parliament took cognizance of the matter; its findings, however, were limited to recommendations only. The new government, who had introduced the proposal to formulate the NIP during the PM's fourth tenure in 2017, pledged to "investigate" the scams.<sup>23</sup> However, nothing was done and there is widespread public distrust whether the guilty shall be brought to justice given the implementation track record of previous so-called "government probes". While the constitutional arrangement, policy framework and routine activities guide overall anti-corruption practices; all policy measures require sincere implementation to achieve the desired outcome.

Nepal has a comprehensive legal anti-corruption framework in place, but enforcement of all corruption-related regulations is very weak. The Prevention of Corruption Act criminalizes attempted corruption, active and passive bribery, money laundering, extortion, facilitation payments, abuse of office and embezzlement. Together with the CIAA Act, the Prevention of Corruption Act requires government officials, ministers and members of the parliament and civil servants to declare their and their family's income and assets; however, there are no sanctions for failing to submit declarations. Money laundering is criminalized under the Money Laundering Prevention Act. The Competition Promotion and Market Protection Act aims to combat private sector fraud, to ensure fair market competition and to prevent the abuse of functions in public procurement. Whistleblower protection and transparency in the public sector is addressed in the Right to Information Act, which gives citizens the right to access information from government bodies. Bribery of foreign officials is not addressed in Nepal's legislation.<sup>24</sup>

### **Good Practices**

- Not only in the constitutional and legislative scheme, GoN also recognizes the anti-corruption agenda in its entire plan and policies including Fifteenth Plan (2019/20-2023/24), Plan and Programmes of Fiscal Year 2021/22 and the successive years and with a draft National Integrity Policy and tries to respond accordingly, which is good in terms of recognizing the need and expressing commitment on corruption control. Likewise, the government, to show its effort towards improved work culture, pasted slogans in the government offices that read out 'I will not commit corruption, I will not let corruption happen, and I will work for the country and people honestly.' "No entry to corrupt".

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<sup>22</sup> Various media reports: Annapur Post (4 April 2020), <https://annapurnapost.com/news/svaasthy-saamgrii-khrid-prkrmn-prdhaanmtrii-nai-gumraahmaa-152216>; Aashanews (5 May 2021), <http://aashanews.com/archives/44506>, accessed on September 2021.

<sup>23</sup> The Common Minimum Program of the present coalition government, Point No. 7, August 8, 2021, <https://www.opmcm.gov.np/wp-content/uploads/2021/08/common-minimun-Program.pdf> (Nepali language), accessed on 25 July 2022.

<sup>24</sup> See "Nepal Corruption Report "of Risk & Compliance Portal of GAN Integrity, available at <https://www.ganintegrity.com/portal/country-profiles/nepal/>, accessed on December 2021.

## Deficiencies

- There is a significant gap, however, between the policies and expressed commitments of the government and their implementation in practice. The draft NIP, for instance, was a good initiative per se but it could not be realized mainly because stakeholders considered it as yet another hollow government commitment and the GoN had no intentions of implementing it. Similarly, corruption and malpractices seem to be rampant right in front of the anti-corruption slogans pasted prominently on the walls of the government offices.

### 4.1.2 Article 6 – Preventive Anti-Corruption Bodies

#### Legal framework

A specialized entity, supported by other constitutional arrangements, is in place to implement policies that prevent corruption. The constitutional bodies and other oversight agencies promote good governance and uphold the integrity of public officials in Nepal. The parliamentary committees, the executive branch of the government, the Financial Intelligence Unit (FIU) of the Central Bank, and a peculiar court system –all complement the process. Below is a short overview of the responsible institutions:

#### 1. The CIAA

The Commission for the Investigation of Abuse of Authority (CIAA) is an important constitutional body for controlling corruption in Nepal through timely investigation of corruption cases prevalent in public offices. Nepal does not have an ombudsman per se, but the CIAA covers the same functions as it mediates citizens' complaints against government employees and entities. It is a distinctive anti-corruption agency in South Asia that simultaneously plays the roles of ombudsman, investigator and prosecutor. It not only investigates corrupt behavior but also documents abuse of authority. The chief commissioner (1) and other commissioners (4) are appointed per the recommendation of the Constitutional Council and following the endorsement by the Parliamentary Hearing Committee. The appointments, therefore, are considered to be supportive of functional independence.

The functional scope of the CIAA covers a wide area. A series of operational regulations and procedural mechanisms have been created to make the CIAA an effective anti-abuse-of-authority institution.<sup>25</sup> The CIAA undertakes preventive, promotional and punitive measures. The Commission has regional outreach offices in five regions and five liaison offices and is accountable to the Good Governance and Monitoring Committee of the parliament.<sup>26</sup> The Commission's annual report is presented to the President of Nepal. In all the strategies and work

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<sup>25</sup> Global Integrity (2009), Qualitative Report – Nepal, <https://www.globalintegrity.org/resource/gir2009-report-nepal/>, accessed on 25 September 2021. The author of this report contributed to this report.

<sup>26</sup> See TI Nepal (2018), Review of the Government of Nepal's Implementation of the Preventive Measures of the UNCAC.

plans formulated to date, the CIAA is the primary agency to implement various components of the anti-corruption strategies and work plans.<sup>27</sup>

## **2. The OAG**

The Office of the Auditor General (OAG) is an independent constitutional body with the goal to enhance good governance by promoting accountability and transparency in the public sector.

The OAG is mandated to audit the accounts of all Federal and State Government Offices including the Office of the President, Office of the Vice-President, Supreme Court, Federal Parliament, State Assembly, State Government, Local Levels, Constitutional Bodies and Offices thereof, Courts, Office of the Attorney General, Nepal Army, Nepal Police, and Armed Police Force. The President, on the recommendation of the Constitutional Council, appoints the Auditor General. The OAG has its office in Kathmandu with no outreach offices elsewhere. The OAG regularly makes its annual report available to the public. The report is published and submitted to the President, who then passes it on to the legislature. The OAG is accountable to the PAC of the parliament, which may scrutinize and further examine this report. Additionally, the OAG has been a member of the International Organization of Supreme Audit Institutions since 1968 and of the Asian Organization of Supreme Audit Institutions since 1979.<sup>28</sup>

## **3. The JC**

The Judicial Council (JC) has been mandated to investigate breaches of procedure and abuse of power within the judiciary. The Council is entitled to deal with all of the matters relating to judicial administration, including the appointment, transfer, disciplinary action, and even the dismissal, of judges.<sup>29</sup> The five member JC is chaired by the Chief Justice and other members including the most senior judge of the Supreme Court, Federal Minister of Law and Justice, and two members appointed by the President – one upon the recommendation of the Nepal Bar Council and the other upon the recommendation of the Prime Minister.<sup>30</sup> The JC has its own secretariat headed by a secretary who is appointed by the government under the recommendation of Judicial Service Commission. The secretariat is responsible for assisting the Council to maintain the performance records of all the judges as well as for implementing the Council's decisions.<sup>31</sup>

## **4. The AG**

The Attorney General (AG) is the government's chief legal advisor on constitutional and legal matters. The office of the AG operates as the government's prosecutor, mainly performing punitive functions against corruption. The AG is appointed by the President upon the recommendation of the Prime Minister and is accountable to the Legislation Committee of the parliament. 77 districts of Nepal have AG outreach offices.<sup>32</sup>

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<sup>27</sup> Out of 105 listed activities in the institution-wise anti-corruption strategies and work plans (2012), 34 activities (around one-third) haven been planned to be implemented by the CIAA. See the CIAA Strategic Plan 2014-19.

<sup>28</sup> See TI Nepal Report (2018), Review of Nepal's Implementation of the Preventive Measures of the UNCAC.

<sup>29</sup> See Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>30</sup> See TI Nepal (2018), Review of Nepal's Implementation of the Preventive Measures of the UNCAC, Op. Cit. 9.

<sup>31</sup> See Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>32</sup> For details, see the AG Office Portal, <https://ag.gov.np/>, accessed on 25 September 2021.

## **5. The PAC**

The Public Account Committee (PAC), a special thematic committee in the parliament, is the oversight agency endowed with diverse responsibilities. It monitors and evaluates government activities, issues instructions and provides necessary advice. The PAC is mandated to look into public accounts and the report of the auditor general, and to initiate discussions on the annual audit report submitted by the OAG. It has power to summon the minister and the secretary concerned to provide explanations to the irregularities reported. The PAC has scrutinized the authorities, but has not been able to enforce most of its recommendations in practice so far.<sup>33</sup>

## **6. The SAGC**

The parliamentary committees are formed mainly to assist regular operation of the parliament and to carry out monitoring and evaluation of activities performed so as to give necessary advice and provide required instructions. These committees have important roles to hold the government accountable to the parliament and the people. The State Affairs and Good Governance Committee (SAGC) has the authority to look into the matters of national security, public administration, election integrity, constitutional bodies' efficacy and peace process related all activities. The SAGC has been mandated to maintain good governance by formulating necessary policies and laws that hold sectoral entities accountable. The OPMCM, Ministry of Home Affairs, Ministry of Defense, Ministry of General Administration and Federal Affairs, the CIAA, the Public Service Commission, Election Commission and peace process all fall under the SAGC jurisdiction.<sup>34</sup>

## **7. The OPMCM**

The Integrity Promotion and Corruption Control Section of the Office of the Prime Minister and Council of Ministers (OPMCM) is responsible for anti-corruption affairs. It functions as an anti-corruption unit that manages complaints of corruption and irregularities as well as assume the responsibility of OPMCM focal point to the CIAA. The main responsibilities of the Section include: (i) analyzing annual mid-term and long-term policies to support required amendments; (ii) looking into the matters experts and officials or sectoral ministry institutions generate as advice to the Prime Minister and the Chief Secretary in regards to corruption control and minimizing irregular activities to facilitate implementation; and, (iii) acting on issues that the CIAA Report flags. Other decisive work that this Section does is averting corruption risk in mobilizing foreign aid. It also provides support in implementing punitive measures effectively. The OPMCM has been performing its role but has not been very effective in practice, probably for the reason that there is a coordination gap between the OPMCM and the ACA.

## **9. The NVC**

The National Vigilance Center (NVC) has been established to help raise awareness of corruption and conduct activities that will help prevent it. Its main purpose is to conduct oversight functions

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<sup>33</sup> Based on the interviews conducted with the concerned stakeholders on September 2021.

<sup>34</sup> Rule 170 of the House of Representatives Rules, 2075 B.S., Nepali version of the Rules available at Nepal Parliament Website, <https://hr.parliament.gov.np/np/publication/1597641296>, accessed on 26 September 2021.

to ensure that public offices adhere to the principles of good governance and transparency.<sup>35</sup> The NVC is also responsible for monitoring the income and asset disclosures of public officials.<sup>36</sup>

With the enactment of the Corruption (Prevention) Act in 2002, the NVC was established under the direct supervision and control of the Prime Minister to effectively control corruption and to increase public awareness against corruption. The NVC is headed by a Chief Officer who is a civil servant equivalent to the rank of a secretary. The NVC does not have offices at the sub-national level. It deploys its staff in the field and conducts surprise checks on government offices/public institutions and prepares reports<sup>37</sup>, which are also made public.<sup>38</sup>

## 10. The DRI

The Department of Revenue Investigation (DRI) came into existence in the year 1993 replacing an old entity, the Revenue Investigation Division (RID) constituted in 1977 under the Ministry of Finance (MoF). The objective of the DRI is to investigate revenue leakage and control economic crimes. Investigation, interrogation and persecution of revenue leakage and abuse of foreign exchange is within the jurisdiction of the department. It has been functioning under the OPMCM since February 2018.<sup>39</sup> The Department is based in the capital city having four other outreach offices in different geographic locations – Itahari, Pathlaiya, Butwal and Kohalpur.

## 11. The DMLI

As per the provisions of the Prevention of Money Laundering Act, 2008, the Department of Money Laundering Investigation (DMLI) was established as a central agency for the investigation of money laundering and terrorist financing in 2011. The DMLI in the MoF serves as the principal entity to conduct investigations and prevent money laundering and the financing of terrorism and its proliferation in Nepal.<sup>40</sup>

## 12. The PPMO

The Public Procurement Monitoring Office (PPMO) was established pursuant to procurement legislation in Nepal.<sup>41</sup> PPMO was founded as a government agency in 2007 and has been placed

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<sup>35</sup> See Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>36</sup> Section 38 of the Corruption (Prevention) Act, 2002.

<sup>37</sup> See TI Nepal (2018), Review of Nepal’s Implementation of the Preventive Measures of the UNCAC, Op. Cit. 9.

<sup>38</sup> A few reports on Nepali version can be accessed at the NVC Portal, <http://www.nvc.gov.np/publication/>, accessed on 26 September 2021.

<sup>39</sup> The GoN Cabinet-Level Decision on 25 February 2018 granted this authority. See the DRI Portal, Department of Revenue Investigation, <http://www.dri.gov.np/content/2/2019/36893041/>, accessed on 26 September 2021.

<sup>40</sup> See TI Nepal (2018), Review of Nepal’s Implementation of the Preventive Measures of the UNCAC, Op. Cit. 9.

<sup>41</sup> The Public Procurement Act, 2006 and the Public Procurement Rules, 2007 provision the PPMO. Nepali version of the Act and Rules can be accessed at the Law Commission of Nepal Portal,

<https://www.lawcommission.gov.np/np/wp-content/uploads/2021/01/%E0%A4%B8%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%B5%E0%A4%9C%E0%A4%A8%E0%A4%BF%E0%A4%95-%E0%A4%96%E0%A4%B0%E0%A4%BF%E0%A4%A6-%E0%A4%90%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%AC%E0%A5%A9..pdf>, and <https://www.lawcommission.gov.np/np/wp-content/uploads/2021/01/%E0%A4%B8%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%B5%E0%A4%9C>

directly under the Office of the Prime Minister. The organization has 51 staff members including the Secretary as head of the institution. The main functions of the PPMO are to prepare public procurement policy, recommend measures of implementation for improvement and proper functioning of the public procurement system, monitor implementation, and advise on public procurement related matters, among others. The PPMO aims to ensure good governance in the procurement system by employing modern information and communications technology (ICT) as a tool.

### **13. The FCGO**

The Financial Comptroller General Office (FCGO) is the main government agency responsible for the treasury operation of the GoN. This office is under the MoF and is headed by the Financial Comptroller General who is a special class officer of the GoN. The FCGO is responsible for overseeing all government expenditure, tracking revenue collection and other receipts and preparing consolidated financial statements of the government.<sup>42</sup> It conducts internal audits of revenue and expenditure of the government and ensures timely repayment of internal and external debts. It also scrutinizes public enterprises' equity and maintains a record of financial transactions public enterprises make. The organizational set up consists of 3 divisions (District Treasury Controller Office, Pension Management Office and Kumari Chowk and Central Arrears Office) and 15 sections having field level offices in all 77 districts of Nepal.

### **14. The FIU**

The Financial Information Unit (FIU) Nepal is a national agency responsible for receiving, processing, analyzing and disseminating financial information and intelligence on suspected money laundering and terrorist financing activities to the relevant law enforcement/investigative agencies and foreign FIUs. It was established on 21 April, 2008 under the section 9 of the Assets (Money) Laundering Prevention Act 2008 within the Nepal Rastra Bank (NRB, the central bank) as an independent unit.<sup>43</sup>

### **15. The Special Court**

Pursuant to the Special Court Act 2002<sup>44</sup>, there is a Special Court to try and adjudicate certain types of offences in Nepal. The Special Court abjugated on charge sheets filed by the CIAA and the DMLI as original jurisdiction from the Crimes against the State (Punishment) Act 1989, the CIAA Act 1991, the Prevention of Corruption Act 2002 and the Money Laundering (Prevention)

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[%E0%A4%A8%E0%A4%BF%E0%A4%95-%E0%A4%96%E0%A4%B0%E0%A4%BF%E0%A4%A6-%E0%A4%A8%E0%A4%BF%E0%A4%AF%E0%A4%AE%E0%A4%BE%E0%A4%B5%E0%A4%B2%E0%A5%80-%E0%A5%A8%E0%A5%A6%E0%A5%AC%E0%A5%AA.pdf](#) respectively.

<sup>42</sup> See the FCGO Portal, <https://www.fcgo.gov.np/page/introduction>, accessed on 26 September 2021.

<sup>43</sup> See the NRB Portal, Financial Information Unit –नेपालराष्ट्रबैंक, <https://www.nrb.org.np/departments/fiu/>, accessed on 26 September 2021.

<sup>44</sup> The translated version of the Act by the Nepal Law Commission is available in its portal, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/special-court-act-2059-2002.pdf>, accessed on 26 September 2021.

Act 2008.<sup>45</sup> The court (the Chairperson, based on seniority, and two other Members) is made up of judges who come from the High Courts and are appointed upon the recommendation of the JC.

In terms of the functioning of the agencies, the CIAA, along with other mechanisms, forms a solid background to prevent corruption in Nepal. The CIAA has all the mandate, among others, to conduct investigations of any abuse of authority committed through corruption by any person holding public office, and to file a case against that person involved in any abuse of authority committed through corruption in the competent court in accordance with law.<sup>46</sup> Ample policy measures have been adopted, and institutions to support the fight against corruption have been created, as outlined in the foregoing paragraphs. The constitutional mechanisms (CIAA, OAG, JC and AG) derive independence from the constitution itself, and there are other legislative measures that ensure this. The parliamentary oversight agencies (PAC and SAGC) are set up to serve Article 97 of the Constitution<sup>47</sup> and are governed by the Legislature Parliament (Conduct of Business of Legislature Parliament Rules 2013), which provides them with the necessary independence. Similarly, all the government functionaries (OPMCM, NVC, DRI, DMLI, PPMO and the FCGO) operate autonomously pursuant to prevalent separate laws. Likewise, the Central Bank entity, the FIU, and the Special Court are in existence by the virtue of special laws which provide them the necessary autonomy. The GoN allocates an annual budget to these institutions and there is a general perception that these institutions face no budgetary and human resource constraints to accomplish the task assigned to them.<sup>48</sup> For instance, in the Fiscal Year 2077/78 (mid-June 2020 – mid-July 2021), the government allocated the budget of Nepali Rupee 1,33,04,00,000 (approximately USD \$10,643, 200) for the CIAA.<sup>49</sup> According to the CIAA Annual Report 2021, the CIAA has not expressed any concern over inadequacy of the budget.

The CIAA receives oversight from the parliament. The federal parliament can bring an impeachment motion against the chief commissioner or commissioner on the ground of his or her failure to fulfil his or her duties of office because of a serious violation of this Constitution and law, incompetence or misconduct or failure to discharge the duties of office honestly or serious violation of the code of conduct.<sup>50</sup> If the motion is passed by at least two thirds majority of the total number of the then members of the House of Representatives, the concerned person shall be relieved of his or her office. The chief commissioner or commissioner can be removed from the

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<sup>45</sup> Per the first Government Notice issued in the Nepal Gazette on 22nd August 2002. For more details, see the Supreme Court Portal, <https://supremecourt.gov.np/court/specialcourt>, accessed on 26 September 2021. Nepali version of all of these legislations can be accessed from the Nepal Law Commission Portal, [https://www.lawcommission.gov.np/np/?lsvr\\_document\\_cat=%e0%a4%ae%e0%a5%8c%e0%a4%9c%e0%a5%81%e0%a4%a6%e0%a4%be-%e0%a4%95%e0%a4%be%e0%a4%a8%e0%a5%82%e0%a4%a8%e0%a4%b9%e0%a4%b0%e0%a5%81-%e0%a4%90%e0%a4%a8%e0%a4%b9%e0%a4%b0%e0%a5%81](https://www.lawcommission.gov.np/np/?lsvr_document_cat=%e0%a4%ae%e0%a5%8c%e0%a4%9c%e0%a5%81%e0%a4%a6%e0%a4%be-%e0%a4%95%e0%a4%be%e0%a4%a8%e0%a5%82%e0%a4%a8%e0%a4%b9%e0%a4%b0%e0%a5%81-%e0%a4%90%e0%a4%a8%e0%a4%b9%e0%a4%b0%e0%a5%81), accessed on September 2021.

<sup>46</sup> Article 239 of the Constitution of Nepal (2015), <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf>, assessed on 27 July 2022.

<sup>47</sup> Article 97 allows the House of Representatives (the lower house) and the National Assembly (the upper house) of the parliament to constitute committees pursuant to laws.

<sup>48</sup> See TI Nepal (2018), Review of Nepal's Implementation of the Preventive Measures of the UNCAC, Op. Cit. 9.

<sup>49</sup> CIAA Annual Report 2021, p. 15, <https://ciaa.gov.np/uploads/publicationsAndReports/wbZQvp.pdf> (Nepali Language), accessed on 26 July 2022.

<sup>50</sup> Article 101 and Article 238(4)(c), the Constitution of Nepal (2015), <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf>, assessed on 27 July 2022.

post by the President upon recommendation of the Constitutional Council on grounds of his or her inability to hold office and discharge the functions due to physical or mental illness.<sup>51</sup>

Nevertheless, in practice impeaching or removing the chief commissioner or commissioner of the CIAA has been a rare phenomenon. At the end of 2016, an impeachment motion was brought against then chief commissioner of the CIAA, who was accused of going on a revenge mission against those who had been his adversaries in the past, running a parallel government, instructing government agencies, going beyond his jurisdiction and working for personal benefits. Later, the Supreme Court of Nepal disqualified him as the chief commissioner of the CIAA annulling his appointment citing he did not hold “high moral character” required to lead the CIAA and did not meet the criteria set to head the constitutional body.<sup>52</sup> In 2019, one of the commissioners, was found to have been engaged with corrupt practices during his tenure lasting from 2015 to 2019.<sup>53</sup> He is alleged to have taken NRs 8.7 million (approx. 70,000 USD) to settle the claims of one academic institution in Nepal, the Nepal Engineering College, for which the CIAA had sued him. He resigned from the post just to avoid impeachment, which was being considered to be tabled in the parliament.<sup>54</sup> The effectiveness of the commission can easily be questioned if the CIAA’s own commissioner is embroiled in bribery.

It is a matter of the general practice that the senior most official is assigned as the acting head in case of automatic suspension or dismissal or resignation or retirement or end of tenure of the head or chief. For instance, the CIAA Act and Regulation do not have a clear provision per se, but when a sitting chief commissioner was automatically suspended after an impeachment motion against him was registered in the parliament, the most senior commissioner took over as the acting chief of the CIAA.<sup>55</sup> After completing his tenure, this person was also indicated in the land scam, connected to his position as a government Secretary before his appointment as CIAA commissioner. Moreover, there were instances in the past when the constitutional bodies including the CIAA was without the chief commissioner or commissioners, not allowing these bodies to function properly and effectively.<sup>56</sup>

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<sup>51</sup> Article 238(4)(d), The Constitution of Nepal (2015), <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf>, accessed on 27 July 2022.

<sup>52</sup> The Kathmandu Post, Prithvi Man Shrestha, Year Ender 2016: Watching the Watchers, 29 December 2020, <https://kathmandupost.com/miscellaneous/2016/12/29/watching-the-watchers> and The Kathmandu Post, Anil Giri, Court disqualifies Karki as CIAA chief, 9 January 2021, <https://kathmandupost.com/miscellaneous/2017/01/09/court-disqualifies-karki-as-ciaa-chief>, accessed on 27 July 2022.

<sup>53</sup> For more details, see myRepublica media report, <https://myrepublica.nagariknetwork.com/news/ncp-lawmakers-planning-to-impeach-ciaa-chief/>, accessed on October 2021.

<sup>54</sup> For details, see a media report Online Khabar (February, 2019), महाअभियोगबाट जोगिन अख्तियारका आयुक्त राजनारायणद्वारा राजीनामा, <https://www.onlinekhabar.com/2019/02/742530>, accessed on 30 September 2021.

<sup>55</sup> The Kathmandu Post, Suspended CIAA chief ‘working’ from quarters, 22 October, 2016, <https://kathmandupost.com/miscellaneous/2016/10/22/suspended-ciaa-chief-working-from-quarters>, accessed on 27 July 2022.

<sup>56</sup> The CIAA was kept without a chief commissioner from 2006 to 2013. For details, My Republica, Narayan Manandhar, The anti-corruption chaos, 14 January 2017, <https://myrepublica.nagariknetwork.com/news/13042/>, accessed on 27 July 2022.

The CIAA and the NVC have a working relationship on monitoring the income and asset disclosures of public officials. The CIAA receives a report from the NVC on the income and asset disclosures of public officials.<sup>57</sup> The CIAA takes a necessary action against public official who does not comply with legal requirement of the income and asset disclosures.<sup>58</sup>

### **Status of Implementation**

While policy and legislation coupled with institutions and their routine activities are supposed to guide overall practices, there are several concerns as to the actual independence of and the appointment processes of the leadership or heads of these institutions and sections. Individuals who please one political party or the other, of course in power, have been receiving rewards in the form of appointments in these constitutional or other important bodies, hence completely sidelining the expected competence for such positions. Favored appointments often compromise on values that such constitutional posts demand for, such as integrity, even if one technically qualifies for the post.

In December 2020, the erstwhile government, for instance, appointed the Chief Commissioner and other Commissioners in the CIAA and other constitutional bodies by introducing an ordinance that was viewed as unconstitutional by many and led to a case in the Supreme Court to test its legality and revoke all the appointments made, which is still pending.<sup>59</sup> The ordinance made it possible that only three members out of six of the Constitutional Council could recommend the appointments, and the appointments were made at a time when there was no sitting parliament, whose hearing is a prerequisite.<sup>60</sup> The Constitutional Council makes recommendations for the numerous check-and-balance bodies mandated by the constitution itself. These include the Commission for the Investigation of Abuse of Authority (CIAA), the investigating body with autonomy to look into grafts involving government officials; the National Human Rights Commission, mandated to investigate cases of human rights abuse; and the Election Commission, the body that conducts elections. All of these important state organs perform vital roles in keeping the country's democracy vibrant and functioning, and as they answer directly to Parliament and not the head of government, they are able to exercise influence on the functioning of the executive.<sup>61</sup> The President of Nepal amended the Constitutional Council through an ordinance on

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<sup>57</sup> CIAA, CIAA Annual Report 2078 (2021), pp. 239, <https://ciaa.gov.np/uploads/publicationsAndReports/wbZQvp.pdf> (Nepali Language), accessed on 27 July 2022.

<sup>58</sup> Ibid.

<sup>59</sup> Advocate Om Prakash Aryal, and Senior Advocate Dinesh Tripathi, filed a written petition challenging the legality of the Ordinance that the KP Sharma Oli-led government introduced to subsequently appoint the present Chief Commissioner and a Commissioner of the CIAA.

<sup>60</sup> Clause 26 of the Rules relating to the Operation of Joint Meeting and the Joint Committees of the Parliament 2017 requires constitutional appointments to be confirmed by the Special Hearing Committee of the Parliament. Nepali version of the Rules can be accessed at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/np/?cat=1019>, accessed on 26 September 2021.

<sup>61</sup> For details, see The Record (February 2021), The recent appointments to constitutional bodies, explained <https://www.recordnepal.com/the-recent-appointments-to-constitutional-bodies-explained>, accessed on 26 September 2021.

15 December 2020,<sup>62</sup> which recommends appointments to constitutional bodies, including the NHRC, clearing the way for it to hold meetings without a quorum and take decisions based on a simple majority. Under Nepali law, appointments to constitutional bodies must also be confirmed through a parliamentary hearing process, which could not take place because the President dissolved the House of Representatives in December 2020. On 3 February 2021, the President appointed five new members to the NHRC, despite the fact that legal petitions challenging the constitutionality of the ordinance were pending at the Supreme Court. In late February 2021, the Court reversed the President's dissolution of the House of Representatives, but hearings on petitions against the ordinance and appointments to Constitutional bodies are yet to take place.<sup>63</sup> Nepal's Human Right Commission has been recommended for downgrading to B level due to such legal cases involving appointments of its members.<sup>64</sup>

In a statement, UN experts<sup>65</sup> have said that the appointment process “failed to implement the essential requirements of the Paris Principles, including the need for an open, transparent and participatory process with broad consultations”. The experts highlighted that the appointments did not adhere to domestic law, as enshrined in the Constitution of Nepal, and that the authorities showed unwarranted haste in avoiding crucial processes such as the parliamentary hearing. The experts also urged the Chief Justice of Nepal to recuse himself from the review of the petitions by the Court “to avoid any perception of lack of independence or bias”, as he was part of the Constitutional Council that recommended the appointments.<sup>66</sup>

Appointments in 11 constitutional bodies in December 2021 was confronted by the domestic institutions also. Issuing the declaration after the 47th Executive Committee Meeting, the lawyers' umbrella body, the Nepal Bar Association (NBA) has said that Article 292 of the constitution provisioned mandatory parliamentary hearings for all constitutional post nominees, and it was the main spirit of separation of powers. The NBA “opposes the recent appointments made in constitutional bodies bypassing parliamentary hearings.”<sup>67</sup>

Per the provisions of the constitution, a constitutional bench is informed of any matter that involves serious constitutional issues.<sup>68</sup> It is comprised of the Chief Justice (CJ) and other four Judges

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<sup>62</sup> The Nepali version of the Ordinance can be accessed at the Parliament of Nepal website, <https://na.parliament.gov.np/uploads/attachments/3vlen3ojxmb3knt4.pdf>, accessed on 26 September 2021.

<sup>63</sup> UN News (April 2021), Nepal: New appointments ‘undermine independence’ of rights oversight body, UN experts warn, <https://news.un.org/en/story/2021/04/1090692>, accessed on 26 September 2021.

<sup>64</sup> The Kathmandu Post (10 November 2022), National Human Rights Commission stares at a lower global status, <https://kathmandupost.com/national/2022/11/10/nhrc-stares-at-a-lower-global-status>, accessed on 2 March 2023.

<sup>65</sup> The human rights experts making the call included special rapporteurs on the rights of peaceful assembly and of association; on the situation of human rights defenders; on the independence of judges and lawyers; and on torture and other cruel, inhuman or degrading treatment or punishment; as well as the members of the Working Group on Enforced or Involuntary Disappearances.

<sup>66</sup> See UN News (2021), Nepal: New appointments ‘undermine independence’ of rights oversight body, UN experts warn, 25.

<sup>67</sup> For details, see The Himalayan Times (March 2021), NBA opposes recent appointments in constitutional bodies, <https://thehimalayantimes.com/kathmandu/nba-opposes-recent-appointments-in-constitutional-bodies>, accessed on 26 September 2021.

<sup>68</sup> Article 137 (2) of the Constitution of Nepal, 2015, available at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf>, accessed on September 2021.

designated by the CJ on recommendation of the Judicial Council.<sup>69</sup> Since the CJ forms part of the Constitutional Council<sup>70</sup>, which made appointments for the constitutional posts, an argument surfaced that the bench led by the CJ would constitute a conflict of interest in the case mentioned above. Therefore, it would be against the principle of natural justice for the CJ to attend the bench in a case related to him. The CJ, thus, decided to recuse himself from the bench but his decision was challenged in the court of law again<sup>71</sup>. A single bench of another justice of the Supreme Court, ruled that the constitutional bench other than the CJ as its Head could not be constituted, and ordered not to hear the case further by issuing an interim order. This ruling has complicated the issue and hearings on cases against constitutional appointments have been thrown into a limbo, as there is confusion over whether the CJ should lead the bench. This issue has further been complicated after the NBA and the Supreme Court Bar Association (SCBA) refused to send their representatives<sup>72</sup> as amicus curie per the ruling of the Justice, clearly exhibiting Bar and Bench tussle because the NBA had never denied sending amicus curie before.

Taking a closer look at the present governance situation, one can easily observe numerous challenges. The executive branch struggles as the cabinet expansion has been constrained since the coalition partners have not reached consensus yet and the House (i.e., legislative branch) is by and large dysfunctional as the main opposition party obstructs it. However, it is not just the two key organs of the state that are in disarray. The third branch also has a fair share of problems of its own. The Supreme Court is grappling with some unprecedented issues, with the CJ in the dock. Observers say Nepal is currently facing an unprecedented situation with all key state organs in a mess. The executive is non-functional, the House has been taken hostage by political parties and the Supreme Court, the ultimate arbiter of the constitution, is caught in constitutional tangles.<sup>73</sup> Some suggest that the ongoing political chaos has its genesis in the faulty design of the constitution and is thus a functional fault of the system. Others see it as a result of the extreme politicization of the judiciary. Even core political issues enter the court and the judiciary is being unnecessarily scandalized (for both internal and external reasons) which is not the good sign for rule of law and good governance.<sup>74</sup>

There has been a wide-spread perception among the general public that the CIAA traps small fishes but lets go of big fishes.<sup>75</sup> Recently in 2020, an audio tape was leaked where a voice purported to be of the then Minister for Communication and Information Technology, could be heard demanding a bribe of Rs. 700 million (approximately USD \$5,600,000) over the construction of a

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<sup>69</sup> Article 137 (1), Ibid.

<sup>70</sup> Article 284 (1) (b), Ibid.

<sup>71</sup> Advocate Dr Ganesh Regmi in August 2021 had filed a written petition seeking an order that the CJ should be allowed to sit on the constitutional bench as per the Constitution of Nepal.

<sup>72</sup> For details, see Kathmandu Post (September 2021), Top court in the dock as the Constitutional Bench issue gets even more complicated, <https://kathmandupost.com/national/2021/09/25/top-court-in-the-dock-as-the-constitutional-bench-issue-gets-even-more-complicated>, accessed on 26 September 2021.

<sup>73</sup> For details, see Kathmandu Post (September 2021), Country's three key state organs are in disarray, <https://kathmandupost.com/national/2021/09/15/country-s-three-key-state-organs-are-in-disarray>, accessed on 25 September 2021.

<sup>74</sup> Based on the outcomes of the focused group discussion held among the lawyers consulted, September 2021.

<sup>75</sup> Nepali Times, Tufan Neupane, CIAA traps small fish, lets big ones go, July 24, 2020, <https://www.nepalitimes.com/latest/ciaa-traps-small-fish-lets-big-ones-go/>, accessed on 26 July 2022.

secure printing press in Nepal.<sup>76</sup> Minister resigned in shame but a corruption charge was never pursued against him.<sup>77</sup> CIAA did not initiate any action in those cases. Likewise, in the Lalita Niwas Land Scam, the CIAA filed a charge-sheet against 175 individuals, including some former important people, at the Special Court, accusing them of involvement in illegally registering Lalita Niwas land in the names of various individuals.<sup>78</sup> The Nepali Congress (NC) leader and former deputy prime minister, three former ministers, former government secretary and former secretary and CIAA ex-chief, are among those accused.<sup>79</sup> The CIAA did not file corruption cases against two former prime ministers, though cabinet level decisions were taken during their tenures to legalize the transfer of government land to individuals citing that cabinet decisions do not fall within its jurisdiction.<sup>80</sup> Likewise, the CIAA did not charge-sheet son of Nepal Communist Party's then General Secretary and a serving Supreme Court Justice who were also found to be part of the people involved in the scam on the ground that they were ready to return the land to the government.<sup>81</sup> Two days after the land grab case was filed against 175 individuals, those two persons transferred the property back to the government.<sup>82</sup> The CIAA did not maintain integrity as it decided not to prosecute both of them on the ground that they were ready to return the land. This raises a question whether a common person can escape criminal prosecution after committing forgery and being ready to return the property like in this case. On the contrary, the CIAA conducted sting operations targeting low rank civil servants and prosecuted them under corruption charges. In more than half of the sting operations, cases were involving less than Rs. 25,000 (approximately USD \$200) in bribes and were of junior civil servants, messengers and peons.<sup>83</sup> In few instances, the graft accused civil servants have committed suicides. In one of the unfortunate instances, a 55-year-old former Nayab Subba (non-gazetted first-class officer) who committed suicide, wrote in the suicide note "I didn't take even two paisas, but I was made out to be a corrupt man. The CIAA filed a corruption case against me at the Special Court. May the CIAA chief live for 200 years."<sup>84</sup> The incidents like these have raised serious doubts regarding the independence, impartiality and integrity of the CIAA and their functions.

It is important to note that the chief commissioner, commissioners and employees of the CIAA are immune from civil and criminal proceeding for acts done within the performance of their

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<sup>76</sup> The Record Nepal, Bhadra Sharma, A year of corruption, 29 January, 201, <https://www.recordnepal.com/a-year-of-corruption>, accessed on 26 July 2022.

<sup>77</sup> Ibid.

<sup>78</sup> Online Khabar, Explained: What is Lalita Niwas land controversy all about?, 9 May 2019, <https://english.onlinekhabar.com/explained-what-is-lalita-niwas-land-controversy-all-about.html> and My Republica, Ananta Raj Luitel, CIAA files case at Special Court against 175 in Lalita Niwas land scam, 6 February 2020, <https://myrepublica.nagariknetwork.com/news/ciaa-files-case-at-special-court-against-175-in-lalita-niwas-land-scam/>, accessed 28 July 2022.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> The Kathmandu Post, Mohan Guragain, What is the land scam that has shaken the government's seat all about?, 13 February 2020, <https://kathmandupost.com/national/2020/02/13/what-is-the-land-scam-that-has-shaken-the-government-s-seat-all-about>, accessed on 28 July 2022.

<sup>83</sup> Nepali Times, Tufan Neupane, CIAA traps small fish, lets big ones go, July 24, 2020, <https://www.nepalitimes.com/latest/ciaa-traps-small-fish-lets-big-ones-go/>, accessed on 26 July 2022.

<sup>84</sup> The Kathmandu Post, Dilliram Khatiwada, Graft-accused former civil servant found dead, 13 August 2019, <https://kathmandupost.com/province-no-1/2019/08/13/graft-accused-former-civil-servant-found-dead>, accessed on 26 July 2022.

mandate, and are protected from malicious civil and criminal proceedings.<sup>85</sup> Equally, the civil servants in general are protected against law suits in respect of any action performed by him/her in the course of discharging the duties of his/her post.<sup>86</sup> It is mandatory to get the approval of the Government of Nepal to institute the case against the civil servants or former civil servants.<sup>87</sup> If Government of Nepal gives its approval, the Government of Nepal will defend the civil servant in court.<sup>88</sup>

The CIAA has been engaging with the public and community at large. In the Fiscal Year 2077/78 (mid-June 2020 to mid-July 2021), the CIAA conducted 25 community education programmes on anti-corruption laws and initiatives that covered 20 districts of Nepal.<sup>89</sup> Likewise, it conducted 43 interaction programmes on good governance and anti-corruption issues that covered 33 districts.<sup>90</sup> More than 5000 individuals attended community education programmes and interaction programmes in the same time period.<sup>91</sup> The CIAA in collaboration with Nepal Television have been broadcasting a TV programme called "Sushasan Sawal (Good Governance Concern)" that primarily aims to advocate and raise public awareness on good governance and anti-corruption efforts.<sup>92</sup> The CIAA has developed various public service announcements that disseminate messages against corruption.<sup>93</sup> The CIAA has engaged indirectly with a larger section of population through radio programmes against corruption.<sup>94</sup>

The CIAA allows anonymous complaints against corruption or improper conduct.<sup>95</sup> The complaint should include information such as a brief description of the complaint, the suspected person or institution and/or evidences. The complaint can be registered with the CIAA in person or sent by post or email or other means.<sup>96</sup> The CIAA needs to conduct inquiries and investigations, or initiate

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<sup>85</sup> Section 25 of Commission for the Investigation of Abuse of Authority Act, 1991, <https://lawcommission.gov.np/np/wp-content/uploads/2021/01/अख्तियार-दुरुपयोग-अनुसन्धान-आयोग-ऐन-२०४८.pdf> (Nepali version, up to date), <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/commission-for-the-investigation-of-abuse-of-authority-act-2048-1991.pdf> (English version, not up to date), accessed on 26 July 2022.

<sup>86</sup> Section 57 of the Civil Service Act 1993, <https://lawcommission.gov.np/np/wp-content/uploads/2021/01/निजामती-सेवा-ऐन-२०४९.pdf> (Nepali version, up to date), <https://lawcommission.gov.np/en/?cat=614> (English version, not up to date), accessed on 26 July 2022.

<sup>87</sup> Section 57(3) of the Civil Service Act 1993, <https://lawcommission.gov.np/np/wp-content/uploads/2021/01/निजामती-सेवा-ऐन-२०४९.pdf> (Nepali version, up to date), <https://lawcommission.gov.np/en/?cat=614> (English version, not up to date), accessed on 26 July 2022.

<sup>88</sup> Section 57(4) of the Civil Service Act 1993, <https://lawcommission.gov.np/np/wp-content/uploads/2021/01/निजामती-सेवा-ऐन-२०४९.pdf> (Nepali version, up to date), <https://lawcommission.gov.np/en/?cat=614> (English version, not up to date), accessed on 26 July 2022.

<sup>89</sup> CIAA, CIAA Annual Report 2078 (2021), pp. 185-190, <https://ciaa.gov.np/uploads/publicationsAndReports/wbZQvp.pdf> (Nepali Language), accessed on 27 July 2022.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> For details, see YouTube Channel of the CIAA - CIAA Nepal, <https://youtu.be/xsr7gjIQBJI>, accessed on 27 July 2022.

<sup>93</sup> The Public Service Announcements are broadcasted during the programme Sushasan Sawal. For details, see YouTube Channel of the CIAA - CIAA Nepal, <https://youtu.be/xsr7gjIQBJI>, accessed on 27 July 2022.

<sup>94</sup> For details, see <https://ciaa.gov.np/audio/radioprogram>, accessed on 27 July 2022.

<sup>95</sup> For details, see online form, <https://ciaa.gov.np/online-complaint>, accessed on 27 July 2022.

<sup>96</sup> Section 8,9,10, 13, 14, 15 of the CIAA Act and Rules 5 and 6 of the CIAA Rules.

other action, in respect to improper conduct or corruption on the basis of the complaint or information obtained by the CIAA from any source.<sup>97</sup>

### **Good Practices**

- The CIAA engages with the general public through interactive mediums of radio and TV as well as community education programs and interaction programs. This allows the CIAA to improve public confidence in its independence, fairness and effectiveness and raise awareness amongst the general public of anti-corruption laws and efforts.
- The CIAA received good oversight from the parliament and the judiciary that facilitated the process of removing the chief commissioner or commissioners who were alleged of misusing the authority or even receiving bribes.
- The law provides for the immunity from civil and criminal proceeding for acts done with *bona fide* intention within the performance of the mandate to any Commissioner or employee of the CIAA. This allows the commissioners or employees to work freely or without any undue pressure while investigation corruption cases.
- The Nepali judiciary is considered proactive generally because it has made some landmark decisions in the past.<sup>98</sup> In particular, the Supreme Court of Nepal ruled the CIAA's sting operation unconstitutional and illegal.<sup>99</sup> Although this decision might be a substantial setback to Nepal's anti-corruption drive, it highlighted the need for using legal means to pursue corruption cases instead of using the means that is so similar to entrapment.

### **Deficiencies**

- The recent entanglement of the judiciary has tainted its image, and the complete disregard of the integrity aspect on appointment in the constitutional posts has weakened major institutions in Nepal.<sup>100</sup>
- The CIAA has not investigated big corruption cases but focused on sting operations targeting low rank civil servants, subsequently prosecuted them in the Special Court. The unfortunate incidents of suicide by low level civil servants charged of corruption indicate that more due diligence is required on the CIAA's part including protecting the privacy of accused and fair trial rights.
- There is a widespread public perception that the CIAA commissioners are themselves not clean and independent to justify their role.

## **4.1.3 Article 7.1 – Public Sector Employment**

### **Legal framework**

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<sup>97</sup> Ibid.

<sup>98</sup> For details, see Supreme Court of Nepal Portal, <https://supremecourt.gov.np/web/index.php/index>, accessed on September 2021.

<sup>99</sup> Nepali Times, Sting Operation ruled illegal, 22 April 2021, <https://www.nepalitimes.com/latest/sting-operation-ruled-illegal/>, accessed 27 July 2022.

<sup>100</sup> Based on the outcomes of the focused group discussion held among the lawyers consulted, September 2021.

The constitution calls for a competent civil service to run the administration of the country. The present constitution (2015)<sup>101</sup> has set up the Public Service Commission (PSC), which has been assigned an independent constitutional status.<sup>102</sup> The PSC dates back to 1951, and it is now proposed that there should be additional regional PSCs.<sup>103</sup> It operates pursuant to the Public Service Commission Act 2010<sup>104</sup> that outlines PSC's functions, duties, powers and procedures. The PSC is involved in selecting meritorious candidates to fill various vacant posts of the civil service in Nepal.

The Civil Service Act and the Civil Service Rules<sup>105</sup> provide the necessary authority for civil service administration in Nepal. Precise criteria of eligibility have been prescribed under the laws. The norms and procedures of civil service recruitment are also outlined. A candidate who aspires to work in the civil service must pass an exam. The government writes in to the PSC describing the number of actual positions required whenever a post becomes vacant. The PSC, then, advertises the positions in national newspapers, mostly in the state-owned media. The recruitment is done as per a set procedure. The government publishes the names of gazetted-level positions (Section Officer level and above) once the position is filled by the PSC.<sup>106</sup>

Another important player in the civil service administration in Nepal is the Ministry of General Administration (MoGA). The Government of Nepal (Allocation of Business) Rules 2015<sup>107</sup> assigns the MoGA different responsibilities that include formulation, implementation, monitoring, and evaluation of the policy, plan and programs on personnel administration, management and the documentation of the civil service. The MoGA creates posts and sets academic requirements for civil service positions; organizes, coordinates and evaluates training to be provided to the civil servants both at the domestic as well as the international level; conducts inter-ministerial transfers of staff; works for the welfare of civil servants in general; and, most importantly, functions as the secretariat of the so-called Promotion Committee. The ministry operates pursuant to the Civil Service Act 1992.<sup>108</sup>

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<sup>101</sup> Available at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf>, accessed on September 2021.

<sup>102</sup> See Part 23, Articles 242-244 of the Constitution of Nepal (2015).

<sup>103</sup> Article 244 of the Constitution of Nepal (2015).

<sup>104</sup> Nepali version of the Act can be accessed at the PSC Portal, <http://old.psc.gov.np/uploads/201202121329031159.pdf>, accessed on September 2021.

<sup>105</sup> Can be accessed at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/09/civil-service-rules-2050-1993.pdf>, accessed on September 2021.

<sup>106</sup> See Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>107</sup> Nepali version of the Act can be accessed at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/np/wp-content/uploads/2022/02/%E0%A4%A8%E0%A5%87%E0%A4%AA%E0%A4%BE%E0%A4%B2-%E0%A4%B8%E0%A4%B0%E0%A4%95%E0%A4%BE%E0%A4%B0-%E0%A4%95%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%AF-%E0%A4%B5%E0%A4%BF%E0%A4%AD%E0%A4%BE%E0%A4%9C%E0%A4%A8-%E0%A4%A8%E0%A4%BF%E0%A4%AF%E0%A4%AE%E0%A4%BE%E0%A4%B5%E0%A4%B2%E0%A5%80-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AA.....pdf>, accessed on September 2021.

<sup>108</sup> Can be accessed at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/en/?cat=614>, accessed on September 2021.

The government generally provides for salary increases in the budget statement, and for a so-called ‘dearness allowance’. Salaries are reviewed in a span of three years whereas the ‘dearness allowance’ is reviewed every year and paid on the basis of the consumer price index. A separate Salary and Allowances Review Committee, under the chairmanship of the Chief Secretary of the GoN and comprising of the secretaries of the Finance Ministry (MoF) and MoGA respectively, is constituted for this purpose.<sup>109</sup> Salaries and allowances are paid monthly and performance-based incentives are also given. The pay-roll system for remuneration is practiced generally.<sup>110</sup> ‘Festival allowance’, equivalent to one month salary, is paid every year and civil servants are also entitled to medical insurance, as well as educational and child care allowances. Other benefits such as pension, gratuity, payables on the ground of deformity, and special family pension and gratuity have also been provided.<sup>111</sup> A separate committee chaired by the Chief Secretary and comprised of secretaries of the MoF and the National Planning Commission (NPC), respectively, and the MoGA as the Member Secretary, looks into the matter of education and training opportunities for civil servants. The committee ensures proportionate representation for all GoN entities in education and training-related opportunities.<sup>112</sup>

Human resource decisions can be challenged through a mechanism of complaint or an appeal, as well as in any court of law. Any person who is not satisfied with the PSC decision may file a complaint within a period of thirty-five days from the decisions made, which the PSC is to resolve subsequently.<sup>113</sup> Going by the statistics, the sixty-first annual report of the PSC depicts a total of 45 cases (41 in the Supreme Court and 04 in the High Court Patan) being filed against it for the decisions it made in the fiscal year 2019/20 insofar as the litigation is concerned.<sup>114</sup> For elected members holding public offices, the constitution provides for an independent constitutional body, the Election Commission (EC).<sup>115</sup> Prior to the election of different levels of government, the GoN first proposes election legislation and presents it to the parliament. The EC then implements it when passed by the parliament. The election legislation outlines the precise criteria for election to public offices, and generally provides for both the eligibility and ineligibility for candidatures. In order to ensure election integrity, some legislative measures have been adopted and the EC issues certain directives and the Code of Conduct regularly.<sup>116</sup> The Political Parties Act 2017, for

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<sup>109</sup> Section 27 of the Civil Service Act, 1992.

<sup>110</sup> Section 28 of the Civil Service Act, 1992.

<sup>111</sup> Section 31 and 32 of the Civil Service Act, 1992.

<sup>112</sup> See Section 40 (B) of the Civil Service Act, 1993.

<sup>113</sup> Section 46 of the PSC Act, 2010. Nepal Law Commission translated version of the Act can be accessed at the Commission Portal, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/public-service-commission-act-2066-2010.pdf>, accessed on September 2021.

<sup>114</sup> Nepali version of the Annual Report can be accessed at the PSC Portal, [https://psc.gov.np/assets/uploads/files/PSC\\_AR\\_2077\\_update.pdf](https://psc.gov.np/assets/uploads/files/PSC_AR_2077_update.pdf), accessed on September 2021.

<sup>115</sup> Precise criteria have been prescribed for appointment to the Commission. Besides, a parliamentary special committee on public hearings, which is mandated to conduct public hearings for the appointments to the constitutional posts, confirms the appointment. The Commission operates pursuant to the Election Commission Act, 2017.

<sup>116</sup> The latest such Code can be found in the EC Portal, [http://election.gov.np/uploads/content/1572014966\\_np.pdf](http://election.gov.np/uploads/content/1572014966_np.pdf), accessed on 28 September 2021.

instance, makes it mandatory to disclose donations parties have received and any donation which exceeds 25,000 Nepali rupees (approx. 215 USD) must be disclosed under the law. The candidates are required to submit the expenditures of their election campaign also. The EC may impose limits on total expenditures for election campaigning. The cap of the amount allowed to be spent by the candidate in the election is prescribed by the commission upon a notification published in the Nepal Gazette.

### **Status of Implementation**

According to a survey conducted in 2017/2018, Nepali civil servants are satisfied with their job and committed to serving the public. However, levels of work motivation are relatively low, let alone the levels of integrity.<sup>117</sup> Many allege that out of the ten countries surveyed, the Nepalese bureaucracy is the most politicized.<sup>118</sup> Despite the struggle for democracy, the incumbent leaders are not showing a strong will to develop a system which will enable the civil service to assume its responsibilities as per the norms of the democratic governance.<sup>119</sup> Career advancement is formally a result of seniority-based promotions and transfers within the civil service. Yet, both personal and political connections are important for getting a desired job posting and climbing up the ladder in the civil service in Nepal, even at the lower-ranking level. The politicization of civil service management has especially negative consequences for work and public service motivation, and the ethical awareness and behavior of civil servants.

### **Good Practices**

- The efforts that have been made to make the civil service as attractive as possible by reviewing salary in a span of three years, and the ‘dearness allowance’ every year.

### **Deficiencies**

- While plenty of normative standards are in place, they are not effectively implemented in practice.
- Though Nepal has continuously experimented with anti-corruption reforms within the civil service, the civil service remains marred by inefficiencies, political patronage, and nepotism, all of which diminish its capacity to make an effective contribution to economic development.<sup>120</sup>

## **4.1.4 Article 7.3 – Political Financing**

### **Legal framework**

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<sup>117</sup> See the findings of the Global Integrity (November 2018), ACE Survey Report, <https://www.globalintegrity.org/wp-content/uploads/2019/01/2018.12.20.-Nepal-FOR-PUBLICATION.pdf>, accessed on 28 September 2021. The Global Integrity Anti-Corruption Evidence Research Program (ACE), conducted civil service surveys in ten countries in four developing regions. The study combined the experiences of staff engagement and staff satisfaction surveys. In Nepal, the survey was conducted in the autumn and winter of 2017-18 as a person-to-person survey, leading to nearly 1,300 responses from civil servants employed in central government ministries and their subordinated offices.

<sup>118</sup> Ibid.

<sup>119</sup> See Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>120</sup> See Global Integrity (November 2018), ACE Survey Report cited above.

There is no specific law on political party financing in Nepal. The current constitution envisages accountable political parties yet does not mention anything on the fundamental principle of transparency unlike its predecessor, the Interim Constitution of Nepal 2007. Previously, there was a clear constitutional obligation for parties to declare their sources of income.<sup>121</sup> Article 272 of the Constitution of Nepal 2015 now states that provisions relating to the formation, registration, operation and facilities of political parties and other matters pertaining thereto shall be governed by the law. Private contributions can be made but political parties in Nepal are restricted to accepting donations or grants from international agencies, foreign governments and individuals as well as anonymous individuals.<sup>122</sup> Donations which exceed 25,000 Nepali Rupees (approx. 215 USD) must be made using proper banking channels<sup>123</sup> and donations that exceed 100,000 Nepali Rupees (approx. 855 USD) must be disclosed by the political parties,<sup>124</sup> but no limit on individual donations is prescribed. The present legislation regulating political parties is silent on total party expenditures, hence there are no statutory limits on corporate donations to parties and candidates. The EC, however, may impose limits on total expenditures for election campaigning. The cap of the amount allowed to be spent by a candidate in an election is prescribed by the Commission upon a notification published in the Nepal Gazette. There are provisions relating to the scrutiny of donations that parties receive, and they are required to submit an Annual Report of Income and Expenditure nonetheless.<sup>125</sup> Besides, parties and candidates are expected to submit their poll expenditure within 30 days after the EC publishes the final results of the polls.<sup>126</sup>

### **Status of Implementation**

Despite these strict measures, in practice, party finances have always been questionable in Nepal. A study reveals that each candidate winning the Federal Parliament elections under the first-past-the-post system spent an average of 21.3 million Nepali Rupees (Rs) (approx. 173,244 USD).<sup>127</sup> The runners-up spent an average of Rs 14.9 million (approx. 121,189 USD) and the remaining candidates spent Rs 8.5 million (approx. 69,134 USD). Likewise, a winning candidate for the provincial elections under the first-past-the-post system spent Rs 12.5 million (approx. 101,669 USD), while runners-up spent Rs 11.7 million (approx. 95,162 USD) and others expended Rs 7.1 million (approx. 57,748 USD), whereas the EC had provided a cap of just Rs 2.5 million (approx. 20,333 USD) and Rs 1.5 million (approx. 12198 USD), respectively. All candidates - local,

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<sup>121</sup> Article 142 (2) (c) of the Interim Constitution of Nepal, 2007.

<sup>122</sup> Section 38 of the Act Relating to Political Parties, 2017.

<sup>123</sup> Section 38 (3), Ibid.

<sup>124</sup> Clause 12 of the Rules Relating to Political Parties, 2017.

<sup>125</sup> Sections 39-42 of the Act Relating to Political Parties, 2017.

<sup>126</sup> Section 25 of the Election Commission Act, 2017.

<sup>127</sup> Study on the Election Campaign Finance: Local, Provincial and Federal Elections in Nepal, the Election Observation Committee (EOC) Nepal, 2017. Available at the EOC Nepal Portal, [download-pdf-1579603077.pdf](https://www.eocnepal.org.np/download-pdf-1579603077.pdf) ([eocnepal.org.np](https://www.eocnepal.org.np)), last accessed on 28 September 2021.

provincial and federal - spent Rs 96.91 billion (approx. 788,219,713 USD).<sup>128</sup> The spending pattern, thus, is on the rise.

Since no law on political financing is in place, political parties do not disclose how much money they received from which donors. Corporate bodies that provide funds to candidates also do not disclose to the public the amounts they have donated. The business community makes certain donations to the political parties and candidates during the elections but they are the least transparent about the donations that they make. As there are no laws that govern this area directly and no disclosure system in practice, little is known about how much parties receive in donations, nor how they are utilized.<sup>129</sup> The corporate ethics of the Federation of Nepalese Chamber of Commerce and Industry (FNCCI)<sup>130</sup> is not that effective in practice either.<sup>131</sup>

The EC has been mandated to monitor political party financing. Although the EC makes it mandatory for all political parties to disclose their financing, most of the parties do not abide by this provision. The practice is such that the EC does not take any action, except making the issue public through the media in cases where a political party does not disclose their election-related expenses.<sup>132</sup> There is no system of verifying or validating the veracity of the election expenses details submitted by the parties. Despite being a constitutional body that exercises full autonomy, the EC has not been able to effectively monitor political party financing because of inadequate regulations and bylaws. The commission also lacks dedicated human resources. In addition, the loyalty of the chief election commissioner and other commissioners to the parties, which recommended their appointments to the posts, makes it virtually unfeasible to conduct scrutiny.<sup>133</sup>

The EC is empowered to specify the ceiling of expenses allowed to be incurred by political parties or candidates.<sup>134</sup> No political party or candidate taking part in the election is allowed to spend more than specified ceiling.<sup>135</sup> If any political party or candidate making expenses in excess of the ceiling specified thereby, the EC may impose a fine of an amount, which is equal to the election expenses made by them or the ceiling of expenses specified by the Commission, whichever is higher.<sup>136</sup> If any political party or candidate fails to submit election expenses to the EC or it appears from the audit report that expenses have been made in an inappropriate manner or in a manner so as to prejudice the fairness of the election or in an illegal manner for illegal purposes, the EC may impose a fine on the political party or candidate, with an amount equal to the election expenses made by them or an amount of five hundred thousand rupees (approximately USD \$4000),

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<sup>128</sup> Ibid; and See a story by Prithvi Man Shrestha, Kathmandu Post (March 2020), Parties spend millions on elections, facilitating corruption and criminalization, experts say, <https://kathmandupost.com/politics/2020/03/10/parties-spend-millions-on-elections-facilitating-corruption-and-criminalisation-experts-say>, accessed on 28 September 2021.

<sup>129</sup> See Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>130</sup> The FNCCI Code of Conduct can be accessed at their website, <https://www.fncci.org/business-code-of-conduct-75.html>, accessed on September 2021.

<sup>131</sup> Based on the FGD outcomes of the stakeholders consulted, September 2021.

<sup>132</sup> Based on the outcome of the FGD with the journalists, September 2021.

<sup>133</sup> Ibid.

<sup>134</sup> Section 24(1) of the EC Act 2017, <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/Election-Commission-Act-2073-2017.pdf>, accessed on 28 July 2022.

<sup>135</sup> Section 24(3) of the EC Act 2017.

<sup>136</sup> Section 26(1) of the EC Act 2017.

whichever is higher.<sup>137</sup> Any political party or candidate failing to submit the fine imposed by the EC within six months, may be prohibited from participating in any election or may be disqualified to appear as a candidate in any election for a maximum period of six years with immediate effect.<sup>138</sup> In this case, the election of such a person, will ipso facto be cancelled.<sup>139</sup> Nevertheless, the EC will provide the concerned political party or candidate with a reasonable opportunity to defend themselves, prior to imposing a fine.<sup>140</sup> Despite these legal provisions, there is no example where the EC has previously punished any candidate for overspending in the election.<sup>141</sup>

A report by the International Foundation for Electoral Systems claims that 57 percent of candidates exceeded the overall spending limit whereas two-thirds of candidates exceeded at least one of the categorized limits and 90 percent of candidates underreported their expenses to the EC.<sup>142</sup> This reflects the fact that all candidates submit their affidavit of the expenses as lower than the actual expenses and within the ceiling specified by the EC, which does not include expenses including hidden costs of advertising and vote buying.<sup>143</sup> The EC has not been able to hold them to account so far. This clearly demonstrates the fact that election law is not strictly abided by and that the EC code of conduct is ineffective in Nepal.

### **Good Practices**

- In the absence of a specific law on party financing, ‘state funding’ for parties has been considered and deliberated over the years. The EC had mooted this idea officially in its Third Five-Years Strategic Plan 2020<sup>144</sup>, where it proposes state funding based on the votes parties garnered in the last elections.
- The election commission sets the limit for election expenses which can be taken as the basis for enhancing integrity and transparency, if monitored effectively.

### **Deficiencies**

- Election integrity remains questionable in Nepal in the absence of a specific law on political party financing.
- There is no regulation capping total party expenditures. Candidates are free to accept private contributions of any amount, and they generally do not disclose what they have received. Political parties are not interested in receiving donations openly.
- There are no statutory limits on corporate donations to parties and candidates. Businesses do not disclose their donation to parties.

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<sup>137</sup> Section 26(2) of the EC Act 2017.

<sup>138</sup> Section 26(3) of the EC Act 2017.

<sup>139</sup> Section 26(5) of the EC Act 2017.

<sup>140</sup> Section 26(4) of the EC Act 2017.

<sup>141</sup> Based on the FGD outcomes of the stakeholders consulted, September 2021.

<sup>142</sup> For details, see International Foundation for Electoral Systems (IFES) Portal (2018), <https://www.ifes.org/publications/new-report-campaign-finance-monitoring-nepal>, accessed on September 2021.

<sup>143</sup> Ibid.

<sup>144</sup> Available in Nepali at EC Portal, Strategic Plan 2020-2025, [http://www.election.gov.np/uploads/content/1583150245\\_np.pdf](http://www.election.gov.np/uploads/content/1583150245_np.pdf), accessed on 28 September 2021.

- The EC's role in monitoring and taking actions for non-compliances has not been that effective despite being a constitutional entity.

#### 4.1.5 Article 7, 8 and 12 – Codes of Conduct, Conflict of Interest and Asset Declarations

##### Legal framework

Two branches, the executive and the judiciary, have their codes of conduct formulated<sup>145</sup> whereas there is no separate code of conduct for the members of the legislature in Nepal. Two different codes of conduct<sup>146</sup> are in existence for civil service employees; one developed in the year 2009 pursuant to Section 44 of the Good Governance (Management and Operation) Act 2008,<sup>147</sup> and another promulgated again in 2011/12. Both codes include high standards such as neutrality, transparency, integrity and professionalism. The latter covers all government employees including civil servants, army personnel, police, teachers, financial and public sector employees. Similarly, the Code of Conduct for Judges 2009<sup>148</sup> guides judicial services covering all aspects of the Bangalore Principles of Judicial Conduct: independence, impartiality, integrity, propriety equality, competence and diligence.<sup>149</sup>

Although no specific law on transparency promotion and conflict of interest prevention exists, the Good Governance (Management and Operation) Act 2008<sup>150</sup> provides certain guidance. High government officials are required to restrain from making decisions if their personal interest is involved so as to avoid potential conflict of interest. Members of the judiciary also have to recuse themselves in the event of collision.<sup>151</sup> Recusal is generally practiced by the judiciary but it is not strictly enforced in civil service so far.<sup>152</sup>

Anti-corruption laws, namely the Prevention of Corruption Act, 2002 and the CIAA Act, 1991 require individuals who hold public office in Nepal to be transparent in terms of their income and assets.<sup>153</sup> Asset declarations are thus a must. The office or the department within the public service

<sup>145</sup> Civil Service Code of Conduct can be found at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/09/regulation-concerning-the-conduct-of-employees-of-the-civil-service-2065-b-s-2009.pdf>, whereas Nepali version of Judges' Code of Conduct is available at the Supreme Court of Nepal website, [https://supremecourt.gov.np/web/assets/downloads/Achar\\_sanhita.pdf](https://supremecourt.gov.np/web/assets/downloads/Achar_sanhita.pdf), accessed on September 2021.

<sup>146</sup> Conduct of the Employees of the Civil Service, 2009 and the Code of Conduct for Government Employees, 2012.

<sup>147</sup> Available at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/good-governance-management-and-operation-act-2064-2006.pdf>, accessed September 2021.

<sup>148</sup> Nepali version of Judges' Code of Conduct is available at the Supreme Court of Nepal website, [https://supremecourt.gov.np/web/assets/downloads/Achar\\_sanhita.pdf](https://supremecourt.gov.np/web/assets/downloads/Achar_sanhita.pdf), accessed on September 2021.

<sup>149</sup> Bangalore Principles of Judicial Conduct, [https://www.unodc.org/res/ji/import/international\\_standards/commentary\\_on\\_the\\_bangalore\\_principles\\_of\\_judicial\\_conduct/bangalore\\_principles\\_english.pdf](https://www.unodc.org/res/ji/import/international_standards/commentary_on_the_bangalore_principles_of_judicial_conduct/bangalore_principles_english.pdf), accessed on September 2021.

<sup>150</sup> Available at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/good-governance-management-and-operation-act-2064-2006.pdf>, accessed September 2021.

<sup>151</sup> See Chapter II of the Act.

<sup>152</sup> Based on the FGD conducted with the lawyers, September 2021.

<sup>153</sup> See Section 50 of the Prevention of Corruption Act, 2002 and Section 31a. of the CIAA Act, 1991.

concerned with this matter collects asset disclosures and the National Vigilance Center (NVC) is responsible for monitoring them insofar as members of the civil service are concerned, whereas the Judicial Council (JC) oversees monitoring asset declarations of members of the judiciary. Legislators are also obliged to submit asset disclosure forms regularly as they are public officials in the eyes of the law.<sup>154</sup>All three branches—the executive, legislature and the judiciary thus required to file asset disclosures. Besides, the election law has all the provisions for disqualifying a person, having a record of previous criminal convictions and the indictment under the moral turpitude, from presenting a candidacy for an election to hold elected public office.

### **Status of Implementation**

There is a growing tendency to formulate and implement the codes of conduct by different government entities in order to comply with the provisions of the Good Governance (Management and Operation) Act 2008. Codes of Conduct for Employees Working in the Courts 2018<sup>155</sup> and the Codes of Conduct for Government Attorneys and Employees Working in the Office of the Attorney General 2018,<sup>156</sup> Code of Conduct for the Office Bearers and Employees of the CIAA 2018, and Code of Conduct for the Employees of the Finance Ministry are examples of such initiatives. The Diplomatic Code of Conduct 2011<sup>157</sup> is another benchmark in this regard. Despite this trend, the Nepalese Parliament is yet to follow suit. It is well advised to have the codes of conduct prescribed for elected representatives also. These codes of conducts are still to be implemented fully in practice. Even though the National Strategy and Action Plan for Implementation of the UNCAC from 2012 highlights the need to have separate legislation to govern the conflict-of-interest issues, no such law has been passed and implemented yet. The little guidance that the Good Governance (Management and Operation) Act 2008 provides is largely insufficient to govern this important area. There have been past instances where the chief commissioner or commissioner acted against the integrity and professionalism. For instance, a CIAA commissioner was alleged of misusing his authority and receiving a bribe against his

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<sup>154</sup> See Sections 2(D) (1) and 50 of the Prevention of Corruption Act, 2002.

<sup>155</sup> The Nepali version of the Code can be found in the Supreme Court Portal at <https://supremecourt.gov.np/web/assets/downloads/%E0%A4%95%E0%A4%B0%E0%A5%8D%E0%A4%AE%E0%A4%9A%E0%A4%BE%E0%A4%B0%E0%A5%80-%E0%A4%B8%E0%A4%82%E0%A4%B9%E0%A4%BF%E0%A4%A4%E0%A4%BE-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AB.pdf>, accessed on 29 September 2021.

<sup>156</sup> The Nepali version of the Code can be found in the OAG Portal at <https://ag.gov.np/files/%E0%A4%B8%E0%A4%B0%E0%A4%95%E0%A4%BE%E0%A4%B0%E0%A5%80-%E0%A4%B5%E0%A4%95%E0%A5%80%E0%A4%B2-%E0%A4%A4%E0%A4%A5%E0%A4%BE-%E0%A4%95%E0%A4%B0%E0%A5%8D%E0%A4%AE%E0%A4%9A%E0%A4%BE%E0%A4%B0%E0%A5%80%E0%A4%95%E0%A5%8B-%E0%A4%86%E0%A4%9A%E0%A4%BE%E0%A4%B0-%E0%A4%B8%E0%A4%82%E0%A4%B9%E0%A4%BF%E0%A4%A4%E0%A4%BE-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AB-1.pdf>, accessed on 29 September 2021.

<sup>157</sup> The unofficial translation of the text can be accessed in the Ministry of Foreign Affairs Portal at <https://mofa.gov.np/wp-content/uploads/2018/05/Diplomatic-Code-of-Conduct-2011-Approved-on-July-13-2011-Released-on-August-18-2011-English-FINAL.pdf>, accessed on 29 September 2021.

mandate<sup>158</sup> and in Lalita Niwas Land Scam, former chief of the CIAA was accused of using his position of power for private gain (see above).<sup>159</sup>

The Nepalese asset disclosure system is merely a cosmetic one because it is ineffective in practice. The law requires all asset disclosures that are filed by public officials to be kept confidential, and not be generally accessible. The Individual Privacy Act, 2018 also protects privacy and confidentiality of details relating to property.<sup>160</sup> The NVC functions as a preventive authority but has no power to conduct the audit of the asset disclosure forms. The CIAA can access them for the purpose of investigation but it is limited purely to the investigating officer. All asset disclosures, thus, are kept confidential, thereby leaving no room for independent auditing except for the investigation purposes per the prevalent provisions of laws that include the right to privacy. Consequently, the NVC has not been able to effectively monitor these disclosures as its role is limited to a repository one. The lack of a national database and inadequate rules and regulations add woes to the problem.<sup>161</sup>

Likewise, the Law provides the sanction in the form of a fine for not submitting the property details. The fine is very nominal, i.e., Rs. 5000 (approximately USD \$40).<sup>162</sup> In 2018, the CIAA, following the recommendation of the NVC, ordered action against 13,390 civil servants for not submitting the property details within the stipulated time.<sup>163</sup> Annually, thousands of civil servants are fined for not submitting property details but this has not encouraged civil servants to act diligently in regards to submission of property details on the ground.<sup>164</sup>

### Good Practices

- Codes of Conduct for Employees Working in the Courts 2018, Codes of Conduct for Government Attorneys and Employees Working in the Office of the Attorney General 2018, Code of Conduct for the Office Bearers and Employees of the CIAA 2018, Code of Conduct for the Employees of the Finance Ministry, Diplomatic Code of Conduct 2011 and Code of Conduct for Judges have been formulated that emphasize on high standards such as neutrality, transparency, integrity and professionalism. These Codes help to guide concerned officials' public conducts, making them more ethical, independent, impartial, competent and diligent.

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<sup>158</sup> My Republica, UPDATE: CIAA commissioner Raj Narayan Pathak resigns, 15 February 2019, <https://myrepublica.nagariknetwork.com/news/ncp-lawmakers-planning-to-impeach-ciaa-chief/>, accessed on 27 July 2022.

<sup>159</sup> My Republica, Ananta Raj Luitel, CIAA files case at Special Court against 175 in Lalita Niwas land scam, February 6, 2020, <https://myrepublica.nagariknetwork.com/news/ciaa-files-case-at-special-court-against-175-in-lalita-niwas-land-scam/>, accessed on 30 July 2022.

<sup>160</sup> Section 10 of the Individual Privacy Act, 2018, <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Privacy-Act-2075-2018.pdf>, accessed 30 July 2022.

<sup>161</sup> Kamal Pokhrel, Research and Media Center Against Corruption (ReMAC) (2007), Legal Framework on Income and Asset Disclosure in Nepal. See also Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>162</sup> Section 50(3) of the Prevention of Corruption Act, 2002

<sup>163</sup> My Republica, 13,390 officials not submitting property details to face action, May 22 2018, <https://myrepublica.nagariknetwork.com/news/13-390-officials-not-submitting-property-details-to-face-action/>, accessed on 30 July 2022.

<sup>164</sup> Nepali Headlines, 44,371 Civil Servants Submit Property Details, August 21, 2021, <https://nepaliheadlines.com/44371-civil-servants-submit-property-details/>, accessed on 27 July 2022.

## Deficiencies

- Codes of conduct are not strictly adhered to in practice, and there are low instances of follow-up in the event of breaches.
- There is no law in place in Nepal regulating conflicts of interest.
- While there is an asset disclosure system in place in Nepal, it is not being properly enforced in practice. Access to asset declarations is severely restricted, there is no national database in place and declarations are not monitored. The law provides for sanctions in the form of a fine but the fine is very low which does not encourage civil servants to submit the property details on time.

### 4.1.6 Article 8.4 and 13.2 – Reporting Mechanisms and Whistleblower Protection

#### Legal framework

Anybody, including a public servant, can report on corruption in Nepal per the provisions of the laws. Both the Prevention of Corruption Act and the CIAA Act encourage reporting. There is no specific law promulgated yet, however, which deals with the protection of whistleblowers directly. Other prevalent laws provide scant guidance on protecting informers. The Right to Information Act 2007<sup>165</sup>, for instance, protects public officials from recriminations and provides compensation in the event of harm inflicted for the information disclosed. Similarly, the Prevention of Corruption Act 2002 has some provisions in this regard. However, these laws refer to breaches of secrecy; and is meant for discouraging false reporting rather than encouraging accurate disclosure.<sup>166</sup> These provisions, thus, are inadequate.

#### Status of Implementation

There is no specific whistleblower or witness protection mechanism or policy in Nepal. However, there are some legal provisions scattered through different acts, regulations, directives and practices, which provide for confidentiality of the identity of whistleblower, immunity from prosecution and remedy and compensation in case of harm or loss suffered.<sup>167</sup> The Prevention of Corruption Act 2002 particularly focused on immunity from prosecution for breaches of office secrecy. Promoting whistleblowing culture requires adequate incentives and rewards for the whistleblowers instead of putting them in the risk of retaliation or threats including denial of promotion or termination from the job.<sup>168</sup> Thus, there is no enabling environment for whistleblowing in Nepal.

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<sup>165</sup> Can be accessed at the Law Commission of Nepal website, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/right-to-information-act-2064-2007.pdf>, accessed on September 2021.

<sup>166</sup> See Section 56 of the Prevention of Corruption Act, 2002. See also Global Integrity (2009), Qualitative Report – Nepal, Op.Cit. 8.

<sup>167</sup> Section 29 of the Right to Information Act 2007, Section 56 of the Prevention of Corruption Act 2002, and also see a paper by Narayan Prasad Panthee, “Securing Protection and Cooperation of Witnesses and Whistleblowers in Nepal”, available at the UNAFEI Japan Portal, [https://www.unafei.or.jp/publications/pdf/RS\\_No86/No86\\_11PA\\_Panthee.pdf](https://www.unafei.or.jp/publications/pdf/RS_No86/No86_11PA_Panthee.pdf), accessed on September 2021.

<sup>168</sup> See Caitlin Maslen, Whistleblower protection at the United Nations, 15 December 2021, [https://whistleblowingnetwork.org/WIN/media/pdfs/whistleblower-protection-at-the-UN\\_PR.pdf](https://whistleblowingnetwork.org/WIN/media/pdfs/whistleblower-protection-at-the-UN_PR.pdf), accessed on 27 July 2022.

The fact that the CIAA allows for anonymous complaints against corruption or improper conduct may encourage whistleblowers to report.<sup>169</sup> However, in practice, there is no guarantee that the IP addresses of the computer or device will not be tracked down and whistleblowers will not face retaliation for reporting corruption or misconduct.<sup>170</sup> For instance, the Freedom Forum reported that in July 2019, an employee of Galchi Rural Municipality of Dhading district was sacked from the job for providing information to journalists that reveal the misconduct of the mayor in the office.<sup>171</sup> She exposed that the mayor had issued a property tax payment certificate with a fake receipt, without paying the actual amount.<sup>172</sup> The mayor verbally fired her for disclosing information of the office. This highlights the challenges faced by whistleblowers in Nepal.

### **Good Practices**

- The law requires to keep the identity of whistleblowers confidential and provides immunity from prosecution. In theory, there is a possibility to seek remedy and redress if unfairly treated for whistleblowing.

### **Deficiencies**

- There is no specific law in Nepal that creates an enabling environment for whistleblowing and protects whistleblowers from retaliation and threats including denial of promotion or termination from the job.
- In practice, whistleblowers face retaliation when reporting corruption.

## **4.1.7 Article 9.1– Public Procurement**

### **Legal framework**

Nepal has comprehensive legislation to deal with the procurement system. The Public Procurement Act 2007 and Public Procurement Rules 2007<sup>173</sup> guide the process. In order to “coordinate with public entities and having an improved relations between the GoN and its suppliers, contractors, consultants and service providers and to build an atmosphere of trust and confidence between the government and the public at large,”<sup>174</sup> the Public Procurement Monitoring Office (PPMO) has been established. The PPMO was set up as a government agency in August 2007 and is under the prime minister’s office. The organization has 51 staff members including the secretary as its head.<sup>175</sup>

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<sup>169</sup> For details, see online form, <https://ciaa.gov.np/online-complaint>, accessed on 27 July 2022.

<sup>170</sup> See a Freedom Forum Report available at <http://nepalpressfreedom.org/main/issue-single/1082>, accessed on September 2021.

<sup>171</sup> Freedom Forum, Whistleblower Sacked from Job, July 19 2019, <http://nepalpressfreedom.org/main/issue-single/1082>, accessed on 28 July 2022.

<sup>172</sup> Ibid.

<sup>173</sup> Available at the PPMO Portal,

[https://ppmo.gov.np/image/data/files/acts\\_and\\_regulations/public\\_procurement\\_act\\_2063.pdf](https://ppmo.gov.np/image/data/files/acts_and_regulations/public_procurement_act_2063.pdf) and [https://ppmo.gov.np/image/data/files/PPA%20Ammendment/Public%20Procurement%20Regulation%20\(Final\).pdf](https://ppmo.gov.np/image/data/files/PPA%20Ammendment/Public%20Procurement%20Regulation%20(Final).pdf) respectively.

<sup>174</sup> PPMO, Vision statement, [https://ppmo.gov.np/about\\_us/about\\_ppmo](https://ppmo.gov.np/about_us/about_ppmo), accessed on 30 September 2021.

<sup>175</sup> See the PPMO Portal, About PPMO, [https://ppmo.gov.np/about\\_us/about\\_ppmo](https://ppmo.gov.np/about_us/about_ppmo), accessed on 30 September 2021.

The PPMO in Nepal is a key oversight agency whose key functions include: formulating policies and recommending measures of implementation, monitoring, coordinating foreign technical assistance and developing human resources. Furthermore, it serves as the secretariat of the Procurement Review Committee (PRC). The PPMO is mandated to submit an annual report on the overall functioning of the procurement system.<sup>176</sup> The PPMO publishes its report and makes it public through its website.<sup>177</sup>

The procurement legislation of Nepal aspires to “get maximum returns of public expenditures by promoting competition, fairness, honesty, accountability and reliability in public procurement process”<sup>178</sup>. Therefore, it prescribes due processes and procedures to make public procurement open, transparent, objective and reliable, guaranteeing equal opportunity, and operating without any discrimination. Another important feature of Nepali legislation is the “enhance[ment of] the managerial capacity of procuring public entities.”<sup>179</sup> Elaborate provisions can be found for all sorts of procurement standards, regarding public information,<sup>180</sup> conditions for participation in bidding,<sup>181</sup> bid evaluation<sup>182</sup> and appeal.<sup>183</sup>

Under the procurement laws, competitive bidding is a must for public procurement except if the context otherwise requires. The opportunity to participate in competitive bidding is open to bidders without any discrimination. The entire public procurement process has to be transparent, and the public notice of the results of procurement decisions is mandatory. Similarly, a redress mechanism for procurement decisions has been clearly laid out. The PRC, headed by the High Court Judge, has the authority to hear disputes.

Moreover, there is additional legislation that facilitate public procurement in Nepal: the Audit Act 2019,<sup>184</sup> the Local Government (Operation) Act 2017;<sup>185</sup> the Financial Procedure and Fiscal

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<sup>176</sup> Ibid; PPMO, Functions, [https://ppmo.gov.np/about\\_us/functions](https://ppmo.gov.np/about_us/functions), accessed on 30 September 2021.

<sup>177</sup> Nepali version of the latest report can be found at the PPMO Portal, <https://ppmo.gov.np/image/data/files/Bulliten/%E0%A4%B5%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%B7%E0%A4%BF%E0%A4%95%20%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A4%A4%E0%A4%BF%E0%A4%B5%E0%A5%87%E0%A4%A6%E0%A4%A8%20%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AE%20%E0%A4%AB%E0%A4%BE%E0%A4%87%E0%A4%A8%E0%A4%B2%20%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A5%87%E0%A4%B8%E0%A4%AC%E0%A4%BE%E0%A4%9F%20%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A4%BE%E0%A4%AA%E0%A5%8D%E0%A4%A4.pdf>, accessed on September 2021.

<sup>178</sup> See the Preamble of the Public Procurement Act, 2007.

<sup>179</sup> See the Preamble of the Public Procurement Act, 2007. See also the Mission statement of the PPMO [https://ppmo.gov.np/about\\_us/mission](https://ppmo.gov.np/about_us/mission), accessed on 30 September 2021.

<sup>180</sup> See Section 14 of the Public Procurement Act, 2007.

<sup>181</sup> See Sections 25-29 of the Public Procurement Rules, 2007.

<sup>182</sup> See Section 71 and 23 of the Public Procurement Act, 2007.

<sup>183</sup> See Sections 47-49 of the Public Procurement Act, 2007.

<sup>184</sup> Translated version by the Law Commission can be accessed in its portal at <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/The-Audit-Act-2075-2019.pdf>, accessed on 30 September 2021.

<sup>185</sup> Nepali version of the Act can be accessed in the Law Commission portal at <https://www.lawcommission.gov.np/np/wp-content/uploads/2020/12/%E0%A4%B8%E0%A5%8D%E0%A4%A5%E0%A4%BE%E0%A4%A8%E0%A5%80%E0%A4%AF-%E0%A4%B8%E0%A4%B0%E0%A4%95%E0%A4%BE%E0%A4%B0->

Accountability Act 2019;<sup>186</sup> the Registration of Association Act 1977;<sup>187</sup> and the Good Governance (Management and Operation) Act 2008.<sup>188</sup> Furthermore, the PPMO has formulated the Directives Relating to Engineering, Procurement and Construction (EPC) Mode of Procurement 2020<sup>189</sup> to maintain uniformity in all procurements in EPC mode.

For public officials involved in procurement, conflicts of interest are explicitly restricted. One has to abstain from making a decision, and needs to report to the superior authority where one's closest relatives are involved in prospective procurements.<sup>190</sup>

### **Status of Implementation**

The procurement system of Nepal seems to be comprehensive, with laws and mechanism in place. Further, the e-procurement platform is in place, which intends to increase transparency.<sup>191</sup> However, a report by the Risk and Compliance Portal says, "Corruption is pervasive in Nepal's public procurement sector: More than two-thirds of companies expect to give officials gifts or other irregular payments to secure public contracts. Systems of patronage are entrenched, and there are frequent reports of the embezzlement of public money."<sup>192</sup>

For instance, a media report suggested that even Airbus, the European aerospace company, paid at least 340,000 euros in bribes to Nepali businessmen and officials in order to secure contracts for two narrow-body Airbus A320 jets for Nepal Airlines Corporation.<sup>193</sup> In another instance, Minister of Physical Infrastructure Development of Karnali Province was sacked from the post after he was convicted by the court for providing a fake bank guarantee document to secure a construction bid.<sup>194</sup> According to media sources, it appears that the political leaders from all major parties have

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[%E0%A4%B8%E0%A4%9E%E0%A5%8D%E0%A4%9A%E0%A4%BE%E0%A4%B2%E0%A4%A8-%E0%A4%90%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AA.pdf](#), accessed on 30 September 2021.

<sup>186</sup> Nepali version of the Act can be accessed in the Ministry of Federal Affairs and General Administration (MoFAGA) website at <https://www.mofaga.gov.np/news-notice/1702>, accessed on 30 September 2021.

<sup>187</sup> Translated version by the Law Commission can be accessed in its portal at <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/association-registration-act-2034-1977.pdf>, accessed on 30 September 2021.

<sup>188</sup> Translated version by the Law Commission can be accessed in GoGo Foundation website at [http://www.gogofoundation.org/downloads/Good Governance Act-2006.pdf](http://www.gogofoundation.org/downloads/Good%20Governance%20Act-2006.pdf), accessed on 30 September 2021.

<sup>189</sup> Nepali version of the Directives can be accessed in the PPMO portal at [https://ppmo.gov.np/image/data/files/SBD/EPC Document/%E0%A4%88.%E0%A4%AA%E0%A5%80.%E0%A4%B8%E0%A5%80.%E0%A4%AE%E0%A4%BE%E0%A4%A7%E0%A5%8D%E0%A4%AF%E0%A4%AE%E0%A4%AC%E0%A4%BE%E0%A4%9F.%E0%A4%96%E0%A4%B0%E0%A4%BF%E0%A4%A6%E0%A4%97%E0%A4%B0%E0%A5%8D%E0%A4](https://ppmo.gov.np/image/data/files/SBD/EPC%20Document/%E0%A4%88.%E0%A4%AA%E0%A5%80.%E0%A4%B8%E0%A5%80.%E0%A4%AE%E0%A4%BE%E0%A4%A7%E0%A5%8D%E0%A4%AF%E0%A4%AE%E0%A4%AC%E0%A4%BE%E0%A4%9F.%E0%A4%96%E0%A4%B0%E0%A4%BF%E0%A4%A6%E0%A4%97%E0%A4%B0%E0%A5%8D%E0%A4), accessed on 30 September 2021.

<sup>190</sup> See Section 61 (F) of the Public Procurement Act, 2007.

<sup>191</sup> For details, see the e-bidding portal, <https://www.bolpatra.gov.np/egp/>.

<sup>192</sup> See "Nepal Corruption Report "of Risk & Compliance Portal of GAN Integrity, available at <https://www.ganintegrity.com/portal/country-profiles/nepal/>, accessed on December 2021.

<sup>193</sup> The Kathmandu Post, Sangam Prasain, Airbus admits to paying at least 340,000 euros in bribes to Nepali officials, February 4 2020, <https://tkpo.st/2vLjdit>, accessed on 27 July 2022

<sup>194</sup> The Kathmandu Post, Achyut Wagle, How the public procurement process derails the economy, August 19 2019, <https://kathmandupost.com/columns/2019/08/19/how-the-public-procurement-process-derails-the-economy>, accessed on 27 July 2022.

been colluding to extract ill-gotten gains from contractors.<sup>195</sup> In such circumstances, relatively honest bureaucrats and project managers will not be able to do much to straightening up the system in fear of politically abetted retribution.<sup>196</sup>

The PPMO blacklists a bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company from one year to three years on the basis of seriousness of his/her act or misconduct.<sup>197</sup> The PPMO asks clarification with the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company before making a decision to blacklist him/her. If the PPMO decides to blacklist, it communicates the decision in writing to the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company. The decision is public and the website of PPMO includes the list of blacklisted organizations.<sup>198</sup> However, the blacklisting is also affected by political connections and alone may not solve the problem of collusion and impunity relating to the public procurement.

There are some legal confusions, nevertheless. As procurement officers are civil servants in the eyes of law,<sup>199</sup> they are required to submit income and asset disclosure records every year. The NVC is mandated to monitor the assets, incomes and spending habits of civil servants.<sup>200</sup> The law, however, envisions a different entity - the PPMO - as the monitoring agency for procurement purposes; yet the PPMO has no authority to monitor the assets, income and spending habits of procurement officers.<sup>201</sup> Thus, there is a confusion regarding who should effectively to monitor the assets, incomes and spending habits of procurement officers in order to prevent collusion and impunity.

### **Good Practice**

- Nepal has the PPMO that is a key oversight agency taking care of key functions such as formulating policies and recommending measures of implementation, monitoring, coordinating foreign technical assistance and developing human resources.
- Nepal has developed the e-procurement platform with an objective of ensuring transparency.

### **Deficiencies**

- Overlapping legal mandate creates confusion and results in weak coordination among the stakeholders concerned.

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<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Section 63 of the Public Procurement Act, 2007.

[https://ppmo.gov.np/image/data/files/acts\\_and\\_regulations/public\\_procurement\\_act\\_2063.pdf](https://ppmo.gov.np/image/data/files/acts_and_regulations/public_procurement_act_2063.pdf), accessed on 28 July 2022.

<sup>198</sup> See [https://ppmo.gov.np/index.php?route=information/black\\_lists&page=13&page=18](https://ppmo.gov.np/index.php?route=information/black_lists&page=13&page=18), accessed on 28 July 2022.

<sup>199</sup> See the CIAA Act, 1991.

<sup>200</sup> See the Prevention of Corruption Act, 2002.

<sup>201</sup> See the Public Procurement Act, 2007.

- There is a huge gap in terms of responsibility as to who to hold accountable in monitoring the assets, incomes and spending habits of public procurement officials, which is the responsibility of the NVC otherwise.

#### **4.1.8 Article 9.2 – Management of Public Finances**

##### **Legal framework**

“An estimate of revenue and expenditures” is presented before the Federal Parliament in mid-May of each year by the finance minister in Nepal.<sup>202</sup> The budget is “laid before the joint sitting of both houses of the Federal Parliament.”<sup>203</sup> The Ministry of Finance (MoF) is responsible for formulating the budget for the “business and development works” of the government to be performed in the next fiscal year.<sup>204</sup> Each government office is obliged to draw up their own budget for the next fiscal year as per the directives of the superior authority, and considering the budgetary limit, guidelines and circulars that the MoF issues from time to time.<sup>205</sup>

The MoF, on behalf of the government, submits the budget estimates to the parliament every year. Different organizations, including the National Planning Commission, line ministries and their department and project units are involved in the budgetary process. The legislative wing of the national legislature, which comprises the opposition and the treasury benches, can suggest adding or removing items or altering the amount allocated to certain sectors during a general debate session. The parliamentary rules provide comprehensive provisions regarding the procedures.<sup>206</sup>

Each government office is required to prepare and forward the monthly and annual statement of expenditure, details of advances due to be settled, bank statement, details of revenue, bank statement of revenue, details of deposit and bank statement of deposit to the concerned district level Funds and Accounts Comptroller Office (FACO) and entities which maintain the central accounts.<sup>207</sup> Moreover, the Office of the Financial Comptroller General (OFCG) submits a financial statement of the central/consolidated accounts of each fiscal year and accounts of appropriation, revenue, deposit, foreign aid and loan, and investment, in addition to the consolidated fund, to the OAG within the period specified by the Auditor General.<sup>208</sup>

Each ministry, secretariat, constitutional body, and departments concerned has to have an internal control system established according to the nature of the functions they carry out to make spending cost-effective and efficient, and to make the fiscal reporting system reliable. The internal control system has to incorporate a controlling environment, risk identification factors and monitoring and evaluation (M&E) aspects also.<sup>209</sup>

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<sup>202</sup> Article 119 (3) of the Constitution of Nepal, 2015.

<sup>203</sup> Article 119 (1) of the Constitution of Nepal, 2015.

<sup>204</sup> The Financial Procedure Act, 1999; Section 5.

<sup>205</sup> The Financial Procedure Rules, 2007; Clause 19.

<sup>206</sup> See Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>207</sup> The Financial Procedure Rules, 2007; Clause 85.

<sup>208</sup> The Financial Procedure Act, 1999; Section 14.

<sup>209</sup> The Financial Procedure Rules, 2007; Clause 95.

The Financial Procedure and Fiscal Accountability Act 2019<sup>210</sup> has recently been promulgated in order to manage and operate the federal reserve fund and other government spending, formulate the budget, make disbursements and incur expenses, maintain accounting and reporting of fiscal transactions with internal control, and to carry out audit and financial activities. The Financial Procedure and Fiscal Accountability Rules 2021<sup>211</sup> supports the implementation of the objectives of the new Act. The legislation aspires to make the fiscal management system responsible, transparent, result-oriented and accountable, and aims to maintain overall fiscal stability by providing a blueprint for the regulation and management of the financial procedures at the federal, provincial and local level.<sup>212</sup>

An independent constitutional body, the OAG, is responsible for carrying out the national audit.<sup>213</sup> Accounts and financial statements of all kinds of income and expenditures are presented before the OAG for external auditing,<sup>214</sup> and it conducts the final audit.<sup>215</sup> The OAG mainly operates through the Auditing Standards it formulated in 1996.<sup>216</sup> The PAC acts as an oversight agency and is mandated to examine the irregularities reported in the OAG annual report.<sup>217</sup> Apart from the Public Audit Committee (PAC), the Finance Committee (FC) of the parliament also provides oversight of public funds.<sup>218</sup>

## Status of Implementation

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<sup>210</sup> Nepali version of the Act can be accessed at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/np/wp-content/uploads/2021/01/%E0%A4%86%E0%A4%B0%E0%A5%8D%E0%A4%A5%E0%A4%BF%E0%A4%95-%E0%A4%95%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%AF%E0%A4%B5%E0%A4%BF%E0%A4%A7%E0%A4%BF-%E0%A4%A4%E0%A4%A5%E0%A4%BE-%E0%A4%B5%E0%A4%BF%E0%A4%A4%E0%A5%8D%E0%A4%A4%E0%A5%80%E0%A4%AF-%E0%A4%89%E0%A4%A4%E0%A5%8D%E0%A4%A4%E0%A4%B0%E0%A4%A6%E0%A4%BE%E0%A4%AF%E0%A4%BF%E0%A4%A4%E0%A5%8D%E0%A4%B5-%E0%A4%90%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AC.pdf>, accessed on September 2021.

<sup>211</sup> Nepali version of the Rules can be accessed at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/np/wp-content/uploads/2021/05/%E0%A4%86%E0%A4%B0%E0%A5%8D%E0%A4%A5%E0%A4%BF%E0%A4%95-%E0%A4%95%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%AF%E0%A4%B5%E0%A4%BF%E0%A4%A7%E0%A4%BF-%E0%A4%A4%E0%A4%A5%E0%A4%BE-%E0%A4%B5%E0%A4%BF%E0%A4%A4%E0%A5%8D%E0%A4%A4%E0%A5%80%E0%A4%AF-%E0%A4%89%E0%A4%A4%E0%A5%8D%E0%A4%A4%E0%A4%B0%E0%A4%A6%E0%A4%BE%E0%A4%AF%E0%A4%BF%E0%A4%A4%E0%A5%8D%E0%A4%B5-%E0%A4%90%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AD.pdf>, accessed on September 2021.

<sup>212</sup> See the Preamble of the Financial Procedure and Fiscal Accountability Act, 2019.

<sup>213</sup> See Part 22, Articles 240-41 of the Constitution of Nepal, 2015.

<sup>214</sup> The Financial Procedure Act, 1999; Section 16.

<sup>215</sup> See the Audit Act, 2019; Section 3 (2).

<sup>216</sup> The Nepali version of this Standards can be accessed in the OAG portal at <https://www.oag.gov.np/menu-category/947/en>, accessed on 30 September 2021.

<sup>217</sup> For details, see the Parliament of Nepal Website at <https://hr.parliament.gov.np/np/committees/Public-Account-Committee/work-duty-authority>, accessed on 30 September 2021.

<sup>218</sup> See the Functions, Power and Duties of the FC in the Parliament of Nepal Website at <https://hr.parliament.gov.np/np/committees/Finance-Committee/work-duty-authority>, accessed on 30 September 2021.

Despite such an explicit constitutional and legal mandate, the passage of the budget 2021/22 raised many eyebrows as it was declared through an ordinance and not in the parliament. A series of ordinances were issued by subverting and evading parliament in year 2021. One of the major criticisms the erstwhile Oli government faced was that it tried to rule the country through ordinances. It issued 15 of them, including one for the federal budget for the fiscal year 2021-22, in the last one year.<sup>219</sup> The government had issued ordinances, some when the House was in recess and others when the House was dissolved.<sup>220</sup> The PM had dissolved the House twice - in December 2020 and in May 2021. The House dissolved on 20 December 2020 was reinstated on 24 February 2021 by the verdict of the Supreme Court of Nepal.<sup>221</sup> The Supreme Court ruled that the decision to dissolve the House was unconstitutional.<sup>222</sup> Again, on 22 May 2021, the House was dissolved by the PM, but the Supreme Court reinstated the House on 12 July 2021.<sup>223</sup>

Under the principle of separation of powers, lawmaking is the prerogative of the Federal Parliament, namely the House of Representatives and the National Assembly. But as an exceptional provision, the constitution allows the government to promulgate laws in the form of an ordinance. However, over the years the executive has made these edicts a norm.<sup>224</sup> There is a widespread criticism of unparliamentarily practices which threaten the rule of law, constitutionalism and the principle of separation of powers. Not just the opposition bloc led by the Nepali Congress, but also leaders from his own party CPN-UML, criticized the PM for promoting undemocratic practices by issuing one ordinance after another. Even the Supreme Court has intervened, quashing the ordinance issued to amend the Citizenship Act 2006, claiming that the laws with long-term implications should not be introduced by bypassing parliament.<sup>225</sup> Despite the Supreme Court ruling, the situation has not improved as the new government follows the same “footsteps”<sup>226</sup> which is not a promising sign for democracy in Nepal.

Pre-budget consultation are generally held for necessary inputs, and proceedings are largely made public. Budget information is disclosed and traceable.<sup>227</sup> There is a mechanism in place for recording, storing and preserving the integrity of accounting books, records, financial statements

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<sup>219</sup> Kathmandu Post (July 2021), Provinces following Oli’s example of governing through ordinances, <https://kathmandupost.com/national/2021/07/17/provinces-following-oli-s-example-of-governing-through-ordinances>, accessed on 30 September 2021.

<sup>220</sup> The Supreme Court reinstated the house on both the occasions, however.

<sup>221</sup> Kathmandu Post, House Reinstated, 24 February 2021, <https://tkpo.st/3pRfrdI>, accessed on 28 July 2022.

<sup>222</sup> Ibid.

<sup>223</sup> Online Khabar (July 2021), Nepal Supreme Court reinstates dissolved parliament, opposition leader to become PM, <https://english.onlinekhabar.com/nepal-supreme-court-reinstates-house-of-representatives.html>, accessed on July 2022.

<sup>224</sup> Kathmandu Post (October 2021), Rule through ordinance threat to democracy, observers say, <https://kathmandupost.com/national/2021/10/07/rule-through-ordinance-threat-to-democracy-observers-say>, accessed on 30 September 2021.

<sup>225</sup> Kathmandu Post (July 2021), Provinces following Oli’s example of governing through ordinances, <https://kathmandupost.com/national/2021/07/17/provinces-following-oli-s-example-of-governing-through-ordinances>, accessed on 30 September 2021.

<sup>226</sup> Focus Entertainment (August 2021), Deuba is also on the path of the ordinance, <https://www.focusentertainment.com.np/2021/08/deuba-is-also-on-path-of-ordinance.html>, accessed on 30 September 2021.

<sup>227</sup> For instance, Public Announcement of Income-Expenditure Details of Fiscal Year 2021/22 is available in the MoF website, [https://www.mof.gov.np/uploads/document/file/1627455031\\_Budget\\_speech\\_2021.pdf](https://www.mof.gov.np/uploads/document/file/1627455031_Budget_speech_2021.pdf), accessed on October 2021.

etc. Despite these clear guidelines, the GoN performance over the years in terms of managing national budget is relatively disappointing as arrears reported of the fiscal year 2019/20 are quite high amounting to 11.39 Nepali Rupees (approx. 92640826 USD).<sup>228</sup> Slow and low capital budget spending is an issue reflecting the weak implementation capacity of the government. Also, hasty budget expenditure towards end of the financial year has affected the quality and value for money aspect of the budget.

### Good Practices

- Pre-budget consultation are generally held for necessary inputs, and proceedings are largely made public.
- Budget information is disclosed and traceable.

### Deficiencies

- There is a growing tendency to bypass the set procedures per the convenience of the parties in power by issuing ordinances instead of obtaining approval in parliament.
- The state arrears are rising alarmingly high.
- Slow and low capital budget expenditure and expenditure towards end of the fiscal year.
- Budget transfer to the unproductive areas.

## 4.1.9 Article 10 and 13.1 – Access to Information and Participation of Society

### Legal framework

Ranked 23<sup>rd</sup> on the global Right to information rating, Nepal has a strong legal framework in place on access to information.<sup>229</sup> Access to state information is a fundamental right in Nepal, and all public information is generally accessible.<sup>230</sup> The Right to Information (RTI) Act 2007<sup>231</sup> seeks to ensure that citizens have access to information relating to public importance, and to make the state proceedings transparent and accountable. Right to information is not applicable to information which seriously jeopardizes the sovereignty, integrity, national security, public peace, stability and international relations of Nepal or which directly affects the investigation, inquiry and prosecution of a crime or which seriously affects the protection of economic, trade or monetary interest or intellectual property or banking or trade privacy or which directly jeopardizes the harmonious relationship subsisted among various cast or communities or which interferes on individual privacy and security of body, life, property or health of a person.<sup>232</sup> Furthermore, in order to promote dignified living standards, privacy of the matters relating to body, residence, property, document, data, correspondence and character of every person is protected by the Privacy Act 2018.<sup>233</sup> The

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<sup>228</sup> For details, see a media report at <https://english.khabarhub.com/2020/12/141628/>, accessed on November 2021. <https://myrepublica.nagariknetwork.com/news/fixing-nepal-s-low-and-slow-development-spending/#:~:text=Fixing%20Nepal%E2%80%99s%20low%20and%20slow%20development%20spending>

<sup>229</sup> Right to Information Rating, Country Data, <https://www.rti-rating.org/country-data/>, accessed on 24 March 2022.

<sup>230</sup> The Constitution of Nepal, 2015; Article 27.

<sup>231</sup> Accessible in Law Commission of Nepal website, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/right-to-information-act-2064-2007.pdf>, accessed on October 2021.

<sup>232</sup> Section 3(3) of the Right to Information Act 2007, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/right-to-information-act-2064-2007.pdf>, accessed on 28 July 2022.

<sup>233</sup> See the Privacy Act 2018, <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Privacy-Act-2075-2018.pdf>, accessed on 28 July 2022.

Nepal National Information Commission is constituted and the Right to Information (RTI) Rules 2009<sup>234</sup> have been formulated to carry out the objectives of the act.

The legislation provides for proactive disclosures<sup>235</sup> and requires having an Information Officer, and a separate Information Section, as applicable, to disseminate the information regularly at all public offices.<sup>236</sup> There are set procedures to obtain information. Records are available upon paying the prescribed fees. The fee is: (a) Rs. 5/- (approximately 0.041 USD) general size paper (A4), (b) Rs. 10/- (approximately 0.081 USD) per page for the information prepared or maintained on a bigger size paper (A3), (c) Rs. 50/- (approximately 0.41 USD) for each Diskette or CD for the information to be provided through Diskette or CD, or other similar electronic devices, (d) Rs. 50/- (approximately 0.41 USD) per hour per person for the study or observation of any document, material or visit or observation of undergoing construction site of the Public Body, if that has to be done for more than half an hour. However, no fees will be charged for public libraries or such places which are available to the public free of charge.<sup>237</sup> Information has to be made available immediately generally but those that cannot be granted immediately shall have to be made available within 15 days of the formal request. Information that cannot be made available on time should be adequately reasoned for by the designated information officer. For any sort of denial, the legislation provides for an appeal mechanism. There are series of steps provisioned for this process – firstly you should appeal to the public information officer of the concerned authority within seven days, followed by an appeal to the chief of the concerned ministry or department and to the Information Commission<sup>238</sup> to the Supreme Court. Appeals are resolved in 60 days from the formal lodging of the complaint.<sup>239</sup>

The Information Commission has, inter alia, the right to order all public offices to make information available to citizens at large.<sup>240</sup> The National Information Commission (NIC) was established in 2008 as an independent body for the implementation of the right to information as per the provisions of the RTI Act. It is responsible for the protection, promotion and practice of RTI in Nepal. The GoN constituted the Commission comprising of one chief commissioner and two commissioners. The other staff of the NIC are provided by the GoN. Currently, there are 32 staff members in the Commission. The NIC has a total of 5 divisions, namely a Planning and Promotion, Administration, Appeal, Account, and Monitoring section to carry out its objectives.<sup>241</sup>

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<sup>234</sup> The Law commission translated version of the Rules can be accessed at the National Trust for Nature Conservation (NTNC) Portal, [https://ntnc.org.np/sites/default/files/doc\\_page/Right%20to%20Information%20Regulation%202009%20%282065%20BS%29.pdf](https://ntnc.org.np/sites/default/files/doc_page/Right%20to%20Information%20Regulation%202009%20%282065%20BS%29.pdf), accessed September 2021.

<sup>235</sup> The RTI Act, 2007; Section 4 (2) (A).

<sup>236</sup> The RTI Act; Section 6.

<sup>237</sup> See Section 8 of the RTI Act, 2007 and Clause 4 of the RTI Rules, 2009. See also Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>238</sup> See the RTI Act 2007; Section 10.

<sup>239</sup> See the RTI Rules, Clause 6.

<sup>240</sup> See the Commission Portal, What we do, <https://nic.gov.np/page/what-we-do>, accessed on 30 September 2021.

<sup>241</sup> Ibid; Commission Portal, About us, <https://nic.gov.np/page/about-us>, accessed on 30 September 2021.

Despite these clear legal imperatives, the Nepalese government has not been very accountable to citizens in terms of providing information that is of national importance. The information, particularly that which is politically sensitive, is often delayed and may even be withheld without assigning any reasons whatsoever.<sup>242</sup> In fiscal year 2018/2019, the National Information Commission settled 1144 complaints and appeals against public bodies denying information.<sup>243</sup> Likewise, in fiscal year 2019/2020, it received 1013 complaints and appeals against public bodies denying information.<sup>244</sup> While the National Information Commission's annual report shows its efficiency of settling 100% complaints and appeals, the publication of the International Commission of the Jurists considers a provision of appeal is largely ineffective in practice.<sup>245</sup> Reports of important inquiry commissions that were constituted from time to time were never made public, nor implemented. For instance, the report of the Rayamajhi Commission that was appointed after the 2006 Democracy Movement and the Commission set up following the 1990 People's Movement were never made public, nor followed.<sup>246</sup>

Even though Nepal has progressive legislation on RTI, it contains several shortcomings: (a) information is available only to Nepali citizens, not a foreigner or foreign entity; (b) the information request procedures require applicants to submit reasons for their requests, which is not only contrary to international standards but also potentially places the burden of proof on the applicant; and (c) it lacks an overriding mechanism for the disclosure of even exempt information where this is in the overall public interest.<sup>247</sup>

The implementation of the RTI Act has been weak and largely inadequate. One of the main reasons for this is the lack of awareness by the public about their right to information and the lack of awareness and well-trained and competent human resources in public agencies. The limited number of requests and small RTI-focused organizations have had limited impact on the level of awareness among public bodies about their statutory obligations. Similarly, a large proportion of public bodies have failed to appoint information officers as required under the law. Only about 200 of 9,000 government bodies have designated an officer.<sup>248</sup>

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<sup>242</sup> See Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>243</sup> National Information Commission, Summary of Annual Report 2019/2020, pp. 12-13, <https://nic.gov.np/uploads/383/1629859675.AnnualReportenglish2076.77.pdf>, accessed on 28 July 2022.

<sup>244</sup> Ibid

<sup>245</sup> International Commission of Jurists (2012), Commissions of Inquiry in Nepal: Denying Remedies, Entrenching Impunity, <https://www.icj.org/wp-content/uploads/2012/06/Nepal-Commissions-of-Inquiry-thematic-report-2012.pdf>, accessed on 25 September 2021.

<sup>246</sup> International Commission of Jurists (2012), Commissions of Inquiry in Nepal: Denying Remedies, Entrenching Impunity, pp. 6-7 <https://www.icj.org/wp-content/uploads/2012/06/Nepal-Commissions-of-Inquiry-thematic-report-2012.pdf>, accessed on 28 July 2022 and Himalayan Times, SC moved to make Rayamajhi commission report public, 26 January 2007, <https://thehimalayantimes.com/kathmandu/sc-moved-to-make-rayamajhi-commission-report-public>, accessed on 28 July 2022.

<sup>247</sup> See Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>248</sup> See Article 19 Country Report: The Right to Information in Nepal, available at Article 19 webpage, <https://www.article19.org/resources/country-report-the-right-to-information-in-nepal/>, accessed on October 2021.

Regarding the participation of societies, civil society organizations (CSOs) may be consulted for “matters of public concern” pursuant to laws that deals with good governance.<sup>249</sup> Though prevention of corruption has not been directly defined as a matter of public concern, participation of CSOs may be sought for that purpose<sup>250</sup>; albeit not mandatorily but if the GoN so desires. Moreover, there are other statutory requirements whereby CSOs may have a chance to participate, for instance in public hearings. It is generally required that the experts, and other stakeholders concerned, along with the CSOs representatives, be invited to hearings on overall governance issues which the GoN organizes at different levels – district, zones, regions and the local level.<sup>251</sup>

The Nepalese Constitution recognizes “freedom to form unions and associations” as a fundamental right.<sup>252</sup> Furthermore, the formation of CSOs is facilitated by a number of other statutes. The Citizens’ Rights Act 1955<sup>253</sup> is particularly important because it specifically mentions that CSOs may “organize peacefully and operate for criticizing and exerting pressure for a policy change, and amending and repealing laws.” This was the first ever statutory provision that facilitated the formation of CSOs in Nepal. Moreover, National Directives Act 1961; Registration of Association Act 1977; and the Social Welfare Council Act 1992 all provide a comprehensive framework for the operation of CSOs in Nepal.<sup>254</sup>

Consequently, many CSOs have contributed to reforming governance in Nepal. A number of public interest litigations (PILs) were moved and the Supreme Court of Nepal has issued directives to successive governments to enact laws that address the issue of governance reform, political party financing, and asset disclosure by candidates contesting elections.<sup>255</sup> Likewise, it should be noted that the CIAA has a working relationship with Transparency International, civil society

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<sup>249</sup> Section 20(1) of the Good Governance Act, 2008, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/good-governance-management-and-operation-act-2064-2006.pdf>, accessed on 1 August 2022.

<sup>250</sup> The Good Governance Act, 2008; Section 20.

<sup>251</sup> Ibid; Section 30.

<sup>252</sup> The Constitution of Nepal, 2015; Article 17 (2) (D).

<sup>253</sup> Nepali version of the Act can be found at the Law Commission of Nepal website, <https://www.lawcommission.gov.np/np/wp-content/uploads/2021/03/%E0%A4%A8%E0%A4%BE%E0%A4%97%E0%A4%B0%E0%A4%BF%E0%A4%95-%E0%A4%85%E0%A4%A7%E0%A4%BF%E0%A4%95%E0%A4%BE%E0%A4%B0-%E0%A4%90%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%A7%E0%A5%A8.pdf>, accessed on October 2021.

<sup>254</sup> Nepali version of these Acts can be found at the Law Commission of Nepal website, <https://www.lawcommission.gov.np/np/?cat=489>; <https://www.lawcommission.gov.np/np/wp-content/uploads/2018/10/%E0%A4%B8%E0%A4%82%E0%A4%B8%E0%A5%8D%E0%A5%E0%A4%BE%E0%A4%A8-%E0%A4%A6%E0%A4%B0%E0%A5%8D%E0%A4%A4%E0%A4%BE-%E0%A4%8F%E0%A5%87%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%A9%E0%A5%AA.pdf>, and <https://www.lawcommission.gov.np/np/wp-content/uploads/2021/01/%E0%A4%B8%E0%A4%AE%E0%A4%BE%E0%A4%9C-%E0%A4%95%E0%A4%B2%E0%A5%8D%E0%A4%AF%E0%A4%BE%E0%A4%A3-%E0%A4%90%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%AA%E0%A5%AF.pdf> respectively, accessed on October 2021.

<sup>255</sup> For details, see a CSO Portal, Propublic Forum for protection of public interest, <http://propublic.org/>, accessed on 24 March 2022.

organizations and community-based organizations in general for awareness generating activities but it does not detail out the nature or scope of the relationship.<sup>256</sup>

There is no record of the civil society organizations being attacked for their activities against corruption. However, in Nepal, civil society is identified largely with the non-governmental organization (NGO) sector, and thus handicapped by the perception or sometimes the mere characterization of NGOs as being driven by pecuniary motives. The activities of nearly all NGOs are externally funded and sometimes supported by external ideas as well. The irony is that despite the good work of many NGOs whose activities contributed to the demand for democratization, this factor has not helped the image of CSOs. Many civil society agents and institutions are also party-affiliated, calling their independence into question.<sup>257</sup>

### **Good practices**

- Nepal has a strong legal framework on the right to information in place with few exceptions.
- Provision of an independent information commissioner and appeals mechanism makes the RTI scheme in Nepal quite robust.
- There is a growing demand from civil society groups for a proper implementation of the RTI Act.<sup>258</sup> Although still quite low, the awareness of the RTI legislation in Nepal is higher than in many other South Asian countries.<sup>259</sup>

### **Deficiencies**

- The RTI Act is not being efficiently implemented in practice. Many information requests are denied and public awareness of the right to access information, and consequently, the number of requests filed, is low.
- Accessing information is a paid service, which means that it is not accessible to all parts of society.
- The implementation of provisions on proactive disclosure has also been weak and public authorities do not publish all required information on their respective websites.<sup>260</sup>
- While the NIC has the power to issue binding decisions and is tasked with conducting promotional activities of the right to access information, it is largely considered as understaffed, under-resourced and in general lacking institutional capability and expert knowledge. The NIC has no actual powers to enforce its decisions or monitor their implementation.<sup>261</sup>

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<sup>256</sup> CIAA Annual Report 2021, pp. 13-14, <https://ciaa.gov.np/uploads/publicationsAndReports/wbZQvp.pdf> (Nepali Language), accessed on 26 July 2022.

<sup>257</sup> See Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>258</sup> See Article 19 Country Report: The Right to Information in Nepal, available at Article 19 webpage, <https://www.article19.org/resources/country-report-the-right-to-information-in-nepal/>, accessed on October 2021.

<sup>259</sup> Ibid.

<sup>260</sup> Ibid.

<sup>261</sup> Ibid.

## 4.1.10 Article 11 – Judiciary and Prosecution Services

### Legal framework

An independent judiciary with the required competence has been established in Nepal. Judicial conduct is regulated by a number of legislations in Nepal: The Judicial Council Act 2016<sup>262</sup>; the Judicial Administration Act 2016<sup>263</sup>; and the Judicial Service Commission Act 2016<sup>264</sup>; as well as a comprehensive code of conduct for judges<sup>265</sup>. Additionally, there is separate code of conduct for the employees working in the courts so as to maintain integrity within the judiciary.<sup>266</sup> The Local Government (Operation) Act 2017<sup>267</sup> provides comprehensive guidance insofar as the judicial function of the local level government is concerned. The process as to the selection, recruitment, performance tracking and termination measures is, thus, very much adequate at least in laws and in policies. In order to ensure fairness, members of the judiciary and the prosecution services need to recuse themselves from potential conflict of interests per the prescribed procedure and they are also subject to disclose their assets like any other public servant.

Members of the judiciary are appointed per the recommendation of the Constitutional Council and the Judicial Council, respectively. For judicial appointments, precise and explicit criteria have been prescribed.<sup>268</sup> A supreme court justice appointee has to undergo a parliamentary hearing for a confirmation to the post– a mechanism that functions as an integrity check.<sup>269</sup> The Judicial Council has been mandated to investigate breaches of procedure and abuse of power within the judiciary. The Council is entitled to deal with all matters relating to judicial administration, including the

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<sup>262</sup> Nepali version of the Act is accessible in the Law Commission of Nepal website, <https://www.lawcommission.gov.np/np/wp-content/uploads/2021/01/न्याय-परिषद-ऐन-२०७३.pdf>, accessed on October 2021.

<sup>263</sup> Nepali version of the Act is accessible in the Law Commission of Nepal website, <https://www.lawcommission.gov.np/np/wp-content/uploads/2021/01/%E0%A4%A8%E0%A5%8D%E0%A4%AF%E0%A4%BE%E0%A4%AF-%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A4%B6%E0%A4%BE%E0%A4%B8%E0%A4%A8-%E0%A4%90%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%A9.pdf>, accessed on October 2021.

<sup>264</sup> Nepali version of the Act is accessible in the Law Commission of Nepal website, <https://www.lawcommission.gov.np/np/wp-content/uploads/2021/01/%E0%A4%A8%E0%A5%8D%E0%A4%AF%E0%A4%BE%E0%A4%AF-%E0%A4%B8%E0%A5%87%E0%A4%B5%E0%A4%BE-%E0%A4%86%E0%A4%AF%E0%A5%8B%E0%A4%97-%E0%A4%90%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%A9.pdf>, accessed on October 2021.

<sup>265</sup> Nepali version of the Code can be accessed at the Supreme Court of Nepal Portal, [https://supremecourt.gov.np/web/assets/downloads/Achar\\_sanhita.pdf](https://supremecourt.gov.np/web/assets/downloads/Achar_sanhita.pdf), accessed on October 2021.

<sup>266</sup> Nepali version of the Codes of Conduct is available at the Supreme Court of Nepal website, <https://supremecourt.gov.np/web/assets/downloads/कर्मचारी-संहिता-२०७५.pdf>, accessed on October 2021.

<sup>267</sup> Nepali version of the Act is accessible in the Law Commission of Nepal website, <https://www.lawcommission.gov.np/np/wp-content/uploads/2019/04/6.%E0%A4%B8%E0%A5%8D%E0%A4%A5%E0%A4%BE%E0%A4%A8%E0%A5%80%E0%A4%AF-%E0%A4%B8%E0%A4%B0%E0%A4%95%E0%A4%BE%E0%A4%B0-%E0%A4%B8%E0%A4%9E%E0%A5%8D%E0%A4%9A%E0%A4%BE%E0%A4%B2%E0%A4%A8.pdf>, accessed on October 2021.

<sup>268</sup> See the Constitution of Nepal, 2015.

<sup>269</sup> See the Constitution of Nepal, 2015 and the House of Representative Rules, 2018.

appointment, transfer, disciplinary action, and even the dismissal of judges. It has its own secretariat headed by a secretary who is appointed by the government upon the recommendation of the Judicial Service Commission. The secretariat is responsible for assisting the Council to maintain the performance records of all the judges as well as for implementing the Council's decisions.<sup>270</sup>

In order to serve training and research needs of the judges, government attorneys, government legal officers, judicial officers, private law practitioners, and others who are directly involved in the administration of justice in Nepal, the National Judicial Academy (NJA) has been established in Nepal.<sup>271</sup> The NJA works under the broad policy guidelines of sixteen members' Governing Council headed by the Chief Justice of Nepal.<sup>272</sup> The NJA is a member of International Organization of Judicial Training.<sup>273</sup> The role of the NJA is to promote a professionally competent and service-oriented judiciary by improving judicial administration for which it coordinates with the Judicial Council and the Judicial Service Commission.<sup>274</sup>

The prosecutorial function is independently exercised by the Attorney General (AG) of Nepal. The AG is the GoN's chief legal advisor who provides advice on constitutional and legal matters. The AG has the right to make a final decision whether to prosecute cases on behalf of the GoN in any court of law, judicial body or authority, and represents the government in the court of law and defends all lawsuits in which the GoN is party to.<sup>275</sup> Their Office has introduced a Prosecutor's Manual (2019)<sup>276</sup> which guides all government attorneys in providing legal advice, representing and defending in a court of law, and rules for pleading. The manual enumerates the power, function and duties, along with the procedures to be followed.<sup>277</sup> A separate code of conduct is in place for the employees working in the AG Office in respect with the principle of integrity.<sup>278</sup> Furthermore,

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<sup>270</sup> For details, see the Council Website, Judicial Council Secretariat, <http://jcs.gov.np/>; see Global Integrity (2009), Qualitative Report – Nepal, Op. Cit. 8.

<sup>271</sup> See Section 3 of the National Judicial Academy Act, 2006. Translated version of the Act can be accessed at the Law Commission of Nepal website, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/national-judicial-academy-act-2063-2006.pdf>, accessed on October 2021.

<sup>272</sup> See Section 6, Ibid.

<sup>273</sup> For more details, see the NJA website <http://www.njanepal.org.np>, accessed on October 2021.

<sup>274</sup> Ibid.

<sup>275</sup> See Section 35 (2) of the CIAA Act, 1991 and the Constitution of Nepal, 2015 as well as the State Cases Act, 1992.

<sup>276</sup> Nepali version of the Manual is accessible in the Office of the Attorney General in Nepal website, [https://ag.gov.np/files/%E0%A4%AE%E0%A4%B9%E0%A4%BE%E0%A4%A8%E0%A5%8D%E0%A4%AF%E0%A4%BE%E0%A4%AF%E0%A4%BE%E0%A4%A7%E0%A4%BF%E0%A4%B5%E0%A4%95%E0%A5%8D%E0%A4%A4%E0%A4%BE%E0%A4%95%E0%A5%8B%20%E0%A4%95%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%AF%E0%A4%BE%E0%A4%B2%E0%A4%AF%E0%A4%A8%E0%A4%BF%E0%A4%B0%E0%A5%8D%E0%A4%A6%E0%A5%87%E0%A4%B6%E0%A4%BF%E0%A4%95%E0%A4%BE%E0%A4%B9%E0%A4%B0%E0%A5%82/nirdesika\\_paripatraharu.pdf](https://ag.gov.np/files/%E0%A4%AE%E0%A4%B9%E0%A4%BE%E0%A4%A8%E0%A5%8D%E0%A4%AF%E0%A4%BE%E0%A4%AF%E0%A4%BE%E0%A4%A7%E0%A4%BF%E0%A4%B5%E0%A4%95%E0%A5%8D%E0%A4%A4%E0%A4%BE%E0%A4%95%E0%A5%8B%20%E0%A4%95%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%AF%E0%A4%BE%E0%A4%B2%E0%A4%AF%E0%A4%A8%E0%A4%BF%E0%A4%B0%E0%A5%8D%E0%A4%A6%E0%A5%87%E0%A4%B6%E0%A4%BF%E0%A4%95%E0%A4%BE%E0%A4%B9%E0%A4%B0%E0%A5%82/nirdesika_paripatraharu.pdf), accessed on October 2021.

<sup>277</sup> The Nepali version of the Manual can be accessed in the AG Office Website, [https://ag.gov.np/files/%E0%A4%AE%E0%A4%B9%E0%A4%BE%E0%A4%A8%E0%A5%8D%E0%A4%AF%E0%A4%BE%E0%A4%AF%E0%A4%BE%E0%A4%A7%E0%A4%BF%E0%A4%B5%E0%A4%95%E0%A5%8D%E0%A4%A4%E0%A4%BE%E0%A4%95%E0%A5%8B%20%E0%A4%95%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%AF%E0%A4%BE%E0%A4%B2%E0%A4%AF%E0%A4%A8%E0%A4%BF%E0%A4%B0%E0%A5%8D%E0%A4%A6%E0%A5%87%E0%A4%B6%E0%A4%BF%E0%A4%95%E0%A4%BE%E0%A4%B9%E0%A4%B0%E0%A5%82/nirdesika\\_paripatraharu.pdf](https://ag.gov.np/files/%E0%A4%AE%E0%A4%B9%E0%A4%BE%E0%A4%A8%E0%A5%8D%E0%A4%AF%E0%A4%BE%E0%A4%AF%E0%A4%BE%E0%A4%A7%E0%A4%BF%E0%A4%B5%E0%A4%95%E0%A5%8D%E0%A4%A4%E0%A4%BE%E0%A4%95%E0%A5%8B%20%E0%A4%95%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%AF%E0%A4%BE%E0%A4%B2%E0%A4%AF%E0%A4%A8%E0%A4%BF%E0%A4%B0%E0%A5%8D%E0%A4%A6%E0%A5%87%E0%A4%B6%E0%A4%BF%E0%A4%95%E0%A4%BE%E0%A4%B9%E0%A4%B0%E0%A5%82/nirdesika_paripatraharu.pdf), last accessed on 30 September 2021.

<sup>278</sup> Nepali version of the Codes of Conduct can be accessed at the Attorney General's Office Nepal website, <https://ag.gov.np/files/सरकारी-वकील-तथा-कर्मचारीको-आचार-संहिता-२०७५-१.pdf>, accessed on October 2021.

the Bar Council’s Code of Conduct 1994 serves as a benchmark in this regard.<sup>279</sup> The JC introduces disciplinary measures if members of the judiciary fail to comply with the standards or code of conducts<sup>280</sup> and the Bar Council does so for lawyers.<sup>281</sup> The JC’s annual report of Fiscal Year 2076/77 (2019/2020) shows that 90 complaints were filed against various judges that year alone, among which 51 complaints were disposed.<sup>282</sup> The JC can issue warning, suspend and/or remove from the office.<sup>283</sup>

Judicial proceedings are open to the public and media, except in camera hearings.<sup>284</sup> Court judgements are generally accessible.<sup>285</sup> Undue interference has been safeguarded through a transparent cause-list mechanism.<sup>286</sup>

## Status of Implementation

The Nepalese judiciary is generally considered pro-active and some landmarks decisions have also been made. The reputation of the Nepalese judiciary, however, has been in a state of erosion over the last few years. The Supreme Court and the CJ in particular ran into some controversy following media reports<sup>287</sup> that alleged their demand for their “share” in the government. From September to October 2021, the CJ was alleged to have requested at least two berths in the cabinet, which was being expanded over a period of nearly three months after the present Prime Minister assumed power following a mandamus of the Supreme Court.

The CJ had previously been involved in a similar controversy. The erstwhile government, through an ordinance, amended the Constitutional Council Act 2010 with an objective to ease the process for taking decisions. By participating in the meeting, which made the decision to recommend as many as 52 individuals for various constitutional positions, the CJ is reported to have secured appointments even for persons who were close to him. A media report says, “[...] Nepal’s judiciary has often courted controversy, despite it having its own glorious past. The Supreme Court has been criticized for becoming a hotbed of corruption – even an internal report prepared by one of its justices says so – and a recruitment center for political parties. Appointments of justices under political quota have become a norm. The controversy surrounding the chief justice has emerged at a time when the country’s three key state organs have been thrown into disarray. The executive

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<sup>279</sup> For details, see the Council Website at Code of Conduct - Nepal Bar Council, <https://nepalbarcouncil.org.np/en/code-of-conduct/>, accessed on 30 September 2021.

<sup>280</sup> Section 18 and 19 of Judicial Council Act 2016, <http://www.jcs.gov.np/regulations/1545816002judicial-council-act-2073-2016.pdf>, accessed on 28 July 2022.

<sup>281</sup> Section 11 of the Bar Council Act 1993, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/nepal-bar-council-act-2050-1993.pdf>, accessed on 1 August 2022.

<sup>282</sup> Judicial Council. Annual Report of 2076/2077, pp. 32-38, <http://www.jcs.gov.np/uploads/annualreports/1618999531Prativewan%202076-77.pdf> (Nepali version), accessed on August 1 2022

<sup>283</sup> Section 14 of the Judicial Council Act 2016, <http://www.jcs.gov.np/regulations/1545816002judicial-council-act-2073-2016.pdf>, accessed on 28 July 2022.

<sup>284</sup> Section 129 of the Muluki Criminal Procedure Code 2018, <https://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Criminal-procedure-code-Revised.pdf>, accessed on August 1 2022.

<sup>285</sup> Important judgements are published in Nepal Kanoon Patrika and available online on <https://nkp.gov.np>.

<sup>286</sup> For instance, cause-list of the Supreme Court is available in the website i.e. <https://supremecourt.gov.np/web/>.

<sup>287</sup> प्रधानमन्त्री-प्रधानन्यायाधीश 'कनेक्सन' बाटमन्त्रीमाप्रस्तावितगजेन्द्रहमाल :: Setopati; प्रधानन्यायाधीशजबरालेमागेकाछन्वनरउद्योगमन्त्रालय—Online Khabar; गढबन्धनमाप्रधानन्यायाधीशपनि?- समाचार - कान्तिपुरसमाचार (ekantipur.com), accessed on 14 October 2021.

has failed to govern, the legislature is dysfunctional and the judiciary is caught in tangles, especially over whether the chief justice should be leading the Constitutional Bench to hear the petitions related to the appointments to the constitutional bodies. The fresh controversy surrounding the chief justice portends legal, constitutional and political consequences that can disturb the separation of powers [...].”<sup>288</sup>

Similarly, the AG – despite being a constitutional post – has not been given due weightage because the appointment is entirely politically driven, and made mainly based on loyalties rather than considering the appointees’ competence and professionalism.<sup>289</sup>

A recent report submitted by the Justice Hari K. Karki led panel, on 29 July 2021, supports the claim that the Nepali judiciary is not immune from corruption. The report states that corruption begins with the selection and appointment of justices and judges at the courts. The 250-page report identifies the judicial appointment process as the most significant factor behind corruption in the judiciary.<sup>290</sup> “The Judicial Council is responsible for recommending names of justices and judges, but the council picks the names per its pleasure without basing it on any legally defined criteria. Hence, the justice appointment gets controversial most of the time.”<sup>291</sup> Another significant highlight of the report is that the middlemen and brokers, alongside some of the justices and advocates, are found to be influencing administrative affairs of the courts, such as the transfer of judges.<sup>292</sup>

Consequently, there is a growing realization that Nepal’s judiciary needs to be reformed. An automated system for designating the benches has been recommended which was the CJ’s discretion hitherto.<sup>293</sup>

### **Good Practices**

- The Judicial Council takes actions against judges on various grounds including incompetence, misconduct, failure to perform his or her duties honestly, performance of business with mala fide intention or serious violation by him or her of the code of conduct required to be observed by him or her.

### **Deficiencies**

- It has been argued that the erosion of judicial independence has increased in Nepal in recent years due to increased politicization in the appointment procedures of the Justices.<sup>294</sup>

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<sup>288</sup> Kathmandu Post (October 2021), As chief justice comes under scrutiny, concerns grow if the rot has set in, <https://kathmandupost.com/national/2021/10/05/as-chief-justice-comes-under-scrutiny-concerns-grow-if-the-rot-has-set-in>, accessed on 14 October 2021.

<sup>289</sup> Based on the outcomes of the FGD conducted with the legal teachers and lawyers, October 2021.

<sup>290</sup> Nepali version of the report is accessible at the Supreme Court website, [https://supremecourt.gov.np/web/assets/downloads/bikriti\\_bisangati\\_2078.pdf](https://supremecourt.gov.np/web/assets/downloads/bikriti_bisangati_2078.pdf), accessed on October 2021.

<sup>291</sup> For more details, see a media report, <https://english.onlinekhabar.com/supreme-court-panel-reports-rampant-corruption-in-judiciary-that-begins-with-justice-selection.html>, accessed on October 2021.

<sup>292</sup> Report of Justice Hari K. Karki led panel cited above.

<sup>293</sup> Ibid.

<sup>294</sup> For more details, see a blog by Bikram Timilsina, Griffith University, available at East Asia Forum Portal, <https://www.eastasiaforum.org/2021/12/17/nepals-eroding-judicial-independence-leaves-supreme-court-in-limbo/>, accessed on December 2021.

- Nepal's court system is subject to corruption and executive influence, causing overall inefficiency in the sector. Judges have been reported to accept bribes from individuals and companies for favorable rulings.<sup>295</sup>

#### 4.1.11 Article 12 – Private Sector Transparency

##### Legal framework

All anti-competitive practices, such as tied selling, bid rigging, cartel formation, collective price fixing, undue business influences, as well as syndicate and exclusive dealing—are exclusively prohibited;<sup>296</sup> and there are a number of legislations that aim to regulate private sector transparency in Nepal.<sup>297</sup> The Federation of Nepalese Chambers of Commerce and Industry (FNCCI), and National Business Initiative (NBI) umbrella organizations of businesses in Nepal, have formulated codes of conduct for making the private sector responsible in terms of corporate ethics.<sup>298</sup>

On the transparency front, every company has to maintain accounts with a double entry system,<sup>299</sup> and follow prescribed accounting standards. The Accounting Standard Board was formed in the year 2003 pursuant to the Nepal Chartered Accountants Act 1997. The Board is an independent statutory body, which prescribes financial reporting standards for preparing and presenting financial statements in Nepal in line with the international financial reporting standards issued by International Accounting Standards Board (IASB). Companies are also required to prepare annual financial statements.<sup>300</sup> So far as banking and other financial institutions are concerned, they need to maintain accounts, ledgers, records, and books of accounts per the accepted standards and based on the double entry system.<sup>301</sup> Similarly, every company has to appoint an auditor to have their accounts audited,<sup>302</sup> and the auditing standards have also been prescribed in line with the International Standards on Auditing, issued by International Federation of Accountants (IFAC) through the International Auditing and Assurance Standards Board (IAASB).<sup>303</sup> For companies

<sup>295</sup> The Global Competitiveness Report 2015-2016 as cited in "Nepal Corruption Report" of Risk & Compliance Portal of GAN Integrity, available at <https://www.ganintegrity.com/portal/country-profiles/nepal/>, accessed on December 2021.

<sup>296</sup> See the Competition Promotion and Market Protection Act, 2007. See also the Consumer Protection Act, 2018 (Chapter-4).

<sup>297</sup> For instance: Consumer Protection Act, 2018 (<https://www.lawcommission.gov.np/en/wp-content/uploads/2019/09/The-Consumer-Protection-Act-2075-2018.pdf>); Essential Commodities Control (Authorization) Act, 2017 (<https://www.lawcommission.gov.np/en/?p=13895>); The Black-Marketing and Some Other Social Offenses (Punishment) Act, 1975 (<https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/black-marketing-and-some-other-social-offenses-and-punishment-act-2032-1975.pdf>); Competition Promotion and Market Protection Act, 2007 (<https://www.wipo.int/edocs/lexdocs/laws/en/np/np002en.pdf>) etc.

<sup>298</sup> For details, see the FNCCI's Business Code of Conduct, <https://www.fncci.org/business-code-of-conduct-75.html>, accessed on 30 September 2021.

<sup>299</sup> The Companies Act, 2006; Section 108.

<sup>300</sup> The Companies Act, 2006; Section 109.

<sup>301</sup> The Banks and Financial Institutions Act, 2017; Section 58.

<sup>302</sup> See the Companies Act, 2006; Sections 110 and the Banks and Financial Institutions Act, 2017; Sections 59.

<sup>303</sup> The Companies Act, 2006; Section 115 (Nepali Version at the Law Commission of Nepal Portal, <https://www.lawcommission.gov.np/np/wp-content/uploads/2021/01/कम्पनी-ऐन-२०६३.pdf>) and the Banks and Financial Institutions Act, 2017; Sections 59 and 64 (Nepali version at the Law Commission of Nepal portal,

which are fully or partially owned by the government that have paid up capital of thirty million rupees (approx. 240,747 USD) or more, an audit committee has to be formed.<sup>304</sup> Both the Companies Act, 2006<sup>305</sup> and the Banks and Financial Acts<sup>306</sup> prescribe sanctioning provisions for noncompliance with legal requirements. There is a separate legislation for providing subsidies and incentives with all the measures available for preventing their misuse.<sup>307</sup>

There are no transparency requirements for beneficial ownership in place. However, the Companies Act provides for nomination of beneficial owners and bearer of shares and there are prescribed guidelines for the implementation of the Act. Nevertheless, in practice, this is not being followed widely.

### **Status of Implementation**

Since there is no legal restriction for government employees entering the private sector after leaving the government; the private sector, thus, is open to all ex-civil servants. However, civil servants, who worked for policy making and law enforcement or acted in the capacity of a regulator previously are restricted to assume the management role in the private sector, according to the Good Governance (Management and Operation) Act, 2008.<sup>308</sup> This is another milestone of private sector transparency and integrity. However, there is no guidance whatsoever on promoting cooperation between the private sector and law enforcing agencies. This leaves a huge gap for a potential undue nexus as the private sector code of conduct may not suffice and has not proven effective since the private sector maintains such a relationship on an arbitrary basis. Similarly, no arrangements which restricts tax deductibility of expenses that constitute a bribe or a facilitation payment have been made so far. There are still challenges in the full implementation of the Nepal Financial Reporting Standards (NFRS).

### **Good Practices**

- The Good Governance (Management and Operation) Act, 2008 does not allow ex-civil servants to assume the management role in the private sector that helps to protect transparency and integrity of the private sector.

### **Deficiencies**

- Private sector code of conduct does not suffice, nor has it proven to be effective, to do away with potential undue nexus with the law enforcement agencies.

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<https://www.lawcommission.gov.np/wp-content/uploads/2021/01/बैंक-तथा-वित्तीय-संस्था-सम्बन्धी-ऐन-२०७३.pdf>), accessed on September 2021.

<sup>304</sup> The Companies Act, 2006; Section 165.

<sup>305</sup> Section 159-163 of the Companies Act, 2006.

<sup>306</sup> Section 99-104 of the Banks and Financial Institutions Act, 2017,

[https://www.nrb.org.np/contents/uploads/2019/12/Bank\\_And\\_Financial\\_Instituion\\_Act\\_2017\\_English\\_Version\\_20190311-1.pdf](https://www.nrb.org.np/contents/uploads/2019/12/Bank_And_Financial_Instituion_Act_2017_English_Version_20190311-1.pdf), accessed on 1 August 2022.

<sup>307</sup> See the Industrial Enterprises Act, 2020 (Translated version available at the Ministry of Industry, Commerce and Supplies website, <https://moics.gov.np/uploads/shares/laws/Industrial%20Enterprises%20Act%20%202020.pdf>, accessed on September 2021).

<sup>308</sup> See the Good Governance (Management and Operation) Act, 2008; Section 18 (4). Translated version by the Nepal Law Commission is available at their website, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/good-governance-management-and-operation-act-2064-2006.pdf>, accessed on September 2021.

- There is no legislation in place prohibiting ex-civil servants to switch immediately to the private sector.
- There is no restriction on tax deductibility of expenses that constitute a bribe.
- There is no transparency of the beneficial owners of companies.
- The Nepal Financial Reporting Standards has not been fully implemented.

#### **4.1.12 Article 14 – Measures to Prevent Money-Laundering**

##### **Legal framework**

The Asset (Money) Laundering Prevention Act, which the government promulgated in 2008, aims to “prevent money laundering of criminally earned assets”<sup>309</sup> and establishes two key institutions, the DMLI and the FIU, which were mentioned under Article 6.<sup>310</sup> The Department of Money Laundering Investigation (DMLI) assumes a dual role – prevention and punitive,<sup>311</sup> whereas the FIU mainly performs the role of information and intelligence provider.

Per the legislative arrangements, banks, financial institutions or nonfinancial institutions in Nepal are obliged to verify the identity of persons for transactions more stringently than what has been prescribed by the Central Bank. They may require such a person to submit certain documents: (i) name, family title, copy of citizenship or passport including other necessary documents specifying permanent address of residence and profession or business, (ii) copy of the document certifying incorporation, establishment or registration of the business or company, documents specifying name, family title, address, profession, business of board of directors and executive director or proprietor of firm or partners, and (iii) documents relating to principal's identity, address including power of attorney clarifying the business if someone else is involved.<sup>312</sup> Similarly, banks/financial and nonfinancial institutions, including government entities, are required to maintain records of amounts transacted beyond the threshold prescribed by the Central Bank for single or multiple transactions, and duly inform the FIU within fifteen days about their nature. These institutions have the power to inquire and investigate any transaction which may have a motive of asset laundering if there are reasonable grounds for suspicion.<sup>313</sup> However, despite measures for internal detection of money laundering, the present Nepalese legislation has no provisions for the detection and monitoring of cross-border cash and negotiable instrument flows.

Sanctions are clearly prescribed for non-compliance in Nepal. The FIU may impose a fine of five hundred thousand Nepali rupees (approx. 4000 USD) to the bank or financial institutions and twenty-five thousand to one hundred thousand (approx. 200 to 800 USD) for non-financial institutions. There is also an appeal mechanism whereby the bank or financial institutions as well

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<sup>309</sup> See the Preamble of the Act. Translated version of the Act can be accessed at the Securities Board of Nepal’s website, <https://www.sebon.gov.np/uploads/uploads/Tj1swbyYwSvxyRN3UmVZlyRFTVbG8zozIdXkxxzA.pdf>, accessed on September 2021.

<sup>310</sup> See Article 6 above. See also the Chapter V Analysis below.

<sup>311</sup> For details, see the DMLI Website, About, <http://www.dmli.gov.np/post/about-dmli.html>.

<sup>312</sup> See the Asset (Money) Laundering Prevention Act, 2008; Section 6.

<sup>313</sup> See Ibid; Section 7.

as non-financial institutions have to take a formal appeal to the High Court within thirty-five days of sanction imposed.<sup>314</sup>

## **Status of Implementation**

On the international cooperation front, Nepal follows the 40-point standards of the Financial Action Task Force (FATF) as a key guideline despite not being a member of the FATF. Nepal has been participating in the FATF International Cooperation Review Group (ICRG) process since 2009. FATF conducted a Mutual Evaluation of Nepal in July 2011 and the report highlights that Nepal faces a number of money laundering (ML) and terrorist financing (TF) risks and threats. Primary predicate crimes in Nepal are drug trafficking, human trafficking, arms trafficking, corruption, counterfeit currency, tax evasion and gold smuggling. Significant vulnerabilities relate to the porous Indo-Nepal border including terrorist activity and TF.<sup>315</sup>

Since the FATF Mutual Evaluation, Nepal has undertaken the task to respond to the Mutual Evaluation and has reiterated its commitment by enacting and amending laws and establishing mechanisms like the DMLI, FIU and other investigating and regulating agencies. Additionally, Nepal became a member of Asia/Pacific Group on Money Laundering (APG), an inter-governmental organization of 41 member jurisdictions, mainly responsible for implementing international standards against money laundering and terrorist financing, in 2002, thus reiterating its commitment to comply with international AML/CFT standards. Besides, the FIU of Nepal has secured its membership of the Egmont Group as its 51<sup>st</sup> Member in 2015. The Egmont Group is an international association of FIUs and has developed a Secured Web for the purpose of exchanging information among its members<sup>316</sup>. Furthermore, Nepal is a member of the World Bank (WB) and International Monetary Fund (IMF). Both of these organizations have mandates for certain AML/CFT matters and have provided trainings and technical assistance in building capacity of relevant institutions in Nepal. The IMF supported Nepal in developing the National AML/CFT Strategy, legal supervisory and FIU capacity building frameworks. The WB had assisted Nepal in conducting a National Money Laundering/Terrorist Financing (ML/TF) Risk Assessment for the period 2015 to 2018, and the National Risk Assessment Report, which was published in June 2020, has already been approved by the National Coordination Committee. The Coordination Committee is formed to coordinate inter-related entities and to provide necessary advice to the GoN with regards to the prevention of AML/CFT offences. The Committee is coordinated by the MoF Secretary. The Risk Assessment Report is made publicly available.<sup>317</sup>

Nepal has installed goAML software developed by the UNODC. The software will help for online receipt of reports and analyze such reports in an automated form. The goAML solution is executed in three steps: collection, analysis (rule based, risk score and profiling) and dissemination (escalate to law enforcement and seek feedback). It provides a facility for the rapid exchange of information

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<sup>314</sup> Section 31 of the Asset (Money) Laundering Prevention Act, 2008.

<sup>315</sup> The report is accessible at the EPG Portal, <http://www.apgml.org/includes/handlers/get-document.ashx?d=45e7e05b-7a59-4e6f-b627-96436196e151>, accessed on October 2021.

<sup>316</sup> For more details, see Egmont Group Portal, <https://egmontgroup.org>, accessed on October 2021.

<sup>317</sup> Available at MoFA official portal, [https://mofa.gov.np/wp-content/uploads/2021/03/NRA\\_REPORT\\_2020\\_Summarized.pdf](https://mofa.gov.np/wp-content/uploads/2021/03/NRA_REPORT_2020_Summarized.pdf), accessed on October 2021.

between the FIUs, financial institutions, law enforcement and judicial authorities, while ensuring the confidentiality of data solicited.<sup>318</sup> However, the annual report of 2020/2021 of FIU Nepal suggests that it has faced some challenges such as enhancing skills and capacity of FIU-Nepal officials and other related stakeholders regarding goAML software and AML/CFT emerging issues as well as maintaining inter-agency coordination and cooperation in policy and operational levels.<sup>319</sup>

### **Good practices**

- The GoN recognizes the AML/CFT system as a strategic tool to control financial crimes and intends to make goAML system fully operational.

### **Deficiencies**

- FIU Nepal has made several strategic and operational efforts to enhance its capacity and has conducted a number of training programs, coordinating with international organizations and foreign agencies, but it is yet to develop the analytical skills compatible to the highly automated system, goAML.<sup>320</sup>

## **4.2 Chapter V – Asset Recovery**

The return of assets is a fundamental principle of the UNCAC. States Parties are required to adopt the widest possible measures of cooperation and assistance in this regard, and ensure effective arrangements for anti-money laundering and asset recovery.

### **4.2.1 Article 52 and 58 – Anti-Money Laundering**

#### **Legal framework**

To begin with, the National Anti-Money Laundering / Countering the Financing of Terrorism (AML/CFT) Strategy and Action Plan 2019-2024<sup>321</sup> deserve a special mention here. It aims to develop a sound legal, institutional, supervisory and operational framework. The strategy focuses on applying a risk-based approach in all sectors concentrating primarily on those concerned with prevention, supervision and financial investigation. One of its objectives includes a national risk assessment as well.

With regards to preventing asset laundering, a coordination committee has been formed in order to encourage cooperation between the inter-related agencies and to provide necessary recommendation to the GoN. Coordinated by the Secretary of the Ministry of Finance, Secretaries of different ministries shall be members of this committee: (i) the Ministry of Law, Justice and Parliamentary Affairs, (ii) the Ministry of Home Affairs, (iii) the Ministry of Foreign Affairs, (iv)

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<sup>318</sup> FIU Annual Report, 2017/18. Can be accessed at the NRB website, [https://www.nrb.org.np/contents/uploads/2021/07/FIU-Nepal\\_Annual\\_Report\\_2074-75\\_017-18.pdf](https://www.nrb.org.np/contents/uploads/2021/07/FIU-Nepal_Annual_Report_2074-75_017-18.pdf), accessed on November 2021.

<sup>319</sup> FIU-Nepal, Annual Report 2020/2021, pp. 61-62, <https://www.nrb.org.np/contents/uploads/2021/12/Financial-Information-Unit-Annual-Report-202021.pdf>, accessed on 1 August 2022.

<sup>320</sup> Ibid.

<sup>321</sup> The Nepali version can be accessed at the OPMCM Website at [https://www.opmcm.gov.np/en/wp-content/uploads/2019/09/AML-CFT-Clear-Final\\_Approved.pdf](https://www.opmcm.gov.np/en/wp-content/uploads/2019/09/AML-CFT-Clear-Final_Approved.pdf), accessed on 30 September 2021.

the OPMCM, and (v) the CIAA, as well as the Deputy Attorney General, Deputy Governor, Inspector General of Police, and the Head of the DMLI.<sup>322</sup> The FIU Chief shall be the secretary and the FIU shall function as the secretariat of this committee.<sup>323</sup> This committee formulates procedures on its own,<sup>324</sup> and has been vested with certain powers, functions and duties. Major tasks the committee has been entrusted with consist of the following: formulating policies and presenting it to the GoN, facilitating and coordinating national and sectoral risk assessments and formulating policies to mitigate risks, implementing the GoN's decisions, advising the GoN to adopt international policies and standards, directing the authority concerned for prevention, and monitoring implementation thereto, deliberating on annual reports by the concerned authorities, regulatory bodies and the FIU and carrying out necessary coordination, and performing other functions as stipulated by the GoN.<sup>325</sup>

As per Asset (Money) Laundering Prevention Act, 2008, Reporting Entities (RE) are financial institutions and designated non-financial businesses and professions. Classification can, thus, be made as under<sup>326</sup>:

#### **A. Financial Sector**

- Bank and Financial Institutions
- Money Remitter
- Money Changer
- Securities Companies
- Insurance Companies
- Cooperatives

#### **B. Designated Non-Financial Businesses and Professions (DNFBPs)**

- Real Estate Agents
- Office of the Company Registrar
- Office which registers
- Office which registers vehicles
- Casinos
- Dealers in precious stones and metals
- Auditors and Accountants
- Trust and Company Service Providers

REs are legally obliged to report threshold transaction reports (TTRs) and Suspicious Transaction Reports (STRs) to the FIU in a prescribed format. REs have to identify the customer accurately and verify such identification in doing the following:

- Establishing a business relationship;

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<sup>322</sup> See the Asset (Money) Laundering Prevention Act, 2008; Section 8 (1).

<sup>323</sup> Ibid; Section 8 (2).

<sup>324</sup> Ibid; Section 8 (3).

<sup>325</sup> Ibid; Section 8 (A).

<sup>326</sup> For details, see FIU Nepal Annual Report, 2017/18.

- Opening an account;
- Carrying out occasional transactions above a threshold limit as prescribed by NRB;
- Carrying out wire transfers by electronic means;
- Detecting any suspicions on the veracity or adequacy of previously-obtained customer identification information;
- Detecting any suspicions of money laundering or terrorist financing;
- Monitoring high risk transactions and PEPs;
- Other situations as prescribed by the regulator.

A national agency responsible for receiving, processing, analyzing and disseminating financial information and intelligence on suspected money laundering and terrorist financing activities to the relevant law enforcement/investigative agencies and foreign FIUs has also been established pursuant to AML/CFT legislation in 2003. The AML/CFT legislation<sup>327</sup> mandates the FIU to do the following, mainly:

- “Receive and collect reports on suspicious and prescribed threshold financial transactions and other information relevant to money laundering and terrorist activities financing from government agencies, financial institutions and non-financial institutions;
- Analyze and assess the information received from reporting entities and inspect transactions and records from banks, and financial and non-financial institutions;
- Provide suspicious and other relevant information to the Investigation Department and other relevant bodies;
- Guide the banks, and financial and non-financial institutions on reporting;
- Ensure compliance by reporting entities with their obligations under the Act, Rules and Regulations;
- Manage training and awareness programs;
- Impose fines on banks, and financial and non-financial institutions that fail to report and comply and;
- Develop an information exchange mechanism with other FIUs or related international institutions by entering into a Memorandum of Understanding (MoU) or Membership.”<sup>328</sup>

FIU-Nepal has Memoranda of Understanding (MoUs) with the following international counterparts already<sup>329</sup>:

1. Financial Intelligence Unit, Central Bank of Bangladesh, October 2008
2. Financial Intelligence Unit, Central Bank of Sri Lanka, July 2009
3. The Anti-Money Laundering Office (AMLO), The Kingdom of Thailand, July 2010
4. Financial Intelligence Unit, Bank Negara, Malaysia, July 2010
5. The Financial Information Unit, The Bank of Mongolia, July 2010

<sup>327</sup> AML/CFT Legislation includes the Assets (Money) Laundering Prevention Rules, 2016 also.

<sup>328</sup> See Nepal Rastra Bank Website, FIU – Nepal, <http://archive.nrb.org.np/fiu/index.php>, accessed on 30 September 2021.

<sup>329</sup> FIU Nepal Annual Report, 2019/20, <https://www.nrb.org.np/contents/uploads/2021/07/Financial-Annual-Report-076-77-2019-20.pdf>, accessed on October 2021.

6. The Anti Money Laundering Division, Investigation Bureau, Ministry of Justice, Republic of China, March 2011
7. Korea Financial Intelligence Unit, Financial Services Commission, Republic of Korea, May 2011
8. Financial Intelligence Unit, India, November 2011
9. The Japan Financial Intelligence Center of the National Public Safety Commission of Japan, November 2013
10. Financial Intelligence Unit, The Republic of the Union of Myanmar, July 2014
11. Anti-Money Laundering Monitoring and Analysis Centre, China, December 2014
12. The Suspicious Transaction Reporting Office, Singapore, September 2016
13. New Zealand Police Financial Intelligence Unit, July 2017
14. Cambodia Financial Intelligence Unit, July 2017
15. Democratic Republic of Timor-Leste, August, 2019

As the laundering of assets is prohibited and criminalized in Nepal,<sup>330</sup> the DMLI carries out the necessary investigation. The DMLI is headed by the Officer of Special Class (Joint Secretary Level) of the Nepalese civil service, and is supported by the prescribed number of staff that the GoN sends to the DMLI.<sup>331</sup> The DMLI has already entered into MoUs with as many as 21 different organizations for mutual assistance and cooperation in order to make its work more effective.<sup>332</sup>

Per the law, the DMLI enjoys the following powers:<sup>333</sup>

- Ask banks, and financial and non-financial institutions as well as other authorities concerned to submit documents, evidences or other details;
- Carry out search operations on banks, financial and non-financial institutions, and other authorities or places;
- Seize and take control of the documents, papers, materials and other evidences;
- Ask any person or authority, who presumably may have obtained the related information, for their testimonials and;
- Ask the authorities concerned to freeze assets based on the request of other nations or organizations pursuant to bilateral or multilateral treaties or agreements.

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<sup>330</sup> The Assets (Money) Laundering Prevention Act, 2008; Section 3.

<sup>331</sup> Ibid; Section 11.

<sup>332</sup> Financial Intelligence Unit, Central Investigation Bureau, Department of National Parks and Wildlife Protection, Department of Land Reforms and Management, Department of Immigration, Department of Transport Management, Office of the Company Registrar, Metropolitan Police Crime Division, Department of Customs, Department of Revenue Investigation, Department of Inland Revenue, Department of Cooperatives, Department of Industry, Forest Department, Social Welfare Council, Nepal Chartered Accountants Association, Department of Insurance, Department of Foreign Employment, The CIAA, Nepal Notary Public Council, Police Headquarter. For details, see the DMLI Website, MOU, [http://www.dmli.gov.np/assets/uploads/files/MOU\\_%E0%A4%AD%E0%A4%8F%E0%A4%95%E0%A4%BE\\_%E0%A4%A8%E0%A4%BF%E0%A4%95%E0%A4%BE%E0%A4%AF%E0%A4%95%E0%A5%8B\\_%E0%A4%B5%E0%A4%BF%E0%A4%B5%E0%A4%B0%E0%A4%A31.pdf](http://www.dmli.gov.np/assets/uploads/files/MOU_%E0%A4%AD%E0%A4%8F%E0%A4%95%E0%A4%BE_%E0%A4%A8%E0%A4%BF%E0%A4%95%E0%A4%BE%E0%A4%AF%E0%A4%95%E0%A5%8B_%E0%A4%B5%E0%A4%BF%E0%A4%B5%E0%A4%B0%E0%A4%A31.pdf), accessed on 30 September 2021.

<sup>333</sup> Ibid; Section 12.

Upon investigation, the DMLI forwards the case to the government attorney for taking a decision whether to institute a case in court of law, and initiates prosecution after the attorney's approval.<sup>334</sup> There is no statute of limitation for initiating AML/CFT cases and the GoN shall be party to all AML/CFT cases thus initiated.<sup>335</sup> The DMLI is reported to have filed a total of 57 ML/TF cases in the court from its inception, out of which two cases were related to TF.<sup>336</sup>

As mentioned above, the systems of gathering information on AML/CFT and investigation of suspected cases for further legal actions are in place. However, there are certain legal provisions that prevent investigation and safeguard assets created through AML/CFT, the vivid example is the provision introduced in Finance Act 2021 for non-requirement of disclosure of source of income for the large investments in the areas infrastructure development (www.mofa.gov.np).

### **Status of Implementation**

The GoN claims to have made significant achievements in adopting measures of the AML/CFT regime in Nepal. It proclaims that substantial policy and institutional reform initiatives in a number of sectors such as regulatory, law enforcement, taxation and other have already been taken in the last couple of years. The GoN further says eleven agencies have been designated as the regulators and are working for both financial and non-financial businesses and professions (DNFBPs).<sup>337</sup> The core reforms include the enactment of the Financial Procedure and Fiscal Accountability Act 2019, the repealing of the Tax Settlement Commission Act, bringing the Department of Revenue Investigation and Department of Money Laundering Investigation under the Office of the Prime Minister and Council of Ministers, the expansion of tax net through an increase in the number of inland revenue and customs offices, the implementation of online monitoring and risk management systems at customs and the introduction of a vehicle consignment tracking system, among others.

Despite claiming this success, the GoN identifies certain shortcomings as well. It says that regulators are more focused on Know Your Customer (KYC) issues than AML/CFT systems. There is lack of proper understanding on issues of AML/CFT across the public and private sectors. For instance, KYC policy has been found implemented by reporting entities with a different understanding, and some responsibilities of the reporting entities have been found transferred to the customers, thereby imposing an unnecessary burden on low or medium risk customers.<sup>338</sup> Similarly, the government identifies the difficulty in acquiring information about the ultimate beneficial ownership and realizes the need to strengthen the identification infrastructure system to support the verification of identities through the public information system.<sup>339</sup>

Nepal is an active participant of the global AML/CFT regime. It is evident from its membership to the UN, SAARC, APG, Egmont Group of FIUs and BIMSTEC. Ratification of major international conventions; enactments of instrumental statutes; the implementation of National

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<sup>334</sup> Ibid; Section 22.

<sup>335</sup> Ibid; Section 23.

<sup>336</sup> See the National Risk Assessment Report on Money Laundering and Terrorist Financing 2020, the Government of Nepal, 2020, [http://archive.nrb.org.np/fiu/pdf/files/NRA\\_Report\\_2020\\_Summarized\\_Final\\_Version.pdf](http://archive.nrb.org.np/fiu/pdf/files/NRA_Report_2020_Summarized_Final_Version.pdf), accessed on 30 September 2021.

<sup>337</sup> The National Risk Assessment Report 2020, Ibid.

<sup>338</sup> Ibid, p. 5, para 14

<sup>339</sup> Ibid, p.5, para 15

AML/CFT strategy; and the establishment and designation of major institutional infrastructures in a short period of time are the basic foundation for functional operation of the AML/CFT regime. As a result, Nepal has been acquitted from the "Improving Global AML/CFT Compliance List" of FATF/ICRG from June 2014.<sup>340</sup> Nepal's progress towards improving the AML/CFT framework includes building a foundation for the implementation of the AML/CFT system by devising legal and institutional frameworks, organizing capacity building programs, and creating awareness among stakeholders as well as the general public.

### **Good practices**

- The existing AML/CFT legal, policy and institutional frameworks provide relatively comprehensive provisions in line with the standards and good practices of the FATF.
- FIU-Nepal has assisted other agencies in developing their AML/ CFT instruments and has provided resource persons for AML/CFT training and capacity building programs, as well as preparing policies and guidelines. These agencies include the National Judicial Academy, NRB, Revenue Administration Training Centre, Investigation Authorities like CIAA, DMLI, Nepal Police, Nepal Banker's Association, National Banking Training Institute, Nepal Bar Association, FNCCI, CNI etc.<sup>341</sup>

### **Deficiencies**

- There is a huge gap in inter-agency coordination and cooperation in policy and at an operational level.
- There is no system in place for the verification of the ultimate owners of Reporting Entities, and consequently, there is no monitoring happening in this regard.
- The finance act safeguards probable AML/CFT assets that are invested in infrastructure projects in Nepal from investigation.

## **4.2.2 Article 53 and 56 – Measures for Direct Recovery of Property**

### **Legal framework**

Nepal expands its judicial outreach cross-broader by enacting the Mutual Legal Assistance Act 2014.<sup>342</sup> The process and requirements of providing and obtaining legal assistance between Nepal and any other foreign country on certain legal matters are governed by this piece of legislation. In order to carry out the objectives of the Act, Mutual Legal Assistance Rules 2014<sup>343</sup> have also been adopted.

The GoN and the foreign country can request mutual legal assistance from each other. The scope of assistance includes: (a) examining evidences, (b) serving notice, (c) carrying out investigation,

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<sup>340</sup> FIU Nepal Annual Report, 2019/20, <https://www.nrb.org.np/contents/uploads/2021/07/Financial-Annual-Report-076-77-2019-20.pdf>, accessed on 1 August 2022.

<sup>341</sup> Ibid.

<sup>342</sup> Translated version of the Act can be accessed at the Law Commission of Nepal website, <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/Mutual-Legal-Assistance-Act-2070-2014.pdf>, accessed on October 2021.

<sup>343</sup> Nepali version of the Rules can be accessed at the Law Commission of Nepal website, <https://www.lawcommission.gov.np/np/wp-content/uploads/2021/01/पारस्परिक-कानूनी-सहायता-नियमावली-२०७०.pdf>, accessed on October 2021.

(d) attaching the title of any property, (e) extraditing, (f) enforcing a judgment.<sup>344</sup> No foreign state is allowed to litigate in Nepalese courts for any property acquired through the commission of an offence<sup>345</sup>, but foreign forfeiture court orders can be enforced in Nepal with this new legal provision. The property identified as belonging to a person convicted of a serious offence, which includes money-laundering or any other proceeds of crime, will be confiscated.<sup>346</sup> Legal assistance can be provided to a foreign country on the basis of a bilateral treaty or a reciprocity commitment from the foreign country.<sup>347</sup> However, a civil case with a total dispute worth below one hundred thousand rupees (approx. 800 USD) and any criminal offence is punishable by less than one year in terms of imprisonment or a fifty thousand rupee (approx. 400 USD) fine, are not subject to the mutual legal assistance.<sup>348</sup> Mutual legal assistance can also be sought for proceeds of crime, which is in a foreign land.<sup>349</sup>

There are, however, a few designated predicate offences or conducts that are yet to be criminalized (i.e., terrorism categorically) and the business regulation of casinos, real estates, and collection of beneficial ownership information are still beyond the purview of law. There is no explicit provision on criminal sanctions for non-compliance with the AML/CFT preventive measures and tipping off relating to the functions of reporting entities, though there are instances where staff have been prosecuted under banking offences, frauds and even on criminal activities.<sup>350</sup>

Besides, hundi transactions<sup>351</sup> are also out of scope and securities offenses such as circular trading and front running also need a categorical inclusion in terms of criminalization. Furthermore, the Securities Board of Nepal (SEBON) is yet to introduce an automated surveillance system incorporating AML/CFT elements.<sup>352</sup>

### **Status of Implementation**

Nepal has not been effectively controlling hundi or stashing of wealth in countries like Switzerland.<sup>353</sup> Although there have been reports regarding Nepali business people setting up companies in Nepal, transferring their illegally earned money to offshore companies set up in tax

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<sup>344</sup> The Mutual Legal Assistance Act, 2014; Section 5.

<sup>345</sup> See the Civil and Criminal Codes of Nepal, 2017; see also the State Cases Act, 2017.

<sup>346</sup> See the Mutual Legal Assistance Act, 2014; Section 34; see also the Proceeds of the Crime (Freezing, Control and Confiscation Of) Act, 2013.

<sup>347</sup> The Mutual Legal Assistance Act, 2014; Section 3.

<sup>348</sup> Ibid; Section 4.

<sup>349</sup> See the Proceeds to the Crime (Freezing, Control and Confiscation Of) Act, 2013.

<sup>350</sup> See the National Risk Assessment Report 2020.

<sup>351</sup> FIU-Nepal, Strategic Analysis Report of FIU Nepal, January 2021, [https://www.nrb.org.np/contents/uploads/2021/07/Strategic\\_Analysis\\_Report\\_of\\_FIU.pdf](https://www.nrb.org.np/contents/uploads/2021/07/Strategic_Analysis_Report_of_FIU.pdf), accessed on 1 August 2022.

<sup>352</sup> For details, see the SEBON Website, <http://sebon.gov.np/>, accessed on October 2021.

<sup>353</sup> Centre for Investigative Journalism Nepal, Nepal leaks 2019, <https://cijnepal.org.np/editorial-nepaleaks-2019/>, accessed on 1 August 2022. The details are discussed in 'Article 57 – The Return and Disposal of Confiscated Property.'

haven countries and repatriating it to Nepal under foreign direct investment, nothing has happened to such business people.<sup>354</sup>

The FIU-Nepal does exchange information with foreign FIUs by adhering to the Egmont principles of exchange of information.<sup>355</sup> The frequency of information exchange has been increasing after Nepal's membership in Egmont Group of FIUs on June 10, 2015.<sup>356</sup>

**Table 4: Information Exchange with Foreign FIUs**

Year/ Action Taken	Requests received from foreign FIUs	Requests sent to foreign FIUs	Spontaneous disclosures from foreign FIUs	Spontaneous disclosures made to foreign FIUs
2009/10	-	1	-	-
2010/11	-	3	-	-
2011/12	-	4	-	-
2012/13	-	2	-	1
2013/14	-	-	1	1
2014/15	-	-	1	1
2015/16	10	3	-	-
2016/17	11	12	-	1
2017/18	12	11	1	1
2018/19	20	16	13	5
2019/20	4	24	10	1
2020/21	5	17	4	0

Source: FIU Nepal, Annual Report 2020/2021

Likewise, there has been an increase in STRs/SARs reporting to the FIU-Nepal that plays a crucial role in combatting money laundering and terrorism financing.<sup>357</sup> In 2020/2021, the FIU-Nepal received a total of 1533 STRs/SARs compared to 1090 of 2019/2020.<sup>358</sup> The reasonable suspicion may arise when a person is unable to show the legitimate source of the fund involved or when analysis reveals reasonable grounds to believe the subject has meaningful relation with criminals or designated terrorist individuals or organizations or when analysis reveals globally identified typology in AML/CFT or when abnormally unusual and complicated transaction is revealed through analysis.<sup>359</sup> There have been instances where Nepali police have arrested people including

<sup>354</sup> For details, see a report 'How Nepali Companies Have Used FDI To Launder Black Money', Nepal leaks 2019, <https://cijnepal.org.np/how-nepali-companies-have-used-fdi-to-whitewash-dirty-money/>, accessed on 1 August 2022. The details are discussed in 'Article 57 – The Return and Disposal of Confiscated Property.'

<sup>355</sup> FIU-Nepal, Annual Report 2020/2021, p.56, <https://www.nrb.org.np/contents/uploads/2021/12/Financial-Information-Unit-Annual-Report-202021.pdf>, accessed on 1 August 2022.

<sup>356</sup> Ibid

<sup>357</sup> Ibid at p.34

<sup>358</sup> Ibid

<sup>359</sup> Ibid at p.36.

foreign nationals engaged in hundi transactions<sup>360</sup> or people carrying money without legitimate source.<sup>361</sup>

**Table 5: Number of STRs/SARs Received from Reporting Entities**

S.N.	Reporting Institutions (REs)	2073/74 (2016/17)	2074/75 (2017/18)	2075/76 (2018/19)	2076/77 (2019/20)	2077/78 (2020/21)
1	Commercial Banks	949	660	910	924	1403
2	Development Banks	31	23	135	93	64
3	Finance Companies	0	3	8	1	12
4	Insurance Companies	4	2	31	4	3
5	Micro Finance	0	0	0	0	3
6	Remittance Companies	69	194	263	52	29
7	Securities Companies	0	2	3	14	18
8	Cooperative	0	2	1	2	0
9	Government agencies	0	1	0	0	1
<b>Total</b>		<b>1053</b>	<b>887</b>	<b>1351</b>	<b>1090</b>	<b>1533</b>

Source: FIU Nepal, Annual Report 2020/2021

The annual reports of the FIU-Nepal show some progress in exchange of information with foreign FIUs and analysis of STRs/SARs but equally, Nepal is unable to deal with increased misuse of online financial services and virtual assets to move and conceal illicit funds.<sup>362</sup>

Regarding mutual legal assistance, Nepal has signed a mutual legal assistance treaty with China in October 2019 that many fear of being misused against Tibetan refugees.<sup>363</sup> The government shares its willingness to conclude treaties/agreements on mutual legal assistance and extradition, as may be necessary, with the neighboring and other friendly countries with a view to promoting effective cooperation on crime prevention and control but details are not available.<sup>364</sup> Likewise, it is

<sup>360</sup> NDTV, 2 Indians Among 3 Arrested For Illegal Hundi Transaction In Nepal, 2 October 2021, <https://www.ndtv.com/indians-abroad/2-indians-among-3-arrested-for-illegal-hundi-transaction-in-nepal-2561692>, accessed on 1 August 2022.

<sup>361</sup> Online Khabar, Bhaktapur: Man arrested with Rs 8 million cash as he can't mention the source, 21 October 2021, <https://english.onlinekhabar.com/bhaktapur-arrest-money-no-source.html>, accessed on 1 August 2022.

<sup>362</sup> FIU-Nepal, Annual Report 2020/2021, p.62, <https://www.nrb.org.np/contents/uploads/2021/12/Financial-Information-Unit-Annual-Report-202021.pdf>, accessed on 1 August 2022.

<sup>363</sup> The Himalayan Times, China may misuse MLAT against Tibetan refugees, 15 October 2019, <https://thehimalayantimes.com/nepal/china-may-misuse-mlat-against-tibetan-refugees>, accessed on 1 August 2022.

<sup>364</sup> For details, press release of 26 July 2020, <https://mofa.gov.np/official-spokespersons-response-to-media-query-on-treaties-agreements-on-mutual-legal-assistance-and-extradition/>, accessed on 1 August 2022.

challenging to receive or provide mutual legal assistance without conclusion of a bilateral treaty.<sup>365</sup> Diplomatic channel are bureaucratic and always not effective.<sup>366</sup>

### **Good Practices**

- The FIU-Nepal as a member of Egmont Group of FIUs is increasingly exchanging information with foreign FIUs by adhering to the Egmont principles of exchange of information.

### **Deficiencies**

- There is no specific law or policy regulating designated non-financial businesses and professions (DNFBPs) which leaves much leeway for money-laundering and corruption.
- Legal assistance can be provided to a foreign country on the basis of a bilateral treaty or a reciprocity commitment from the foreign country but in reality, it is complicated without a bilateral treaty. Diplomatic channels are often too bureaucratic.

## **4.2.3 Article 54 – Confiscation Tools**

### **Legal framework**

First of all, there is a provision of fines to banks or financial institutions (five hundred thousand Nepali rupees, approximately 4000 USD) as well as non-financial institutions (twenty-five thousand to one hundred thousand Nepali rupees, approximately 200 to 800 USD) for not providing information to the FIU.<sup>367</sup> Secondly, the DMLI or its investigating officer has the power to give orders for freezing assets during the course of an investigation. Fines are imposed if orders are not complied with.<sup>368</sup> Domestic bank accounts can be withheld and requests for freezing foreign bank accounts can be made through diplomatic channels.<sup>369</sup> Adequate safety is ensured for the seized assets and documents by the investigation officer.<sup>370</sup> Relevant support from other entities concerned may be obtained.<sup>371</sup> The property identified as belonging to a person convicted of a serious offence, which includes money laundering or any other proceeds of crime will finally be confiscated.<sup>372</sup>

### **Status of Implementation**

Despite the comprehensive legal and policy mandates of AML legislation and the National AML/CFT Strategy and Action Plan, the GoN finds it difficult to track down and investigate

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<sup>365</sup> Section 3 and Section 15 of the Mutual Legal Assistance Act 2014, <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/Mutual-Legal-Assistance-Act-2070-2014.pdf>, accessed on 1 August 2022.

<sup>366</sup> Section 15 of the Mutual Legal Assistance Act 2014.

<sup>367</sup> See the Assets (Money) Laundering Prevention Act, 2008; Section 31, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/money-laundering-prevention-act-2063-2008.pdf>, accessed on 1 August 2022.

<sup>368</sup> Ibid; Section 18.

<sup>369</sup> Ibid; Section 19.

<sup>370</sup> Ibid; Section 20.

<sup>371</sup> Ibid; Section 21.

<sup>372</sup> Section 34 of Assets (Money) Laundering Prevention Act, 2008.

money laundering offences as it indicates in the National Risk Assessment Report, "...In spite of legal and policy mandates under Section 5 of the Money Laundering Prevention Act (MLPA) and National AML/CFT Strategy and Action Plan, to investigate money laundering offences, together with predicate offences and share related information with DMLI, the low level of sharing of information by the predicate offence Law Enforcement Agencies (LEAs) and similar agencies including revenue to DMLI is related to the issues of proper knowledge or understanding of relevant requirements. This has not only created difficulty in ascertaining the degree of national ML threat but also impacted the ability of combating ML."<sup>373</sup>

### **Good Practices**

- The Assets (Money) Laundering Prevention Act, 2008 provides the DMLI or its investigating officer the power to give orders for freezing assets during the course of an investigation. Fines are imposed if orders are not complied with.
- Domestic bank accounts can be withheld and requests for freezing foreign bank accounts can be made through diplomatic channels.

### **Deficiencies**

- Implementation of the provisions of Nepalese laws in dealing with the issues remains to be seen.

## **4.2.4 Article 51, 54, 55, 56 and 59 – International Cooperation for the Purpose of Confiscation**

### **Legal framework**

The Assets (Money) Laundering Prevention Act, 2008; Proceeds to the Crime (Freezing, Control and Confiscation Of) Act, 2013; Mutual Legal Assistance Act, 2014; Financial Procedure and Fiscal Accountability Act 2019; and National AML/CFT Strategy and Action Plan 2019-2024 are some of legislations that provide grounds for international cooperation for the purpose of confiscation. The legal and policy regime is fragmented in this regard as provisions are scattered in various laws and policies.

The legal framework largely conforms to the international standards. This includes the basic AML/CFT measures such as Customer Due Diligence (CDD); monitoring, reporting, record keeping; regulation, supervision, prohibition of fictitious and anonymous accounts; and transactions with shell banking. Additional measures include monitoring politically exposed persons (PEPs), wire transfer, and non-face to face technology based financial activities. It also covers aspects of the AML/CFT such as investigation, prosecution, adjudication, sanction, assets recovery and international cooperation issues.<sup>374</sup> However, there is a need to revise the existing

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<sup>373</sup> See Clause No. 18 of "B. Policy, Legal and Institutional Frameworks and Enforcement Scenario" in the National Risk Assessment Report 2020, [https://mofa.gov.np/wp-content/uploads/2021/03/NRA\\_REPORT\\_2020\\_Summarized.pdf](https://mofa.gov.np/wp-content/uploads/2021/03/NRA_REPORT_2020_Summarized.pdf).

<sup>374</sup> See the National Risk Assessment Report 2020, Op. Cit. 167.

legal framework for explicit criminalization of terrorist acts, and the building capacity of intelligence and LEAs.

### **Status of Implementation**

Nepal is a member of APG, Egmont Group of FIU, Asset Recovery Interagency Network- Asia Pacific (ARIN-AP) and INTERPOL since 1967. The National Central Bureau (NCB) has been working to ensure liaison with various concerned national and international agencies as well as with the Secretariat of INTERPOL as the national contact point. NCB-Kathmandu serves as the national point of contact for all INTERPOL matters in Nepal and coordinates international investigative cooperation between INTERPOL's member countries throughout the world and domestic LEAs. The NCB uses INTERPOL's secured global police communication system called I-24/7 to share information, coordinate police activities and access their databases. It transmits messages about wanted fugitives, kidnapped children, terrorists, illegal drug traffickers, and other individuals and groups involved in criminal activities, and assists police investigations across the world.<sup>375</sup>

### **Good Practices**

- Nepal is a member of APG, Egmont Group of FIU, Asset Recovery Interagency Network- Asia Pacific (ARIN-AP) and INTERPOL since 1967 and is committed to provide cooperation internationally.

### **Deficiencies**

- The existing legal framework does not explicitly criminalize terrorist acts.

## **4.2.4 Article 57 – The Return and Disposal of Confiscated Property**

### **Legal framework**

The Proceeds to the Crime (Freezing, Control and Confiscation Of) Act, 2013 defines situations whereby all assets must be returned. The property must be returned if the property is not related with the proceeds of the crime or the property belongs to innocent third party or the court makes an order directing that the property be returned to the person from whose possession it was seized.<sup>376</sup>

All assets recovered are credited to the Special Fund aimed at managing the proceeds of crime, which shall be operated by a separate Management Committee.<sup>377</sup> This committee is comprised of: (i) the Secretary – Ministry of Finance as the coordinator; (ii) the Joint-Secretary – Ministry of Law, Justice and Parliamentary Affairs, Member; (iii) the Joint-Secretary – Ministry of Home Affairs, Member; (iv) Representative (first-class) – Financial Comptroller General Office, Member, and (v) Director General – Department of Managing Proceeds of Crime, Member-

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<sup>375</sup> For details, see Nepal Police Website, <https://www.nepalpolice.gov.np/structure/interpol-section/>, accessed on October 2021.

<sup>376</sup> Section 27-28 of the Proceeds to the Crime (Freezing, Control and Confiscation Of) Act, 2013, <https://www.lawcommission.gov.np/wp-content/uploads/2021/01/कसुरजन्य-सम्पत्ति-तथा-साधन-रोक्का-नियन्त्रण-र-जफत-ऐन-२०७०.pdf> (Nepali version), accessed 1 August 2022.

<sup>377</sup> See the Proceeds to the Crime (Freezing, Control and Confiscation Of) Act, 2013; Section 22.

Secretary. It formulates procedures on its own and even a foreigner can participate in committee meetings as an observer. The Department of Managing Proceeds of Crime functions as the Committee Secretariat.<sup>378</sup> The Special Fund takes effect through opening an account in the central or commercial bank<sup>379</sup> and needs to be audited by the Auditor General following the set standards.<sup>380</sup> The fund, among others, is “shared with the foreign country per the requirements”.<sup>381</sup>

### **Status of Implementation**

While the legal framework is in place, asset recovery laws insofar as ML/TF is concerned have not been effectively implemented so far.

Nepal Rastra Bank (NRB), the country’s central bank, revealed that the Foreign Direct Investment (FDI) worth a total of Rs 137.68 billion (approx. 1,108,151,400 USD) had been endowed to industries currently operating in Nepal. More than 60 percent of the FDI share, amounting to NRs 82.65 billion (approx. 663,273,150 USD) came from tax haven countries of which only 17 have been approved to invest by the Nepali government. Investments from the British Virgin Islands and nearby countries in the Caribbean alone comprise NRs 62.78 billion (approx. 501,499,200 USD).<sup>382</sup>

A headline hit mainstream media with sensational news that Swiss Bank has billions of Nepalese rupees deposited.<sup>383</sup> The Centre for Investigative Journalism’s (CIJ) report *Nepal-leaks 2019: Illegal Wealth watch* revealed that Nepalis have stashed Rs 35.8 billion (approx. 283,104,390 USD), violating the country's law which bars them from transferring funds abroad and has also claimed that 55 Nepalis have invested in offshore companies, taking advantage of the country's secretive tax regimes and breaching the law which bars investment in foreign countries.<sup>384</sup> Those who invested money in foreign countries span from politicians and high-flying businessmen – some of whom are non-resident Nepalis – to doctors and hoteliers. The majority of the investments were made in businesses registered in the British Virgin Islands, one of the most notorious tax havens in the Caribbean.<sup>385</sup> The report also revealed how a lot of these investors used their offshore companies to funnel money back into the country under the guise of FDI.<sup>386</sup>

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<sup>378</sup> Ibid; Section 25.

<sup>379</sup> Ibid; Section 22.

<sup>380</sup> Ibid; Section 23.

<sup>381</sup> Ibid; Section 24.

<sup>382</sup> Nepal Rastra Bank, A Survey Report on Foreign Direct Investment in Nepal, 2019; soft copy of the report can be accessed at <https://www.nrb.org.np/contents/uploads/2020/08/FDI-Report-December-2019.pdf>, accessed on 30 September 2021.

<sup>383</sup> myRepublica (January 2019), 55 Nepalis have over Rs 52 billion in Swiss banks, <https://myrepublica.nagariknetwork.com/news/breaking-news-55-nepalis-have-over-52-billion-in-swiss-banks/>; The Himalayan Times (July 2018), Nepalis parking wealth in Swiss banks, <https://thehimalayantimes.com/business/nepalis-parking-wealth-in-swiss-banks>, both accessed on 30 September 2021.

<sup>384</sup> Centre of Investigative Journalism Portal (January 2019), The Nepalis who deposited their suspicious wealth in Swiss banks, <https://cijnepal.org.np/the-nepalis-who-deposited-their-suspicious-wealth-in-swiss-banks/>, accessed on 30 September 2021.

<sup>385</sup> The Economic Times (January 2019), Nepalis stash Rs 35.8 billion in Swiss banks: Report, <https://economictimes.indiatimes.com/news/international/world-news/nepalis-stash-rs-35-8-billion-in-swiss-banks-report/articleshow/67574405.cms>, accessed on 30 September 2021.

<sup>386</sup> Ibid.

Nevertheless, no investigation was initiated by the government, neither was any action taken to stop illegal investments. The NRB’s report thus recommends that laws must be strictly implemented. An article from The Record Nepal states: “Although the DMLI was established to investigate such cases, due to weak legal compliance, poor governance and rampant impunity, it has failed to be effective, making the country even more vulnerable to money laundering. So far, only a small number of small-scale money laundering cases have been filed in courts by the DMLI.”<sup>387</sup>

To summarize, various rules and regulations with adequate provisions are in place to regulate economic and financial crimes, and to penalize corrupt authorities, tax evaders and money launderers in Nepal. The CIAA has extraordinary powers to investigate and file cases related to corruption in the Special Court, except the policy decisions of the Council of Ministers, judiciary and the army. The DMLI has the authority to investigate and prevent the commission from money laundering as well as the financing and proliferation of terrorism in the country while the DRI has been entrusted to discharge the functions and responsibilities under the important legislations of the country. These institutions’ track record, however, shows that notwithstanding this comprehensive framework, illegal activities have not declined. Sadly, the constitution and law of Nepal provide immunity to policy decisions of parliamentarians and lawmakers, which has been conducive to increased instances of corruption. Every decision of the cabinet has been beyond the scope of the CIAA’s investigations. This has resulted in all kinds of proposals, big and small, being sent to the cabinet, thereby making them immune to investigation. All decisions made by the cabinet cannot be regarded as policy decisions, which allow for them to act with impunity. Henceforth, they must be separated from real policy decisions and be included within the investigative parameters.<sup>388</sup>

The DMLI Annual Report of 2017/18 shows that 281 complaints were registered with the DMLI but only 136 complaints were forwarded to the investigating officers and a mere 6 complaints were investigated.<sup>389</sup> It shows there is a need for more investigation by the DMLI.

**Table 6: Complaints, Investigation and Cases Details (FY 2017/18)**

Complaints registered with the DMLI	Complaints forwarded to the Investigating Officers	Complaints Investigated	Cases Filed	Closed Complaints	Complaints forwarded to other Authorities
281	136	6	4	174	34

<sup>387</sup> For details, see The Record (April 2020), Nepal’s underground economy, <https://www.recordnepal.com/nepals-underground-economy>, accessed on 30 September 2021.

<sup>388</sup> Ibid.

<sup>389</sup> Nepali version of the Report can be accessed at the DMLI website, [http://www.dml.gov.np/assets/uploads/files/%E0%A4%B5%E0%A4BE%E0%A4%B0%E0%A5%8D%E0%A4%B7%E0%A4BF%E0%A4%95\\_%E0%A4AA%E0%A5%8D%E0%A4B0%E0%A4%97%E0%A4A4%E0%A4BF\\_%E0%A4AA%E0%A5%8D%E0%A4B0%E0%A4A4%E0%A4BF%E0%A4B5%E0%A5%87%E0%A4A6%E0%A4A8\\_%E0%A5%A8%E0%A5%A6%E0%A5AD%E0%A5AA-%E0%A5A8%E0%A5A6%E0%A5AD%E0%A5AB.pdf](http://www.dml.gov.np/assets/uploads/files/%E0%A4%B5%E0%A4BE%E0%A4%B0%E0%A5%8D%E0%A4%B7%E0%A4BF%E0%A4%95_%E0%A4AA%E0%A5%8D%E0%A4B0%E0%A4%97%E0%A4A4%E0%A4BF_%E0%A4AA%E0%A5%8D%E0%A4B0%E0%A4A4%E0%A4BF%E0%A4B5%E0%A5%87%E0%A4A6%E0%A4A8_%E0%A5%A8%E0%A5%A6%E0%A5AD%E0%A5AA-%E0%A5A8%E0%A5A6%E0%A5AD%E0%A5AB.pdf), accessed on October 2021.

Source: DMLI Annual Report, 2017/18<sup>390</sup>

### Good practices

- The CIAA, Special Court and DMLI have necessary rules and regulations in place to regulate economic and financial crimes, and to penalize corrupt authorities, tax evaders and money launderers in Nepal.

### Deficiencies

- Despite reports such as *Nepal-leaks 2019: Illegal Wealth watch*, no investigation was initiated by the government, neither was any action taken to stop illegal investments.

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<sup>390</sup> Nepali version of the Report can be accessed at the DMLI website, [http://www.dml.gov.np/assets/uploads/files/%E0%A4%B5%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%B7%E0%A4%BF%E0%A4%95\\_%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A4%97%E0%A4%A4%E0%A4%BF\\_%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A4%A4%E0%A4%BF%E0%A4%B5%E0%A5%87%E0%A4%A6%E0%A4%A8\\_%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AA-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AB.pdf](http://www.dml.gov.np/assets/uploads/files/%E0%A4%B5%E0%A4%BE%E0%A4%B0%E0%A5%8D%E0%A4%B7%E0%A4%BF%E0%A4%95_%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A4%97%E0%A4%A4%E0%A4%BF_%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A4%A4%E0%A4%BF%E0%A4%B5%E0%A5%87%E0%A4%A6%E0%A4%A8_%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AA-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AB.pdf), accessed on October 2021.

## V. Recent Developments

The lowest conviction rate in corruption cases was recorded in the 32-year history of the CIAA in the fiscal year 2021-22.<sup>391</sup> The Special Court had quashed more than 140 cases as of November 2022. It is because in April 2021, the Supreme Court ruled the CIAA's use of sting operations to collect evidences against public officials in corruption unconstitutional.<sup>392</sup> This ruling has affected the conviction rate of corruption cases. In the fiscal year 2021-22, the conviction rate was 38.51 percent<sup>393</sup> compared to 71.68 percent in the fiscal year 2020-21.<sup>394</sup> The CIAA has filed appeals in the Supreme Court against the verdicts of the Special Court. However, it raises the questions on investigation conducted by the CIAA.

As of November 2022, the government is undertaking the process to update the National Strategy and Action Plan on Implementation of UNCAC 2012. The process of updating the national strategy and action plan is in a preliminary phase and primarily discussion among key ministries is ongoing.<sup>395</sup> Since the process is still at the preliminary phase, the draft is not publicly available.

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<sup>391</sup> The Kathmandu Post (September 2022), Conviction rate in graft cases at record low, <https://kathmandupost.com/national/2022/09/22/conviction-rate-in-graft-cases-at-record-low>, accessed on 10 November 2022.

<sup>392</sup> Nepali Times (April 2021), Sting operation ruled illegal, <https://www.nepalitimes.com/latest/sting-operation-ruled-illegal/>, accessed on 10 November 2022.

<sup>393</sup> See The Kathmandu Post (September 2022), Conviction rate in graft cases at record low.

<sup>394</sup> The Kathmandu Post (November 2022), Low conviction rate prompts CIAA to appeal at top court in record numbers, <https://kathmandupost.com/national/2022/11/09/low-conviction-rate-prompts-ciaa-to-appeal-at-top-court-in-record-numbers>, accessed on 10 November 2022.

<sup>395</sup> Personal Communication with Ms. Aruna Joshi, UNCAC Focal Person and Joint Secretary, OPMCM, 23 November 2022, Singh Durbar, Kathmandu.

## **VI. Recommendations**

Despite deriving their independence from constitutional provisions, the anti-corruption agencies' role appears to have shrunk in Nepal as the focus is on petty offences only, but not on the large-scale cases and policy-level corruption that has largely contributed to a culture of impunity in the country. There is, however, a perception among people that corruption is prevalent in society as is reported by the flagship publications of international watchdogs, including the Corruption Perceptions Index (CPI) of Transparency International, and others.<sup>396</sup> A culture of vigil is essential to replace the culture of impunity. All GoN efforts, thus, should be directed towards bringing each and every stakeholder on board as it is a duty of all to contribute to the fight against corruption.

In light of the aforesaid, this report recommends the following:

### **Key Recommendations for Priority Actions**

In order to fully comply with the UNCAC requirements, Nepal should consider the following primarily:

1. Involve CSOs, the private sector and media in combating corruption in general, and extend interaction with them in the UNCAC review process in particular, by inviting them to meaningful consultations, as it is a national obligation which is not merely confined to the government only.
2. Formulate and implement special laws in line with international standards especially in areas requiring full compliance with the UNCAC, for instance, regarding conflicts of interest and political party financing.
3. Secure full abidance with existing laws, mitigating all anomalies and intricacies involved, as most of the prevalent laws need immediate amendments.
4. Ensure that institutions are endowed with adequate human and financial resources and an enabling environment so that they function independently and effectively, as well as in an efficient and sustainable manner.
5. Demonstrate a strong political will to do away with growing impunity by prosecuting even the PEPs involved in corruption.
6. Make a distinction between the operational vs. the policy decisions of the Cabinet to ensure that the corruptions cases involving politicians are also under the ambit of the investigating agencies and the court.

### **Recommendations for Chapter II**

1. Ensure broad participation of CSOs, the private sector and ordinary citizens in formulating and implementing anti-corruption policies and action plans at all levels so as to increase a sense of ownership; and consolidate all scattered policies in a comprehensive national

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<sup>396</sup> For more details, see Transparency International Portal, <https://www.transparency.org>, and Global Integrity Portal, [www.globalintegrity.org](http://www.globalintegrity.org), accessed on November 2021.

policy and ensure effective implementation of the integrity system as pledged to be enforced.

2. Restructure the various anti-corruption agencies so as to avoid duplication of work and coordination problems as a multi-agency approach is burdensome in terms of financial as well as human resources; and build the capacity of institutions accordingly endowing them with the adequate human and financial resources to achieve their goals.
3. Put an end to the politicization of the civil service and enhance work motivation, raising both the ethical awareness and behavior of the civil servants by providing them with adequate necessary perks and trainings required. Ensure mechanisms to reduce reliance on political connections in civil service management for raising the levels of professionalism in the civil service sector in Nepal.
4. Enhance the overall capacity of the Election Commission to monitor political party financing.
5. Ensure an environment of functional independence of civil service and judicial positions and immediately stop the practice of political connections and loyalties being a prerequisite to be obtain such a position.
6. Immediately formulate and implement a code of conduct for the Members of Parliament.
7. Entrust the Public Procurement Monitoring Office (PPMO) to look into the conflict-of-interest situation of public procurement officials, and entrust the NVC to audit all asset declarations and not to confine it to “investigating purposes” only.
8. Allow the PPMO to monitor the assets, income and spending habits of the procurement officers, as it is the sole monitoring agency for procurement purposes.
9. Immediately introduce a separate law on whistleblower protection, ensuring they have channels to report anonymously and are protected against retaliation, as the prevalent laws to protect informers are inadequate.
10. Strictly implement the findings of the Office of the Auditor General, the Public Audit Committee and other parliamentary committees and oversight agencies in both letter and the spirit; and put a complete halt on the practice of using ordinances to bypass the constitutional obligation to present the budget in parliament as this weakens the rule of law in Nepal.
11. Strengthen a culture of proactive disclosure of information on all matters of national importance, which should be made public immediately.
12. Require judicial integrity to be respected by all including the leadership of the judiciary; and ensure the appointment of the Attorney General is strictly based on merit.
13. Immediately enact laws that promote cooperation between the private sector and law enforcing agencies to ensure private sector transparency.
14. Further develop and strengthen the capacity of all stakeholders, including the Financial Intelligence Unit and the Department of Money Laundering Investigation (DMLI), to effectively address the issue of money laundering and terrorist financing (ML/TF), as this is still a new concept to many in Nepal.

15. Create a register of timely and verified beneficial ownership information and make it available to the public to ensure transparency of the beneficial owners of companies in Nepal.

### **Recommendations for Chapter V**

16. Make sure reporting entities themselves are clear on ML/TF and KYC issues first, instead of transferring the burden to the customers in the name of Know Your Customer (KYC), and strengthen the public information system to support the verification of customers' identity.
17. Immediately criminalize and enforce predicate offences such as regulation of casinos and real estates, along with hundi transactions and securities offenses such as circular trading and front running accordingly.
18. Provided for and enforce sanctions for non-compliance with AML/CFT preventive measures.
19. Have the reporting agencies introduced automated surveillance system immediately, and strengthen international cooperation.
20. Revise existing legal framework to explicitly criminalize terrorist acts, and strengthen Law Enforcement Agency's intelligence capacity.
21. Immediately investigate all financial irregularities reported – the DMLI and other agencies concerned must be more proactive in this respect.

## VII. Annex

### 7.1 List of Persons Consulted

Name	Organization/Affiliation	Interview Date
Mr. Koshal Chandra Subedi	Joint Secretary, Office of the Prime Minister and Council of Ministers (OPMCM) UNCAC Focal Point	September-October, 2021
Mr. Chudamani Paudel	Advocate	September, 2021
Mr. Surendra Kunwar	Advocate	September, 2021
Mr. B.P. Gautam	Advocate	September, 2021
Ms. Indira Neupane	Advocate	September, 2021
Mr. Shiv Paudel	Advocate	September, 2021
Mr. Birendra Thapaliya	Civil Society Representative	September, 2021
Mr. Raj Kumar Shiwakoti	Civil Society Representative	September, 2021
Ms. Raksha Basyal	Civil Society Representative	September, 2021
Mr. Gyanendra Ojha	Government Employee	October, 2021
Mr. Achyut M. Neupane	Government Employee	October, 2021
Mr. Bijay Paudel	Journalist	October, 2021
Mr. P.B. Pokharel	Journalist	October, 2021
Mr. Prakash Shrestha	Education Activist	October, 2021
Anonymous	CEO, Banking Sector	October, 2021
Mr. Santosh K.C.	Legal Faculty	October, 2021
Mr. Shiv B. Bisangkhe	Legal Faculty	October, 2021
Mr. Prem P. Neupane	Entrepreneur	October, 2021

### 7.2 Bibliography

Acts, Regulations and By-laws are enacted in the Nepali language in Nepal.<sup>397</sup> The Nepal Law Commission prepares English language translations of some Acts, Regulations and By-laws as per necessity. All available translated versions are adequately referenced in the main report (please see report footnotes), whereas all primary sources hereunder can be accessed at the Law Commission of Nepal Website.

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<sup>397</sup> For Acts, [https://www.lawcommission.gov.np/np/?lsrv\\_document\\_cat=मौजुदा-कानूनहरू-ऐनहरू](https://www.lawcommission.gov.np/np/?lsrv_document_cat=मौजुदा-कानूनहरू-ऐनहरू); for Rules, [https://www.lawcommission.gov.np/np/?lsrv\\_document\\_cat=मौजुदा-कानूनहरू-नियमहरू](https://www.lawcommission.gov.np/np/?lsrv_document_cat=मौजुदा-कानूनहरू-नियमहरू) in Nepali language.

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- Assembly or Union Act, 1949
- Assets (Money) Laundering Prevention Act, 2008
- Audit Act, 2019
- Banks and Financial Institutions Act, 2017
- CIAA Act, 1991
- Citizens' Rights Act, 1955
- Citizenship Act, 2006
- Civil and Criminal Codes of Nepal, 2017
- Civil Service Act, 1992
- Companies Act, 2006
- Competition Promotion and Market Protection Act, 2007
- Constitutional Council Act, 2010
- Consumer Protection Act, 2018
- Election Commission Act, 2017
- Financial Procedure Act, 1999
- Financial Procedure and Fiscal Accountability Act, 2019
- Good Governance (Management and Operation) Act, 2008
- Industrial Enterprises Act, 2020
- Judicial Administration Act, 2016
- Judicial Council Act, 2016
- Judicial Service Commission Act, 2016
- Local Government (Operation) Act, 2017
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- Registration of Association Act, 1977
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